Appeal No:

HO (Appeal Hearings - Fast Track) Turkey [2003] UKIAT 00006

IMMIGRATION APPEAL TRIBUNAL

Date: 29th May 2003
Date Determination notified:
29 May 2003

Before:

The Honourable Mr Justice Ouseley (President)
Mr C M G Ockelton (Deputy President)
Mr J Barnes

Between:

APPELLANT

and

Secretary of State for the Home Department
RESPONDENT

DETERMINATION AND REASONS

1. The Appellant, a citizen of Turkey, appeals, with permission granted on Statutory Review by Maurice Kay J, against the determination of an Adjudicator, Mr A J Olson, dismissing his appeal against the decision of the Respondent on 14th April 2003 refusing him leave to enter the United Kingdom after refusing him asylum.

2. We determine this appeal without a hearing. Although the judge's Order makes passing reference to the "hearing" before the Tribunal, we do not interpret that as an order that a hearing be held and, so far as we are aware, the judge was not asked to make any decision on this issue. The question of whether to hold a hearing is a matter for the Tribunal in this as in any other appeal. In this appeal, which is governed by the provisions of the Immigration and Asylum Appeals (Fast Track Procedure) Rules 2003, the Tribunal is assisted in making its decision by the obligation imposed on the Claimant by Rule 11(2)(a) of those Rules to give his reasons why he would seek a hearing of his appeal to the Tribunal and the obligation imposed on the Respondent by Rule 12(1)(a) similarly to give his reasons. In the present appeal, the Respondent does not seek an oral hearing. The Appellant does: his reasons are "*on the basis the issues of*

law are complex on both limbs of the challenge to warrant such an oral hearing". We have considered those reasons, such as they are. We make further comments on the second limb below. The matters raised under the first limb, although dealt with at inordinate length in the grounds of appeal, are not complex and do not merit an oral hearing.

3. The conduct of the Appellant's solicitors in the application for Statutory Review gives considerable cause for concern. First, they failed to serve a copy of the application on the Tribunal as is required by the Civil Procedure Rules. Secondly, they appear to have failed to alert the judge to the fact that they had not complied with the provisions of the Rules. Thirdly, following the grant of permission to appeal they were unable to respond properly to the Appellate Authority's request for a copy of the grounds that they had put before the judge, giving as their reason (we are told) that they had no copy on file. Fourthly, the document dated 6th May 2003, eventually supplied to the Appellate Authority on 23rd May, is evidently not that which was before the judge. We say that because in his grant of permission the judge specifically refers to paragraphs 9 a, b and c and 24, none of which appear in the document the solicitors have sent to the Authority. In these circumstances, it is, to say the least, difficult for the Tribunal to make sense of the judge's Order.

4. The fifth reason for concern is a matter of substance. The second of the "*two limbs*" raised in the original grounds of appeal to the Tribunal was a challenge to the vires of the Fast Track (Procedure) Rules. As was observed by the Acting Vice President who refused permission to appeal, that challenge sounds in Judicial Review, not in Statutory Review. Nevertheless, it was raised again (presumably at public expense) in the application for Statutory Review. In the circumstances, the judge, of course, made no decision on it. We observe only that, in view of the order which we make in this determination, it would appear to be clear that the Appellant will have had ample time to prepare and present his case for asylum, which he arrived in this country intending to make, on 8th April 2003, now over seven weeks ago.

5. The basis of the Appellant's claim is that he is at risk of persecution following his detention on 21st March 2003 for HADEP activities. The Adjudicator did not believe his story and, in particular, did not believe that he was associated with HADEP as he claimed or that he had been detained in March 2003. We are persuaded by the matters raised in the grounds that on both those particular issues the Adjudicator's reasoning cannot be sustained. On the first, the Adjudicator's view was that the Appellant's knowledge of HADEP had been sketchy from the very beginning. A reading of his asylum interview does not support that assertion. The Adjudicator also observed that he was unwilling to place weight on a particular HADEP document because it was a poor photocopy. That reason of itself would

clearly be insufficient for disbelieving the substantive contents of a document (particularly without any investigation as to whether the poorness of the photocopying was attributable to the Appellant or his representatives). In conjunction with the error to which we have already made reference this particular step towards the conclusion that the Appellant's claim to be connected with HADEP was not worthy of belief was unsound.

6. Turning now to the Adjudicator's conclusion that the Appellant had not been detained in March 2003 as he claimed, we are again persuaded that in reaching that conclusion the Adjudicator failed to take into account the details of that matter as set out by the Appellant in his asylum interview. For these reasons (of which we give no further detail here in order to avoid any risk of over-emphasising individual aspects of the Appellant's claim, which will have to be considered as a whole by another Adjudicator) we have reached the view that the Adjudicator's determination cannot stand. We therefore propose to remit the Appellant's appeal for re-determination by another Adjudicator. We see no basis for removing this appeal from the Fast Track procedure.

7. There is one other matter. Photocopies of documents were appended to the original grounds of appeal to the Tribunal. In granting permission, the judge observed that it would be for the Tribunal to decide whether to permit their use, because he found no good reason why those documents were not produced earlier. As the matter is going to be reheard, it does not seem right to us to make a decision about the use of the documents. What is clear is that the Appellant will need to have some compelling explanation for his decision not to produce them until after the Adjudicator had dismissed his appeal on the basis that he did.

8. This appeal to the Tribunal is allowed and we direct that the Appellant's appeal be considered afresh by an Adjudicator other than Mr Olson.

C M G OCKELTON
DEPUTY PRESIDENT