Case No: C5/2007/1333

Neutral Citation Number: [2007] EWCA Civ 1514

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE IMMIGRATION APPEAL TRIBUNAL
(AIT No: AA/09866/2005]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 27th November 2007

Before:

THE PRESIDENT OF THE FAMILY DIVISION
LORD JUSTICE HOOPER
and
LORD JUSTICE MOSES

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Between:

SD (TURKEY)	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

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Mr S Harding (instructed by Howe and Co) appeared on behalf of the **Appellant**.

Mr T Eicke (instructed by Treasury Solicitors) appeared on behalf of the **Respondent**.

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Judgment

Lord Justice Moses:

1. This is an appeal from a decision of Immigration Judge Watkins CMG on 15 January 2007 on reconsideration. The appeal is brought with leave of a two-judge court after refusal by a senior Lord Justice and refusal by a senior immigration judge.

2. The appellant, SD, comes from Turkey and sought asylum after he had arrived concealed in the back of a lorry on 12 September 2005. The immigration judge accepted two important facts about this man's life back in Turkey: that two of his brothers were believed by the authorities to have been involved with the dissident Kurdish-supporting PKK, as a result of which he and his family were suspect, and subject to what the immigration judge describes as harassment.

3. He himself had an Alevi Kurdish background and had distributed leaflets for the HADEP. As a result of this, he had on three occasions in 2002, 2003 and 2005 been detained by the police and during the course of that detention had been mistreated. He said that he had suffered violence and torture. There were no precise findings of fact as to the extent of that, but it was accepted that he had been mistreated. As a result of that, he feared that he would receive similar treatment -- in other words, a risk of persecution should he return.

4. The case turned upon whether the appellant was at risk of ill-treatment on return. By the time of the decision on reconsideration of Immigration Judge Watkins, the country guidance case IK (Turkey) v SSHD [2004] UKIAT 00312 had been concluded. The immigration judge purported to apply the conclusions as to risk on return in the case before him. This appeals turns upon whether he accurately reflected the findings in that country guidance case in his conclusions.

5. It was essential to the conclusion of the immigration judge that he determined what risk this appellant would be exposed to when he returned to the airport. The immigration judge concluded that there would be no record of his previous detention available to the Turkish authorities at the airport. He so concluded that following, as he said, SA (Turkey) v SSHD [2004] UKIT 00229, that was not a promising beginning to his conclusions, since the decision in IK specifically refers to that case as having been overtaken by subsequent events.

6. In considering whether the appellant would be at risk, the immigration judge concluded at paragraph 12 of his determination that the circumstances of his return would not be such as necessarily to arouse suspicion on arrival. The immigration judge accepted that he would be questioned, but concluded that although he would be questioned about his identity and probably about his reasons for leaving Turkey, he would then be free to return to his homeland.

7. He noted, as undoubtedly was the case, that the appellant had been released on the three occasions he had been detained and mistreated, without being

charged or appearing before a court. In those circumstances, he said that if the appellant returned to his homeland, his area where he had previously lived, he would, as he said:

> "Absent any records however, I do not accept that it is reasonably likely that he would be subjected to further interrogation by the anti-terror branch and thus face a real risk of ill-treatment amounting to persecution."

On return to his homeland, he accepted that he would be at a real risk of persecution, or in breach of his Article 3 rights. He said this:

> "In that home area, I accept that it would be known, even if not formally recorded, that he was related to his brothers and that he himself had been previously detained."

That conclusion does not provide any firm finding as to whether there would be any records in his homeland or not, and reveals, to my mind, the error in the immigration judge's approach. It is important in order to identify that error to bear in mind what was found in the country guidance case of IK. In that case, the tribunal was at pains to point out that the starting point of the enquiry must be the circumstances of whether there would be information about a returning, failed asylum seeker in his home area. The tribunal said in IK:

> "118. …we consider that one should proceed, when assessing the viability of internal relocation, on the basis of an individual's material history, will in broad terms become known to the authorities at the airport and in his new area where he settles, either through registration with the local Mukhtar or if he comes to the attention for any reason to the police there."

