IAC-HW-MP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04976/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11th November 2015	**On 21st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR ISMAIL KOTEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R. Bartram, Solicitor
For the Respondent: Ms S. Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Turkey born on 15th May 1993. He appeals against the decision of Judge of the First-tier Tribunal Nicholls sitting at Taylor House on 20th August 2015 who dismissed the Appellant's appeal against a decision of the Respondent dated 4th March 2015. That decision was to refuse the Appellant's application for asylum and to remove the Appellant as an illegal entrant by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971. The Appellant's claim was

that since about the age of 17 he had been a supporter of the Kurdish political party, the BDP, which campaigns for Kurdish rights. In the course of distributing leaflets he had been arrested by the Turkish authorities who had detained and ill-treated him. He was detained and ill-treated on a second occasion and thereafter failed to report for compulsory military service as he did not wish to take part in operations against fellow Kurdish people. He left the country and since then the authorities had been to his parent's home asking questions about him.

The Determination at First Instance

2. In his determination Judge Nicholls stated at paragraph 28 that on any assessment of his actions the Appellant could not be thought to be playing a leading role or to be significantly involved in pro-Kurdish politics. The Appellant's account showed that he was acting with friends delivering leaflets in an open manner on behalf of a lawful political party. As far as the second detention in August 2013 was concerned the Appellant had been interrogated about his work in the mountains as a shepherd and whether he had information about PKK bases or arrangements.

3. The Judge continued at paragraph 28:

> "... that account suggests that the primary point of interest for the Turkish police was not the Appellant's activities on behalf of the BDP but his link with the areas where the PKK were believed to be based. The Appellant maintains that he denied all the allegations and after being detained for over 24 hours, he was released on both occasions without charge. He does not suggest that he was ever the subject of formal prosecution or that he appeared before a judicial authority. He maintains that on the second occasion he was required to report weekly and that there were expectations that he would supply information".

4. The Judge noted at paragraph 30 that the Appellant had been inconsistent about his claims that there was a warrant for his arrest in Turkey. In interview the Appellant said that his parents had guessed that an arrest warrant was in existence although it had never been produced to them or mentioned. By contrast in oral evidence the Appellant had said this was not the case rather his father had asked the police to produce the warrant but they had not done so. The Appellant admitted that his father had made no enquiries directly with the police or through a lawyer to obtain a copy of the warrant. The Appellant did not recall stating in interview that his parents had guessed about the existence of the warrant. The Judge pointed out that this was one of two answers of significance in the interview that the Appellant had said he could not recall. The Judge agreed with the Respondent's comment that the Appellant's claims about the arrest warrant were "vague and implausible".

5. The Judge concluded that there was a real likelihood that the Appellant had become the subject of minor harassment by local Turkish police when he was found distributing BDP leaflets in circumstances where they would suspect active support for the PKK. Bearing in mind the generally

accepted likelihood of ill-treatment whilst in detention, the Judge found that the Appellant had shown to the required standard a real likelihood that he, the Appellant, was subjected to assaults and beatings while detained. The Judge also accepted the likelihood that the Appellant was required to report to the police authorities following the second release in August 2013. What the Judge was not prepared to accept was that the Appellant had demonstrated a well-founded fear of persecution in his home area. It would not be surprising that the police would undertake enquiries of those working in the mountainous area to see if they might have information about the PKK but the Appellant had not demonstrated that he would attract the adverse attention of the local security forces on the basis of being a significant activist for the BDP.

