

LSH
Heard at: Field House

EA (GBTS info _ Speculative
Reasons) Turkey [2004]
UKIAT 00050

On 25 February 2004

IMMIGRATION APPEAL TRIBUNAL

notified:

Date Determination

23 March 2004

Before

:

**His Honour Judge N Ainley (Chairman)
Mr R Hamilton**

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION OF APPEAL

1. This is an appeal by the claimant from the determination of Mr Ward sitting as an Adjudicator on 14 January 2003.
2. The claimant is a Turkish citizen and is female. The basis of her claim is that her late husband was a PKK supporter who was taken by the authorities and tortured on a number of occasions. Eventually he was shot and killed by them. She came to the United Kingdom in July 2002 and claims that if she were to be returned to Turkey, because of her family's associations with the PKK, she would be at risk of persecution.
3. The Adjudicator found that her accounts of her husband's mistreatment and of the dangers that she would face on return were untrue and he dismissed her appeal.
4. There are two matters before the Tribunal. One is an application for this hearing to be adjourned to produce further

evidence and the other, should that application fail, is that the matter should be remitted to be reheard by another Adjudicator.

5. In order to deal with the application and indeed with the appeal itself, it is necessary to go into the facts.
6. In her statement the claimant said that her husband was a PKK supporter and this led to raids on the house. She said she did not know how often the raids occurred as she was bad with dates and was uneducated. She said that on one occasion her husband was tortured so badly that he had to remain at home for 3 months, never making a full recovery from his ill-treatment. She said that her husband was also visited by HADEP members and they would discuss politics.
7. She said that she remembered how her husband died. Their house was raided by Gendarmes who kicked down the wooden door attacked her and made as if to rape her. She was told to lie on the floor but her husband jumped on top of her. She heard a gun shot and fainted. When she came round she was in hospital and found out later that her husband had been killed. She mentioned that she had some injuries to her chest, right arm and head.
8. After this happened she returned to the village but discovered that her three sons had left home and were missing. They had gone away having heard what had happened to their parents. She did not see them again until she came to the United Kingdom in July 2002 where one of them was already living and where another has since joined her.
9. Her statement was supplemented by a psychiatric report compiled by Dr Clark. He interviewed her on 9 January 2003 and she told him of the account of what had happened to her. He came to the conclusion that she was severely distressed and that also she was not in a fit state to give evidence because this might precipitate a panic attack or an acute asthmatic attack.
10. Some of the facts that were given to the psychiatrist are different from those that were eventually given in evidence. She stated to the psychiatrist that her husband had been taken and mistreated on a number of occasions but that the final occasion was in early 2002 when the Gendarmes came to the house while her sons were out, attempted to rape her and shot him while her husband was trying to protect her. She stated that two of her sons had already fled to England and after her release from hospital she stayed with her sister-in-law until she could travel to England.

11. In her evidence which, according to the Adjudicator, she was quite able to give, showing no difficulty in answering the questions that were asked her, she said when examined that her husband had died in 1999; in other words, rather more than 3 years before the hearing date instead of the few months that would have elapsed since his death if the account she had given to the psychiatrist were correct. This discrepancy on its own is capable of casting serious doubt on the account the claimant gave and her risk on return because if what she was saying in evidence were true she had obviously been living in Turkey for a period of 3 years since her husband died without having any trouble from the authorities at all. One would then be entitled to ask what the precipitating event that led to her leaving could possibly have been if it was connected with any persecution inflicted by the authorities.
12. The Adjudicator found that there were other aspects of her evidence that were unsatisfactory. She was asked what her husband did to assist the PKK and said that she could not remember. The Adjudicator said that he found that not possible to follow because she would be bound to ask her husband, as in ordinary human nature one would, why the house was being raided or why he was being taken away when those events occurred. She also gave evidence that was different from what she said earlier in respect of her children. She was asked who looked after her when she was released from hospital and said that her children looked after her. She then contradicted that evidence saying that the children had fled after her husband was killed and that her brother-in-law looked after her. There again, the Adjudicator found it difficult to see that there could be an honest explanation for that discrepancy. What also troubled the Adjudicator considerably was that there was no death certificate for her husband and he could not understand why one had not been obtained. There is no question but the lack of the existence of the death certificate was a factor in his assessment of credibility. He was further troubled by the fact that although two of the claimant's sons were in the United Kingdom neither of them came along to corroborate her account. Although corroboration is not necessary the fact that the sons were not called did seem to him to call for some sort of explanation.
13. In short the Adjudicator held that the whole story was made up and that the claimant had nothing to fear from the authorities.
14. Since then the death certificate has come to light and it was placed before us. No one challenges its authenticity. What it shows is in our judgment of considerable support to the conclusions that the Adjudicator had come to without seeing it. The certificate shows that the claimant's husband died on 5 May 1999 at 9.30 am of natural causes. We can think of no

reason why, if the authorities thought he was a terrorist and had shot him there should be any reason they should feel any need to conceal the fact that his death was as a result of a clash with the security forces. Indeed there is a specific code for death in a clash with security forces provided for in Turkish death certificates. The position would therefore seem to be according to an authentic document that the story of her husband's murder is a fabrication and that he died several years before she left Turkey of natural causes; nothing to do with the authorities at all.

