IAC-AH-KEW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03071/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 February 2016	**On 8 March 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SET
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sirikanda, Duncan Lewis & Co Solicitors
For the Respondent: Ms Brocklesby-Weller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, SET, was born in 1989 and is a male citizen of Turkey. He appeals against the decision to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006 which was

dated 16 February 2015. The respondent has rejected his asylum claim. The First-tier Tribunal (Judge Telford) in a decision promulgated on 27 July 2015 dismissed the appeal on all grounds. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are three grounds of appeal. First, the appellant asserts that the judge made an error of fact. At no point did the appellant claim to have had his toenails pulled out as part of torture by the Turkish authorities. At [3], the judge recorded that the appellant had "claimed he was … arrested twice and tortured including his toenails being pulled out when asked for information on pro-Kurdish activities." Again, at [18], the judge wrote,

> The injuries from torture he now relates to the medical practitioner were not provided in a screen interview (*sic*) as elements of torture but when asked about any medical conditions he was able to provide details of an in-growing toenail as detailed. I find he did so because he was picking and choosing what information to provide. Likewise he claimed they pulled his nails out three times but did not rely on this later as evidence of torture all told this is a confusing picture he has presented.

3. I consider that the grounds contain a valid criticism of the judge's reasoning. Ms Brocklesby-Weller, for the respondent, did not seek to disagree with the submission of Ms Sirikanda, for the appellant, that the judge had misunderstood the evidence.

4. The second ground of appeal criticises the judge for attaching excessive weight to the screening interview. The judge noted that the appellant had not stated at the screening interview that he had been tortured; he had not described any injuries which he had sustained from torture; he did not say that he had been fingerprinted; he mentioned at the screening interview only two arrests and subsequently claimed to have been arrested on two additional occasions; he stated at the screening interview that he had no knowledge of any arrest warrants issued against him but subsequently claimed that there "may be" warrants. Ms Sirikanda submitted that the appellant had given answers at his screening interview through a telephone interpreter.

5. I do not find that this ground of appeal has merit. The judge was clearly aware of the difficulties of attaching inappropriate weight to screening interviews. At [5] he wrote,

> It was a short screening interview and I noted the criticisms of answers in the screening interview as potentially inconsistent or vague for example should in any event have been treated with caution as the appellant was informed in the screening interview that the purpose was not to discover in detail the full aspects of any claim.

6. Subject to that self-direction, it was open to the judge to attach some weight to the answers given at the screening interview given the particular discrepancies between those answers and the appellant's subsequent evidence.

7. The third ground of appeal contains a challenge to the judge's findings on risk on return. At [23] the judge wrote:

> The background material deals with those who are on the system for investigation and detention in Turkey. It deals with how higher level members than the appellant of the BDP may come into conflict with the state. This appellant is nothing of the sort. At most his membership of the BDP indicates an interest in politics but many thousands of members are low-level and I find that this is the case in this appellant's claim. Given that he has been prepared to use false identities and deceive by omission and later false additions as evidence as I find it, I reject his claim that he is in personal fear of persecution and also the claim that there is any objective risk to him upon return to Turkey. He gave evidence that was inconsistent about arrest warrants. There were none related in his screening interview. In SEF interview and witness statement there may be. In oral evidence that position remained vague. I find the lack of reasonable attempt to validate this vague claim indicates to me that he wishes to avoid being pinned down on any claim in case it is not substantiated.

8. The judge went on at [25] to conclude:

> I consider whether the claim – *even at its highest* – could succeed as I find there was sufficiency of protection for him in any event. He claimed he could not return because it meant he would be targeted and if targeted would face a scenario of insufficient protection and an inability to relocate. After due consideration and anxious scrutiny, and although there was background evidence that the Kurdish political parties' higher level activists may face persecution, I find his claim that his ethnicity and political views and membership of the BDP not to be such as put him at risk. I find that his account of fear of the State incredible. [my emphasis]

9. The grounds draw attention to what is described as "a bleak picture" of the treatment of grass roots supporters of the BDP by the Turkish authorities. Two examples are cited, one from the United Kingdom Parliament's Foreign Affairs Committee Report (Turkey relations and Turkey regional role April 2012) which noted "the mass arrests of [BDP's] supporters." The other source is an E-Kurd article of 2012 which noted that 7,748 people had been taken into custody and over 3,895 had been arrested and that "dozens of BDP executives and employees are still in prison."

10. The difficulty for this appellant is that, although I find that the judge erred in law in misunderstanding the evidence regarding his toenail removal, the judge has gone on to consider the appellant's claim "at its highest." I take that to mean that, for the purpose of assessing risk on return, the judge has assumed that what he has been told by the appellant is true. The judge's analysis of the appellant's credibility, therefore, is not of relevance in that assessment. Even the appellant himself does not say that there are any outstanding arrest warrants against him in Turkey; at the best, he was only able to state that there "may be" warrants. Otherwise, the appellant presented, by his own account, as a low level or grass-roots supporter of the BDP. The background material before the judge including

those two extracts which I have cited above do not support a finding that this appellant, a low-level grade grass-roots supporter, would be at real risk on return to Turkey. For the purpose of that analysis, it cannot be assumed that there is any arrest warrant against him or that he would appear on any records held by the Turkish authorities either at the airport on entry to Turkey or upon return to his home area. The E-Kurd article (which together with the Parliamentary report is now four years old) recorded that BDP members had been taken into custody but also noted that it had been "executives and employees" of the BDP who had remained in prison. That is not to say that those detained and subsequently released were not ill-treated but there is no direct evidence of that having occurred, only evidence that higher level employees and executives of the party were of such interest to the Turkish authorities that they remained in prison. Likewise, the reference in the Parliamentary report to "mass arrests" was plainly insufficient to establish the existence of a real risk to a low level supporter who was otherwise not known to the authorities, such as this appellant. The judge's conclusions as to risk on return, therefore, are not tainted by any error he has made by misunderstanding the appellant's evidence and, although brief, are not undermined by anything which the appellant now asserts in the grounds of appeal to the Upper Tribunal. I refrain from setting aside the judge's decision because, even if he had understood the appellant's evidence regarding toenail removal or, indeed, if he had accepted the evidence of the appellant as to past events in Turkey as true, he would have reached the same correct conclusion as to risk on return.

Notice of Decision

This appeal is dismissed.

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 their 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 20 February 2016

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 20 February 2016

Upper Tribunal Judge Clive Lane