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Heard at Field House

OD (Kurd - PKK - Internal Flight)
Turkey [2004] UKIAT 00023

On 18 August 2003
Prepared 18 August 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

12 February 2004

Before:
Mr H J E Latter (Chairman)
Mrs W Jordan

Between

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation

For the Appellant: Mr James Collins, of counsel instructed by J R Jones Solicitors

For the Respondent: Mr Steve Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Turkey appeals against the determination of an Adjudicator (Mr D R Garrett), who dismissed his appeal against the decision made on 24th July 2002 giving directions for his removal following the refusal of his claim for asylum.
2. The appellant left Turkey on 9th July 2002 travelling across Europe in the back of a lorry. He made a clandestine entry in to the UK. Once the lorry had been opened by Immigration Officers he claimed asylum. He said that he had been arrested and detained on four occasions, on suspicion of helping the PKK. He had also promoted the pro-Kurdish Hade party. His village in Kayseri province was constantly visited by soldiers who accused him and other villagers of supporting the PKK. After his last detention in March 2002, his family decided that he should

go and live with his maternal uncle in Ankara. He stayed there until July 2002. He said that he decided to leave Turkey as someone had informed the Turkish authorities that he had a false ID card and his uncle's house had been raided. For the reasons set out in his letter dated 24th July 2002, the Secretary of State he was not satisfied that the appellant was entitled to asylum.

3. The Adjudicator heard the appeal against this decision on 27 November 2002. He has summarised the appellant's case in paragraphs 8-22 of his determination and set out his analysis of the evidence in paragraphs 30-37.
4. He accepted that the appellant had been arrested on 4 occasions. It was his account that his first arrest was in November 1998 and there were subsequent arrests in April 1999, November 1999 and finally in March 2000. The Adjudicator was satisfied that the appellant had been arrested and detained because of suspicions that he was involved with the PKK, but he was not satisfied that the appellant received serious ill-treatment as he had described. The Adjudicator commented that the appellant's evidence was that he was not associated with the PKK although he was a sympathiser with Hadep, the legitimate political party supporting Kurdish interests. The Tribunal note that subsequently Hadep was banned by the Constitutional Court in Turkey in March 2003: see paragraphs 18-21 of **A (Turkey)** [2003] UKIAT 00034 for a summary of the current situation in respect of Hadep.
5. The Adjudicator commented that it appeared to him that the interest of the authorities in the appellant was a matter of routine and not on account of any specific suspicions they may have had about him. The first arrest occurred when he was visiting a cousin who was in prison for membership of the PKK. The appellant did not explain the circumstances in which he came to be arrested on the second and third occasions but in relation to the fourth occasion he said it was when soldiers raided his home in March 2000. The appellant was released without charge on each occasion through lack of evidence. The Adjudicator commented that he found it improbable that the authorities would wish to detain and severely ill-treat the appellant when after the first arrest they discovered that he had no information of value to give them or that he had any connection with the PKK.
6. Although the Adjudicator accepted that the appellant had been arrested and detained he believed it was for a shorter period than claimed and that the treatment described by the appellant had been exaggerated. He was satisfied that there had been some ill-treatment but not that it amounted to torture.
7. After the final arrest the appellant had moved to live with an uncle in Ankara. The Adjudicator did not believe that he had only been able to live there under a false identity. He believed that he was able to relocate here to avoid the harassment he had been receiving from the authorities in the Kurdish region in which he was living. He noted that there was no evidence that his uncle had been harassed in Ankara and this supported his view that the appellant had been able to lead a life

free from harassment there for almost two years before his departure for the United Kingdom.

8. The Adjudicator went on to consider the involvement of other members of the appellant's family and his assertion of Kurdish rights. He accepted that a number of his relatives had been able to claim asylum but that alone did not satisfy him that the appellant's account entitled him to asylum status. The Adjudicator commented that his family associations may have drawn him to the attention of the authorities and that accounted for the harassment he had received in his home area. He was satisfied that the appellant had a subjective fear of persecution because of the treatment he had received in his home region but he was not satisfied that those fears were in his mind when he left Ankara for the United Kingdom in 2002. Looking at the Appellant's circumstances in the light of the background evidence, the Adjudicator accepted that the appellant would be at risk of persecution if he returned to his family in the Kayseri province, but he did not believe that it would be unduly harsh for the appellant to relocate and live in Ankara, as he had done for a substantial period prior to his departure from the country. It was his view that the appellant had never sought publicly or politically to assert his Kurdish ethnic identity and he noted that the appellant had not described any attempts to do so, whilst living in Ankara.
9. In considering the issue of what would happen on return, the Adjudicator noted the CIPU report at paragraph 6.87 and the fact that those who had criminal records may face difficulties. The appellant had not been involved in criminal activities and had been released on each occasion that he was arrested. There were no outstanding proceedings against him. He was not satisfied that the appellant would be under suspicion when he was returned and so would not be at risk of persecution. In summary, although the appellant may be at risk of persecution in the region of Turkey from which he comes the Adjudicator was not satisfied that there was a risk of persecution for a convention reason if he returned to live in Ankara as he had done previously. It would not be unduly harsh for him to relocate there.
10. Mr Collins argued that in the light of the finding that the appellant would be at risk of persecution in his home area, it followed that internal relocation would not be a viable option. If he was of interest to the Turkish authorities he would be at risk of interrogation and persecution upon arrival. He referred to the determination in **Suleyman Okur** (00/TH/00436). The appellant had been involved with leftist politics. His situation would be analogous to that of the appellant in **Suleyman Okur**. Internal flight would not be an option because of his profile. There would be a risk of detention and torture on return.
11. In the light of the Tribunal determinations in **Hayser** [2002] UKIAT 07083 and **A (Turkey)** [2003] UKIAT 0034 the appellant would be at risk on return. He had been a supporter of Hadep. He had been arrested and detained on four occasions. His cousin was a member of the PKK. His father had been a supporter of the TDKP who had been imprisoned. His brothers and one sister had left Turkey because they

had been harassed. Other relatives had also been granted refugee status abroad.