8. The issue is whether that record would be reasonably likely to lead to persecution outside his own area. Thus, the starting point was the question of whether the information from the home area would arrive at the point where he would first be questioned at the airport. As the tribunal in IK said:

> "77. …whether the records are transferred to a central computer system or not, and whether they are maintained locally in a computerised form that might be accessible elsewhere in Turkey or not, we

> accept that if a person is detained either in the airport police station after arrival or subsequently elsewhere in Turkey, and the circumstances justify it, some further inquiry beyond the information in the GBTS could be made of the authorities in his local area about him. Also, if the circumstances so justify, an enquiry could be made with the anti terror police or MIT to see if an individual is of material interest to them."

9. Thus it is that the question of whether there would be a record about him in his home area on enquiries being made was of importance in determining what sort of questions he would be asked and the manner of his detention when he arrived at the airport. There is no express finding by the immigration judge as to whether there would or would not be a record of him in his home area. In accordance with the decision in IK, there should have been. The throwaway line, namely "I accept that it would be known even if not formally recorded", does not in my judgment amount to a sufficiently precise finding of fact as to whether there would be some record about him in his local home area which might have been available when enquiries were made at the airport.

10. The error does not stop there. It is plain from the decision in IK that the absence of any record under the GBTS system is not dispositive as to the means which could be deployed for enquiring about the background of a particular returning failed asylum seeker. It is clear from paragraph 85, and the record there of the Home Office position, that it is incumbent upon the tribunal to reach a conclusion as to the nature of the questions which could be asked.

11. IK reveals that, on returning with emergency documentation, there is a real risk that someone in the position of this applicant would be asked questions as to why he had left Turkey and the circumstances of his return. Indeed, the tribunal in IK emphasised the importance of reaching conclusions as to the likely questions to be asked (see paragraph 86). It is also accepted in that passage of decision in IK that individuals, when asked about the circumstances in which they left Turkey and in which they are returning, are not expected to lie.

12. There is no specific reason finding from the tribunal in the instant appeal as to what questions this applicant would be asked, save a reference to paragraph 85 and a conclusion that the police were likely to ask him for the reasons for which the returnee had, as the immigration judge put it, "been stopped". That, to my mind, does not deal with any sufficient particularity as to what was likely to happen should this appellant have answered honestly questions which he was likely to be asked. There is no reason to think that he would not be asked as to why he left, nor fail to answer that he had left because of his ill-treatment by the authorities on three separate occasions and because of the attitude of the state authorities to his two brothers. It then requires no

imagination to perceive what the likely consequences of such answers would be. Yet, in the determination of the adjudicator there is no reference to that whatever, or as to the importance of the consequences should honest answers be given to likely questions.

13. It is, to my mind, clear from the determination of the immigration judge, read as a whole, that he failed sufficiently to appreciate that there were likely to be other sources of information about this appellant stemming from knowledge about him and his brothers in his home area, and also from the likely questions he would be asked when he arrived as a failed asylum seeker at the airport. He was likely to be asked about the circumstances in which he had previously claimed asylum in the United Kingdom and was furnished with an emergency travel document. It was incumbent, in my view, upon the immigration judge to make findings about that. In the light of his conclusion that there would be no GPTS record, which to my mind discloses an error of law, he never asked nor answered the appropriate questions. Had he done so, it is sufficiently clear to me that he would have concluded that there was a real risk of persecution should he return.

14. The adjudicator found that although he would be at risk in his home area, it would not be unduly harsh to expect him to relocate elsewhere, notably to Istanbul, but for the reasons I have already endeavoured to identify, he would never have got that far in the light of the questioning to which he would have been exposed and the answers that he was likely to have given at the airport. In those circumstances and for those reasons, I take the view that the immigration judge erred as a matter of law in failing to follow the guidance set out in IK and I would allow the appeal.

The President of the Family Division:

15. I agree.

Lord Justice Hooper:

16. I also agree.

Order: Appeal allowed