

SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: **SN/91/2020**
Hearing Date: **23.06.2021**
Date of Judgment: **26th July 2021**

Before

**THE HONOURABLE MR JUSTICE JOHNSON
UPPER TRIBUNAL JUDGE McWILLIAM
MRS JILL BATTLE**

Between

AZIZ DOGAN

Applicant

and

**THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Respondent

OPEN JUDGMENT

Anthony Metzger QC and Emma Harris (instructed by **Virgo Solicitors**) appeared on behalf of the Applicant

Emily Wilsdon (instructed by the **Government Legal Department**) appeared on behalf of the Secretary of State

Jack Holborn (instructed by **Special Advocates' Support Office**) appeared as Special Advocate

Introduction

1. The Applicant is a national of Turkey. He applied to naturalise as a British citizen. The application was refused by the Secretary of State on the grounds that he had not established his good character, because of his “association with the PKK, a proscribed organisation.” The Applicant seeks a review of that decision.

The facts

2. The Applicant came to the UK on 17 September 1988. He claimed asylum. He contended that he feared persecution as a result of his political beliefs. In particular, he was a member of the Socialist Worker’s Party of Turkey (“TSIP”). He contended that he had been detained on a number of occasions in Turkey, that he had been tortured by the authorities, and that he had been forced into military service.
3. The Applicant was granted asylum. In 1997 he was granted indefinite leave to remain in the UK.
4. The Applicant’s case is that he worked as a freelance journalist from 1991 to 2005/6, and has written articles about “the Kurdish issue.” He has continued with his political activities. Between 1992 and 1994 he was the chairman of the Kurdish Worker’s Association in Haringey. Between 1996 and 2003 he was a member of the Turkish political party, HADEP. From 1998 to 2000 he was a member of the Kurdish Parliament in exile in Brussels. Since 2005/6 he has established his own business, developing, selling and renting properties.
5. On 20 May 1998 the Applicant applied for British citizenship by way of naturalisation. This application was refused more than 7 years later, on 1 August 2005.
6. On 28 February 2013 the Applicant again applied to naturalise as a British citizen, pursuant to section 6(1) British Nationality Act 1981. It again took more than 7 years for the application to be determined. It was refused on 2 September 2020. No explanation has been given for the delay. The refusal was certified under section 2D Special Immigration Appeals Commission Act 1997 as being a decision that was made wholly or partly in reliance on information which, in the Secretary of State’s opinion, should not be made public.

Statutory framework

7. Section 6(1) of the 1981 Act states:

“If, on the application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen.”

8. Schedule 1 to the 1981 Act sets out the requirements for naturalisation as a British citizen. It includes a requirement that the applicant is “of good character.”
9. Section 2D of the Special Immigration Appeals Commission Act 1997 states:

“Jurisdiction: review of certain naturalisation and citizenship decisions

- (1) Subsection (2) applies in relation to any direction of the Secretary of State which-
- (a) is either –
- (i) a refusal to issue a certificate of naturalisation under section 6... of the British Nationality Act 1981 to an applicant under that section...
...
- and
- (b) is certified by the Secretary of State as a decision that was made wholly or partly in reliance on information which, in the opinion of the Secretary of State, should not be made public-
- (i) in the interests of national security,
- (ii) in the interests of the relationship between the United Kingdom and another country, or
- (iii) otherwise in the public interest.
- (2) The applicant to whom the decision relates may apply to the Special Immigration Appeals Commission to set aside the decision.
- (3) In determining whether the decision should be set aside, the Commission must apply the principles which would be applied in judicial review proceedings.
- (4) If the Commission decides that the decision should be set aside, it may make any such order, or give any such relief, as may be made or given in judicial review proceedings.”

Policy framework

10. The Secretary of State has published guidance as to the approach that is taken to applications for naturalisation as a British citizen. At the time that the Applicant lodged his application, the guidance stated:

“You must also say here whether you have had any involvement in terrorism. If you do not regard something as an act of terrorism but you know that others do or might, you should mention it...”

You must say whether you have been involved in anything which might indicate that you are not of good character. You must give information about any of these activities no matter how long ago it was. Checks will be made in all cases and your application may fail and your fee will not be fully refunded if you make an untruthful declaration. If you are in any doubt about whether you have done something or it has been alleged that you had done something which might lead us to think you are not of good character you should say so.”