6. As it would be documented that the Appellant was returning to Turkey from the UK he would not be suspected of involvement with the PKK during the time that he had been away from his home area. The Appellant had been detained and abused in the past but the Judge had to assess risk on return at the date of hearing (20th August 2015). There was no real likelihood that the Appellant would be suspected by the police authorities in his home area once they knew the Appellant was returning from the UK. Although he might be wanted as a draft evader following country guidance this was not likely to disclose a real risk of persecution or a breach of Article 3 (although not stated by the Judge explicitly the authorities confirm that punishment for draft evasion is more likely to be prosecution rather than persecution). The Judge did not accept the likelihood of there being a warrant for the Appellant's arrest in Turkey. Although the Appellant may have failed to report as required, in failing to do so he would be one of many thousands, particularly young men, who failed to report in similar circumstances. The Appellant had not established the likelihood of the existence of an arrest warrant about which he had been inconsistent and in respect of which he had produced no supporting evidence which would be readily available to him such as from his parents or from a lawyer in Turkey. There was no argument in relation to Article 8 and the Judge dismissed the appeal.

The Onward Appeal

7. The Appellant appealed against this decision arguing that the Judge had accepted previous detentions and ill-treatment there must therefore be a serious possibility that ill-treatment would reoccur notwithstanding whatever explanations and excuses for not reporting to the police as ordered that the Appellant might proffer. The application for permission to appeal came on the papers before First-tier Tribunal Judge Ford on 12th October 2015. In granting permission to appeal she wrote that Judge Nichols may have erred in that he may not have adequately considered the potential risk to the Appellant as a perceived rather than as an actual Kurdish activist with a history of detention and a failure to report.

8. The Respondent replied to the grant permission by letter dated 20th October 2015 stating that the Judge of the First-tier Tribunal had directed

himself appropriately and made sustainable findings properly open to him on the evidence. Contrary to the Appellant's grounds the First-tier Judge had produced a decision that properly considered the Appellant's asylum claim of both actual and imputed political opinion at paragraphs 32 to 34 and specifically 35 of the determination. The Appellant's claim about future risk based upon his past history had been properly considered by the First-tier Judge who had provided adequate reasons to support his finding that these events had not disclosed a real risk of future persecution.

The Hearing Before Me

9. In consequence the matter came before me to determine whether there was any error of law in the Judge's decision such that it fell to be set aside. If there was not then the decision of the First-tier Tribunal would stand. In oral submissions the Appellant's solicitor indicated that the findings of the Judge were not disputed. Although the Judge had not found as a fact that an arrest warrant existed, there was evidence from the Appellant that his family home had been visited by police on or about 6th September 2013 asking about the Appellant's whereabouts. The last visits he had been told about had been in March and June 2015. Before that the police visited every four or five months asking about the Appellant's whereabouts which the Judge had not indicated was not accepted.

10. The issue of future risk had not been adequately dealt with by the Judge in the determination. Paragraph 33 of the determination said the authorities would not suspect the Appellant of involvement with the PKK during the time that the Appellant had been away from his home area once they knew he was returning from the United Kingdom. That ascribed to the Turkish authorities a course of conduct which one could not be certain of given the previous treatment the Appellant had received. The Appellant fell into all the risk categories in the case of **IK**. The Turkish authorities were visiting the Appellant's parent's home.

11. In reply the Presenting Officer argued that at its highest the Appellant was a low-level supporter of the PKK. He had been released from both detentions without charge. The GBTS information system referred to in the case of **IK** distinguished between two situations, arrests and detentions. A detention did not involve a court intervention. The Appellant had been released without charge and thus there was no court intervention. The Judge had addressed both actual and perceived involvement with the PKK at paragraph 35 where he had referred to the Appellant not demonstrating a real likelihood of actions against him which would amount to persecution on account of his ethnicity or actual or imputed political opinions. The Judge had rejected the Appellant's claims at paragraph 34 of the existence of an arrest warrant. There would be no perceived involvement with the PKK just because of an absence from the home village because it would be documented that the Appellant was in the United Kingdom. The Judge had followed country guidance.

12. In reply the Appellant's solicitor said that if one looked at paragraph 17 of the determination the evidence of the visits could not be said to be not accepted. Failure to report might lead to a perception that the Appellant had fled because he was being asked for information.