12. Mr Walker argued that the appellant's involvement with Hadep had been at a low level: putting up posters and distributing leaflets. The Adjudicator found that he had been released without charge. He had never had any involvement with the PKK. It was a question of fact whether he could relocate and live in safety in Ankara. The Adjudicator's conclusions in this respect were properly open to him.
13. The issue at the heart of **A (Turkey)** is whether the Turkish authorities will suspect a returnee of separatist tendencies or sympathies. In paragraph 46 the Tribunal identified factors to be taken into account when assessing whether the authorities would hold such suspicions. The Tribunal emphasised the importance of not treating these factors as some kind of checklist and emphasised that the assessment of each claim must be in round bearing in mind the particular matters set out and must follow a careful scrutiny and assessment of the evidence.
14. In this appeal the appellant argues that he would be at risk firstly because he had promoted Hadep. The appellant accepted that he not been associated with the PKK. The Adjudicator came to the view that the interest of the authorities in him had been a matter of routine. Even though Hadep has now been banned in Turkey, the Tribunal are not satisfied that the appellant's previous links with Hadep would now either be known to the authorities or would put him at any additional risk. The appellant also relies on the fact that he has been arrested on four occasions between November 1998 and March 2002. The Adjudicator dealt with these issues in paragraph 31 of his determination. He found that he was released without charge on each occasion through lack of evidence, and that it was improbable that the authorities would wish to detain and severely ill-treat the appellant when they discovered that he had no information to give them and no evidence of any connection with the PKK. Mr Collins criticised the use of the word "improbable" as possibly indicating that the Adjudicator had not applied the appropriate standard of proof, but in our view this must be read in context. The Adjudicator properly directed himself on the standard of proof and there is no reason to believe that he did not apply it.
15. When considering the issue of the arrests the Adjudicator came to the view that the authorities had been satisfied that the appellant was of no continuing interest to them. He also found that the appellant had exaggerated both the length of his detentions and the extent of his ill-treatment. The last arrest took place over two years before the appellant's departure from Turkey and the causal connection between his last arrest and his subsequent departure is tenuous indeed. It was following his last arrest that he went to live in Ankara. He did not leave Turkey at that stage.
16. The Adjudicator took into account the fact that a number of relatives had left Turkey and successfully claimed asylum. The Adjudicator accepted that this may have drawn him to the attention of the

authorities and accounted for the harassment, which he had received in his home area but he concluded that the appellant had been able to avoid further problems by relocating.

17. The Adjudicator came to a conclusion that the appellant had been able to live in safety in Ankara. He did not believe that he had only been able to live there by using a false identity. He took into account that his uncle lived in Ankara without being harassed. In our view the Adjudicator was fully entitled to take these factors into account when considering both the appellant's reasons for leaving and what the risk would be on return.
18. The Adjudicator found that there may be a risk of persecution in the appellant's home area but was satisfied that he could relocate and live in Ankara. Whether or not the appellant is able to relocate in Ankara can in our view be tested by the fact that he has been able to live there safely for two years before leaving Turkey. That is not determinative of the issue but is certainly a relevant consideration which the Adjudicator was entitled to take into account.
19. It is argued that if the appellant is at risk in his home area, it must follow that he is at risk of detention and ill-treatment on return at the airport and if he is at risk from the authorities he can not reasonably be accepted to relocate in Ankara. In **Suleyman Okur** the point made by the President was that internal flight was not an option as the applicant in that appeal would be interrogated on return to Istanbul. This leads to the issue of whether this appellant in the light of his background and general profile would be at risk of detention on return at the airport.
20. The Adjudicator was not satisfied that he would be under suspicion when he was returned: see paragraph 36 of his determination. In our judgment in the light of the Adjudicator's assessment of the appellant's detentions and the relevance of his family's political activities, this finding was properly open to him. The treatment of returnees is considered in paragraph 6.89-108 of the CIPU report (April 2003). It is said in paragraph 6.93 that anyone suspected of having committed criminal offences is transferred to the relevant investigative authority. Anyone suspected of membership of the PKK, left wing radical organisations such as the DHKP/C or TKP/ML, militant Islamic groups or anyone suspected of giving support or shelter to one of those organisations is handed over to the anti-terrorist branch for further investigation.
21. In our judgment it follows from the Adjudicator's findings that there is no real risk of the appellant being suspected of membership nor of giving support or shelter to any such group. Even if his detentions are recorded, the last one was in 2000 and any enquiries would reveal that he had lived in Ankara. The Adjudicator's assessment of the risk on return at the airport was properly open to him and his conclusions are sustainable on the evidence.
22. The Tribunal are not satisfied that it is arguable that the option of internal flight is not open to the appellant because of the finding that he

might be at risk in his home area. The Adjudicator accepted that there might be such a risk there. That arose from the particular situation in the Kayseri province and the behaviour of local officials there. The appellant has not sought to assert publicly or politically his Kurdish ethnicity in Ankara. In the light of the Adjudicator's findings there is no real risk of the authorities having any adverse interest in the appellant in Ankara.

23. In summary, the Tribunal are satisfied that the Adjudicator carefully examined the appellant's evidence and looked at whether there would be a risk to him in the light of his background and his personal and family political profile. His conclusions that there would be no real risk of persecution or treatment contrary to article 3 on return were properly open to him on the evidence for the reasons which he gave.

24. In these circumstances this appeal is dismissed

H J E Latter
Vice President