11. The form he completed asked the following (amongst other) questions:

“3.13 Have you ever been involved in, supported or encouraged terrorist activities in any country

3.14 Have you ever been a member of or given support to an organisation which has been concerned in terrorism?”

12. The Applicant answered “No” to each of these questions.
13. By the time that the application was determined, the policy guidance had been amended. The latest version, before the decision maker in this case, was published in January 2019. The new guidance included a section entitled “Association with individuals involved in terrorist, extremism and/or war crimes.” It stated that citizenship may be refused to those who have associated with persons involved in terrorism. It set out guidance on the matters to be taken into account, which included how long the association lasted, how long ago it was, and whether there was an awareness of the associate’s background and activities. The guidance states that association alone is not a reason to refuse an application for citizenship if there is evidence that the applicant does not accept, tolerate or support the views or activities of the associate.

Procedural background

14. The application was lodged on 14 September 2020. The grounds for the review stated:

“The Appellant’s application for naturalisation has been refused on the basis that he does not meet the requirement of good character. The Respondent gives the reason for this as being the Appellant’s association with the PKK, a proscribed organisation. The Appellant certifies that he has no connections with the PKK and therefore requests that the decision to certify his naturalisation application under the Justice & Security Act 2013 section 2D is reviewed favourably. The Appellant has been involved in Kurdish politics in Turkey and in the UK but has no involvement with any proscribed organisation. For this reason the Appellant requests that the decision to certify is set aside.

More elaborate grounds follow.”

15. It is clear that the reference to “the Justice & Security Act 2013” is intended to be a reference to the Special Immigration Appeals Commission Act 1997.
16. On 25 November 2020 the Commission promulgated directions for the resolution of the review. These included that any amended grounds of review, and any evidence to be relied on by the Applicant, should be filed and served by 22 April 2021.
17. In the event, no such amended grounds or evidence was forthcoming. After this was raised by the Secretary of State, the Commission asked the Applicant’s solicitor to confirm the position. On 21 May 2021 the Applicant’s solicitor confirmed that no amended grounds and no additional evidence would be filed.
18. Very shortly before the hearing, the Applicant filed:
 - (1) A witness statement, running to 53 paragraphs;
 - (2) A bundle containing additional evidence, specifically details of the location of different members of the Applicant’s family, a witness statement from the Applicant’s wife,

journalism cards, character references, an employment letter and a card showing membership of the Labour party;

(3) A document described as “Supplementary Open Grounds for Review”. This said that there were two grounds of review. The first is that the decision is *Wednesbury* unreasonable. The second is that there was procedural unfairness because of the change to the policy guidance and the failure to give the Applicant any opportunity to make relevant representations or to submit evidence in relation to his associations, despite him having had no knowledge that this might be relevant when he made his application.

19. At the outset of the hearing an application was made to rely on this additional material. On behalf of the Respondent, Ms Wilsdon did not positively oppose the application to rely on the statement of the Applicant, but did oppose reliance on the other material, stating that it had been provided far too late, that there was no good reason for the failure to provide it earlier, that the additional evidence was not relevant to any issue in the review, that the first proposed new ground of review simply replicated the existing basis for the application and that the second proposed new ground of review was without any merit. After hearing submissions (in the course of which Ms Wilsdon indicated that she was in a position to deal with all the new material) we indicated that we would, provisionally, take it all into account, and that we would defer ruling on the application to admit it until the end of the proceedings.

The Applicant’s evidence

20. The Applicant sets out in his statement a detailed biographical and employment history including his interest and involvement in politics. He says that he has never been involved in the PKK. He says the following:

