IAC-FH-CK

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/47780/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 March 2016	**On 28 April 2016**
Prepared on 18 March 2016	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

A C
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagiotupoulou, instructed by Trott & Gentry LLP Solicitors
For the Respondent: Ms J Isherwood, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Turkey, date of birth [ ] 1974, appealed against a decision of the Secretary of State, dated 24 October 2013, to make removal directions under Section 10 of the Immigration and Asylum

Act 1999, a form IS.151A having been served on 24 October 2013 and a human rights based claim having been rejected. Unfortunately a decision of First-tier Tribunal Judge Warren L Grant, who dismissed the appeal, was found to contain errors of law. On 27 October Deputy Upper Tribunal Judge Rimington concluded that there had been a failure to properly consider the impact of public record keeping, not least with reference to the GBTS computerised national security computer, and decided that the appropriate course was to set aside the judge's decision and for the matter to be remade in the First-tier Tribunal. Judge Rimington's decision, promulgated on 5 December 2014, eventually, regrettably after significant delay, led to a further hearing in the First-tier Tribunal by Designated Judge of the First-tier Tribunal Shaerf (the Judge) before whom appeared Ms Panagiotupoulou, Counsel.

2. The judge concluded that there was no material risk on return with reference to the Refugee Convention nor any need for Humanitarian Protection grounds to be engaged and that there were no ECHR grounds that justified the Appellant remaining in the UK. The judge's decision [D] was promulgated on 2 September 2015. Permission to appeal was given by Upper Tribunal Judge Rintoul on 3 February 2016.

3. The grounds settled by Ms Panagiotupoulou argued that the judge had failed to properly consider the extent of risk in the home area not only by reference to the GBTS computer system but also to the existence of local records and the extent to which if they were consulted, either through the arrival at a Turkish airport on entry or thereafter, would reveal adverse interest held by the Gendarmerie or the police in the Appellant.

4. In particular it was submitted that the judge had failed to properly consider the impact of the country guidance case of **IK (Returnees, Records, IFA) Turkey CG [2004] UKIAT 00312** in terms of the perception of the Appellant both through his lengthy absence in Germany and the United Kingdom for over twenty or more years and the extent to

which the home area, described in a recent document as a 'ghost town', presented the likelihood if he returned of his background being revived and renewed adverse interest in him taken.

5. It is worth recollecting that the Appellant did not say, although he relied upon detentions in 1993 and 1995, that he has, as it were, done anything more to attract adverse interest and nor was it accepted that there are refugee sur place issues that give rise to an adverse interest in him. Thus it was clear, on the evidence that must have been given to the judge, that the Appellant had said there had been clearances in the village where he grew up, younger persons had left the area and has been repeated in a recent statement where he clarified that so far as his parents were concerned their home was now in a cleared area or ghost town because it is almost empty. What was said was that the judge should not have assumed that there was likely to be changes in policing and thus a diminution in risk to the Appellant. Similarly the judge had not properly assessed the existence of paper records and materials which could be accessed from outside of the village or alternatively would result in information from the village headman or local Jandarma giving rise to potential risk to the Appellant. I concluded it was open to the judge, on the evidence, to have reached a view on the evidence of the likelihood of changes to life in Turkey

6. The judge's decision was plainly directed at, and substantially so, what was being argued were errors in the earlier decision [D23-28]. A distinction was plainly drawn at that stage between the situation of arrests or previous arrests, restrictions on travel, potential draft evasion and various other matters in relation to military service and tax arrears which were not in fact pertinent to this Appellant. What does not appear to have been substantively advanced to the judge was the reasonable likelihood that on a return those paper records would have been pursued and addressed bearing in mind, if the Appellant did not fall within GBTS

provision, or that there was likely to be further enquiry made into local records.

7. I take the view that in relation to the assessment of risk in the home area the judge was entitled to take into account as he did the long absence of the Appellant from Turkey, the nature of the adverse interest which had been taken at the time when the circumstances involving the PKK and trouble in Turkey was obviously as a fact likely to be different from today in material ways. More importantly that the judge was not failing to deal with an element which had been raised as to the real likelihood as opposed to possibility of there being any present or continuing or likely to be revived adverse interest in him.

8. Thus the judge recognised that submission had been made, see D26, but evidently did not conclude, as an experienced judge, there was real risk of proscribed ill-treatment on return. Had he done so he would have dealt with it, if it was an issue that merited particular scrutiny. In any event the judge did go on to look at the issue of local arrangements for policing and the 'tab records' as touched upon in paragraphs 72 to 87 of **IK (Returnees)**. It is fair to say there is not a detailed analysis of that issue but it seemed to me that that reflected the fact that the judge was not obliged to deal with all points that the parties raise but the particular points that were important to assess on risk on return as judged by the judge on the evidence before him. So it seemed to me that as a fact Ms Panagiotupoulou's argument has on the face of it a basis to be argued but for the reasons given reading the decision as a whole the challenge was without substance. Ultimately, in the light of the judge's overall findings concerning the Appellant's activities, there was nothing that showed the real likelihood of the authorities inquiring deeply into the history of the Appellant assuming, as I do for these purposes, there may be some record kept of those detentions as long ago as 1993 and 1995.

9. The second ground of appeal particularly related to the length of time the Appellant has been absent from Turkey, which was, as I have said, was something over twenty years. A matter which was not forgotten by the judge. For whilst the extent to which it may have any significance, bearing in mind the many numbers of Turkish people who have from time to time come to the United Kingdom and returned, was difficult to assess. The judge concluded, when the Appellant was not a person likely to give rise to adverse interest from the GBTS records the fact was that he has been out of Turkey living in the United Kingdom. The judge did not accept the *sur place* claim [D36]. No one can say with certainty the Appellant would not be of any interest. The matter was canvassed to the judge and he dealt with the issue as it had been raised. Ground 10 of the grounds is miss-conceived. The judge noted the Appellant's brother's evidence [D 22, 45, 47].The statement 28/5/2015 does not add to the claimed basis of fear on return nor does it corroborate the claimed risk on return. I do not accept therefore that the grounds of appeal, well-presented as they have been by Ms Panagiotupoulou, demonstrate any error of law which had it not been made would have or could have been likely to give rise to a different decision. I therefore do not find that any criticisms made were likely to generate a different outcome. The Original Tribunal made no material error of law.

NOTICE OF DECISION

The appeal is dismissed.

ANONYMITY

In my view an anonymity order is necessary and appropriate to avoid any further sur place claim.

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant

and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 25 April 2016

Deputy Upper Tribunal Judge Davey