15. It is against that background that we are invited to adjourn this matter, so that we can receive fresh evidence. The new evidence that the claimant's current solicitors say is available and should be received is evidence from a man called Bugday who is now a United Kingdom citizen although originally Turkish. He fled to this country some time in the early 1990s and obtained indefinite leave to remain in or about 1993. The solicitors say that it was impossible to have his evidence to hand and in front of the Adjudicator because no one on the claimant's side knew that he was in the country until the middle of 2003, some months after the hearing had taken place. No notification of the existence of this man was given between his discovery and now because the person handling the matter for the previous solicitors was incompetent. As to this latter point there seems to be little doubt that this person was incompetent; he was sacked by the former solicitors for gross misconduct.
16. The evidence of Mr Bugday would apparently be to the effect that he was detained with the claimant's husband in either 1980s or very early 1990s and saw the claimant's husband being mistreated by the authorities. We were invited to adjourn so that his evidence could be placed before the Tribunal or alternatively to remit this matter so that his evidence could be heard by another Adjudicator.
17. We consider that there are no good reasons for admitting this evidence. First, we do not know what Mr Bugday would actually say, because there is nothing other than the solicitors opinion of what he would say before us and nothing in writing from him whatever. The current solicitors have only very recently taken over the file in this case. We should say that in our judgment we consider that they have advanced every point in favour of their client that they could possibly have been expected to advance but we consider that it is extraordinary that in the months since Mr Bugday has surfaced no one thought to take a statement from him and nor did he proffer a statement. It would appear that there is no record of what he proposes to say at all. We must therefore view with some caution any assertion made that he will say certain things that are thought crucial to this appeal. For that reason

alone we would have declined the adjournment on the grounds that the adjournment is based on little more than speculation as to what a witness would say. But we would go further than that because it seems to us that even if it were the case that a decade or more ago the claimant's husband had been detained and mistreated by the authorities this is not a matter that would be likely to cause her any problems at all on return to Turkey because on arrival at Istanbul airport there would be no record linking this claimant with separatist activities.

18. The Tribunal has recently received a note via the Embassy in Ankara dealing with what is actually recorded on the Turkish national computer the GBTS at Istanbul airport. It would seem that someone who has been treated as the claimant's late husband would not be someone who would ever have been registered on this computer because he never formally entered into the judicial system. People who are merely detained and mistreated and then released without charge do not appear on the computer. It is only when they are formally arrested by warrant or have been formally charged or proceeded against that they do. In any event, data on a person are erased upon that person's death even if they have been convicted of a crime.
19. The Solicitors for the claimant helpfully put before us e-mails that had gone between them and a Miss Denise Graf of Amnesty International in Switzerland. These e-mails date from the end of January 2004 and deal with what is on the computer. Miss Graf wrote

"It is true that during my 20 years activity on Turkey, I have met only one case of a person against whom no arrest warrant was released and whose has never been judged and whose record has been found on the GBTS computer all the same. Usually, only persons against whom a judicial procedure has been opened or who are wanted by the police have records on this computer. Persons who are only wanted by the police or the military police are not recorded on the GBTS computer, because no formal arrest warrant has been released against them".
20. She went on to say that other records on persons of adverse interest to the authorities did exist elsewhere and were now likely to be computerised and thus accessible.
21. Even if one were to assume that there were or had been records on the claimant's husband in the province from which she comes that would not alert the authorities in any way at Istanbul airport because all they would be faced on the return of this claimant was a returning failed asylum seeker. The authorities do not assume that because someone is a failed asylum seeker they are someone of adverse interest in Turkey.

Their normal assumption is that this is a person who has made up a story to try and make a better life for themselves in the west. There would be nothing on this claimant, who has no political profile at all. In such circumstances they would not look for any evidence from elsewhere because they would not be alerted to any need to do so.

22. In all the circumstances, it seems to us that for the reasons we have given these applications for an adjournment and for remittal must fail.
23. The application for an adjournment is too speculative as is the application for a remittal even if it were the fact that the claimants husband had been ill-treated a very long time ago. There is clear evidence to show that he was not killed in 1999 but died then and there is also material to show that the fact of his earlier involvement with the PKK, if it is existed, would not be such as to put this claimant at any real risk on return even if the evidence of Mr Bugday were to be accepted in its entirety.
24. Accordingly, this appeal is dismissed.

Ainley

**His Honour Judge N
Vice President**