MT (Safe Third Country - HR- Germany) Germany CG [2003] UKIAT 00130

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 29th October 2003
Determination delivered orally at Hearing
Date Determination notified:
.5 November 2003.....

Before:

Mr C M G Ockelton (Deputy President)
Ms D K Gill
Mr N H Goldstein

Between:

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

DETERMINATION AND REASONS

1. The Appellant, a citizen of Turkey, appeals, with leave, against the determination of an Adjudicator, Mr C B Buckwell, dismissing his appeal which is based on human rights grounds only for reasons which will appear. Before us today he is represented by Mr Harris, instructed by UK Solutions, and the Respondent is represented by Mr Gulvin.

2. The Appellant came from Turkey to Germany and whilst there made a claim for asylum. He arrived in the United Kingdom in due course and was here subject to proceedings for his return to Germany. On 18th January 1999, the Respondent wrote a letter which is headed as follows "*Asylum and Immigration Act 1996 Notice of Decision to Certify Application on Third Country Grounds*". The letter begins as follows:

> "You have applied for asylum in the United Kingdom on the grounds that you have a well-founded fear of persecution in Turkey for reasons of race, religion, nationality, membership of a particular social group or political opinion.
>
> However, Turkey is not the only country to which you can be removed. Under the provisions of the Convention for Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Community (the Dublin

Convention), the authorities in Germany have accepted that Germany is the state responsible for examining your application for asylum under Article 10(1)(e). You are, under paragraph 8(1)(c) of Schedule 2 of the Immigration Act 1971 returnable to Germany which is a signatory to the 1951 United Nations Convention relating to the status of refugees."

Either accompanying that letter or later produced is a document apparently in German, which Mr Harris says he cannot understand.

3. It is evident that the letter which we have cited refers to legislation not now in force in respect of new appeals. But, in the Immigration and Asylum Act 1999, sections 15 and 11 read, so far as relevant, as follows:

> "**15. Protection of claimants from removal or deportation**
> (1) During the period beginning when a person makes a claim for asylum and ending when the Secretary of State gives him notice of the decision on the claim, he may not be removed from or required to leave the United Kingdom.
>
> ...
>
> (4) This section is to be treated as having come into force on 26th July 1993.
>
> **11. Removal of asylum claimants under standing arrangements with member States**
> (2) Nothing in section 15 prevents a person who has made a claim for asylum (the Claimant) from being removed from the United Kingdom to a member state if:
> (a) the Secretary of State has certified that:
> (i) the member state has accepted that under standing arrangements it is the responsible state in relation to the Claimant's claim for asylum; and
> (ii) in his opinion the Claimant is not a national or citizen of the member state to which he has been sent.
> (b) the certificate has not been set aside on an appeal under section 65."

4. Section 65 of the 1999 Act is, as is well known, the section which gives a right of appeal to the Appellate Authorities on human rights grounds and, for present purposes, it suffices to indicate that an appeal under that section is limited to the ground that a person alleges that, in taking a decision relating to an individual's entitlement to enter or remain in the United Kingdom, the authority taking the decision has acted in breach of that individual's human rights.

5. It is clear to us that the provisions in the 1999 Act to which we have referred apply to this Appellant, and indeed the contrary has not been suggested.

6. The letter of 18th January 1999, to which we have also referred,

makes it clear that the Secretary of State regards the Appellant as a Turkish national and certifies that Germany, under the Dublin Convention (which amounts to "standing arrangements" for the purposes of section 11(2)(a)(i)) will accept him. It follows from section 11(2) that the Appellant is not protected from removal, and therefore can be removed, unless he succeeds in having the certificate set aside by an appeal under section 65. It follows that the only grounds available to him are human rights grounds. He must show that the issuing of a certificate is an action by an authority which breaches his human rights.

7. Two Articles of the European Convention have been cited in argument: Articles 3 and 8. It is clear from the decision of the Court of Appeal in Ullah that the Appellant cannot succeed in an appeal under section 65 by showing that he might be treated in breach of Article 8 in another country. So far as the Article 8 argument is concerned, he must show that it is the action of the public authority in the United Kingdom which would amount to a breach of Article 8. That was a matter considered by the Secretary of State at the time he made his decision. The Secretary of State noted that he proposed to remove the Appellant's close family, consisting of his wife and two children to Germany at the same time as the Appellant. Although there are certain other issues in this case relating to other relatives in the United Kingdom, we are not persuaded that any Article 8 ground is made out here.

8. So far as Article 3 is concerned, it is not suggested that the very removal of the Appellant to Germany would breach his rights under Article 3, nor it is suggested that the Germany authorities would treat the Appellant other than in accordance with Article 3. The Appellant claims, however, to fear that the German authorities might return him to Turkey where he would, he says, be treated in breach of Article 3: and that therefore the removal of him to Germany would itself expose him in due course to a risk of breach of Article 3. That argument involves, of course, an allegation that Germany does not recognise its duty under Article 3 to protect individuals within its jurisdiction from treatment contrary to that Article. As Mr Harris acknowledged, there is no evidence of that before us and indeed, it seems to us extremely unlikely that such evidence would ever be available. The position is that there is simply no reason to believe that Germany does not recognise its obligations under Article 3. The Appellant's appeal on the limited grounds which we have specified is thus doomed to failure.

9. Mr Harris argued one other point specifically. The certificate under section 11(2) of the 1999 Act is limited to a certificate relating to "standing arrangements". Mr Harris submitted that there was no material before us which could demonstrate that the proposed removal was indeed under standing arrangements. That was why we referred earlier in this determination to the

document apparently in German which Mr Harris says he cannot understand. It appears to us that that document is in fact likely to be the evidence of the standing arrangements, but that is not the point. The standing arrangements themselves do not affect the treatment of the Appellant on removal. Whether the certificate was properly issued under standing arrangements or not is therefore not a matter which calls for consideration under section 65, which is the only right of appeal which the Appellant has.

10. Further, it is clear from section 11 that there is no general right of appeal on "*not in accordance with the law*" grounds and there is not even a right of appeal on refugee grounds in the circumstances of this appeal. The appeal is limited to human rights grounds and on those grounds it is dismissed.

C M G OCKELTON
DEPUTY PRESIDENT