Findings

13. The Appellant claimed to be at risk because of a perceived link to the outlawed PKK. The Judge had accepted the credibility of some parts of the Appellant's evidence, in relation to previous arrests, ill-treatment and release without charge but had not accepted other parts of the Appellant's evidence, in particular that there was an outstanding arrest warrant. The case turned on whether there was a continuing interest in the Appellant from the Turkish authorities. The Judge found that there was not and dismissed the appeal. For the Appellant it was argued before me that the Judge had received evidence of continuing visits by the authorities to the Appellant's parent's home; evidence which had not been specifically rejected.

14. That is not quite how the Judge put the matter. At paragraph 17 he recorded the evidence of the visits to the appellant's parent's home. He also recorded that the Appellant had been inconsistent about these visits. In interview the Appellant had said that the last time the police visited his parents was in October or November 2013. This flatly contradicted what he said in oral testimony that the police had visited his parent's home every four or five months between the visit on 6th September 2013 and the visits in March and June 2015. Asked to explain this discrepancy the Appellant said he could not remember giving that answer.

15. The Judge picked up on that point at paragraph 30 of the determination when he noted that the Appellant had been unable to recall answers in interview about two significant matters. The first was to do with his parent's knowledge of an alleged arrest warrant (see paragraph 4 above) but the second was to do with his answer in interview that the police had visited his parent's home shortly after he disappeared but not thereafter. The Judge was clearly unimpressed by the Appellant's excuse about the inconsistency over the arrest warrant that he could not recall giving a damaging answer in interview and could be taken to be equally sceptical over the alleged continuing interest in the Appellant.

16. The Judge's view of the Appellant was that he was at best a low-level sympathiser with Kurdish rights, had been arrested, detained and released without charge on two occasions. There would be no further interest in the Appellant. There was no real likelihood that the Appellant would be suspected by the police authorities once they knew he was returning from the United Kingdom. They would be satisfied that he had not disappeared in order to join the PKK but had gone to the United Kingdom for his own reasons. The Judge was well aware of the country guidance case of **IK** analysing it at paragraph 23 of his determination. He noted that the

decision was now more than ten years old but summarised the relevant parts thus:

> "If a person was held for questioning at an airport on arrival in Turkey enquiries could be made of the authorities in the local home area which might access more extensive information than was available at the airport. A Kurdish returnee might face a greater risk of ill-treatment if his home area was in an area of conflict in Turkey than might be the case in other parts of the country. The Tribunal recognised the 'long and deep seated' use of torture by security forces in Turkey and concluded it was premature at that time to revise the long-established view of the potential risk of torture and detention. … The proper course was to assess whether the returnee would be at risk and have a well-founded fear of persecution in his home area in the light of the individual facts. If that was not the case, then the returnee would be unlikely to be at real risk anywhere else in Turkey".

17. The Appellant had produced a bundle of recent news reports of incidents in South-Eastern Turkey and the Judge had referred to harassment and discrimination against Kurdish people in South-East Turkey more recently heightened by the tensions around the conflict with the Islamic extremists in Northern Syria (paragraph 31). Notwithstanding this the country guidance in **IK** remained authoritative.

18. What the Judge was required to do was to apply the particular facts of the case he was deciding to the general background information and country guidance. This he did adequately explaining his conclusions which were open to him on the evidence. The Judge had not accepted the Appellant's credibility in its entirety but had carefully analysed the Appellant's evidence giving cogent reasons why some parts of the evidence were accepted but other parts were not. The fact of past arrests in themselves did not mean that the Appellant automatically would be at risk of persecution upon return. **IK** did not say that and the Judge carefully explained why on the facts of this case that would not be the case. Overall the Judge gave sound reasons for his findings and the grounds of onward appeal amount in reality to no more than a mere disagreement with the findings of the Judge. I therefore dismiss the appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the First-tier Tribunal's decision to dismiss the Appellant's appeal.

Appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 9th day of December 2015

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Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

As no fee was payable and the appeal was dismissed there can be no fee award.

Signed this 9th day of December 2015

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Deputy Upper Tribunal Judge Woodcraft