- (1) In December 1985 he was charged in Turkey with making Kurdish separatist propaganda. He was questioned about the PKK. He was tortured. It was subsequently decided that there was insufficient evidence linking him to the PKK.
- (2) He was arrested in March 1987 and accused of assisting the PKK in 1987 in Turkey. There was no evidence against him. He was mistreated but he resisted pressure to sign a confession. He was released after 20 days.
- (3) Whilst living in the UK the Applicant has undertaken work for the Kurdish parliament in exile. As a result he, and 31 others, have been “put on Interpol by the Turkish state and accused of having connections with the PKK.” He was questioned about this by the British authorities in 1999 and denied any involvement with the PKK.
- (4) He has met people who were involved in the PKK, and has had meetings with these people at the Kurdish Community Centre in Haringey (the Applicant was chairman of that group from 1992-1994).
- (5) He met Riza Altun (who the Applicant says “probably was” involved in the PKK) in 2004 or 2005. This was in the Applicant’s capacity as a journalist and the meeting was to talk to him about the PKK ceasefire and peace process. The meeting was to try and elicit information and nothing more. The Applicant did not endorse any PKK views that Riza Altun may have held.

21. The Applicant also gives evidence of his involvement with the Kurdish Workers Association. This Association is quite separate from the PKK (which is also known as the Kurdish Workers Party), but the Applicant raises the possibility that the suggestion that he has associated with the PKK is due to a degree of confusion (e.g. due to translation or transcription error). He points, by way of illustrative example, to a document where his acknowledgment of involvement with the Kurdish Workers Association was wrongly attributed as being involvement with the Kurdish Workers Party.
22. The Applicant's wife explains that her applications for naturalisation have been refused on the grounds of her involvement with the PKK. She says that this is wrong because she has never been involved with the PKK.
23. The balance of the Applicant's evidence indicates that he is a journalist, and that he is well regarded in his local community and by his employees and friends.
24. Ms Wilsdon confirmed, in the course of the hearing, that the Secretary of State recognised that there was an ongoing obligation of candour, which is capable of being informed by the new material that the Applicant had lodged. We, for our part, have no reason to consider that the Secretary of State has not discharged that obligation or that we do not have the material necessary properly to determine the proceedings (see rule 4(3) Special Immigration Appeals Commission (Procedure) Rules 2003). The Special Advocate did not suggest otherwise.

Ground 1: *Wednesbury* unreasonableness

Applicant's case

25. There is no dispute as to the relevant law. It was for the Applicant to persuade the Secretary of State that he is of good character. The Secretary of State's decision may only be reviewed on public law grounds. It is not for the Commission to reach its own view as to whether the Applicant satisfied the good character test. The question, under the first of the Applicant's grounds, is whether the Secretary of State reached a decision that was unreasonable in the *Wednesbury* sense. As Mr Metzger QC points out, the consistent approach of the Commission is that set out in *AHK v SSHD* (SN/2/2014), as summarised in *AFA v SSHD* (SN/56/2015) *per* Flaux J at [27].
26. The Applicant's case is that a fair review of the evidence shows that he has not accepted, tolerated or supported the PKK. To the extent that he has met members of the PKK that has been in a context that is fully explained in his statement and does not suggest that he was supportive of their aims. It was therefore wholly irrational (and therefore unlawful in a public law sense) for the Respondent to have refused his application.

Discussion

27. The open evidence includes the Applicant's completed application form for naturalisation (in which he answered all questions about involvement in or support for terrorism in the negative), and the details of police interviews when he had been stopped at ports.
28. There is nothing in the open evidence to show that the Applicant has associated with the PKK so as to justify the refusal of his application. To the extent that the Applicant has, on his own account, met with individuals who may be members of the PKK this could not, on

the open evidence, properly be described as association with the PKK that would justify a refusal of his application for naturalisation. There was nothing in that association to suggest that the Applicant shared the PKK's ideology or aims. He was meeting not as an associate but as a journalist or as a member of domestic groups or organisations that were not ideologically aligned to the PKK. Mr Metzger QC submits that mere contact with members or supporters of the PKK cannot be sufficient to demonstrate bad character. The guidance that was in force at the time of the decision under review comes close to saying the same thing – albeit it is qualified by a requirement that there is evidence that the Applicant does not share the associate's views. It was not suggested by the Secretary of State that the open evidence – in isolation – justifies a decision to refuse naturalisation.

29. Accordingly, if the open evidence stood alone, we would readily have upheld the Applicant's contention that the decision is not reasonable.
30. The open evidence does not, however, stand alone. As was made clear at the time of the decision there is additional evidence which the Secretary of State did not consider could be disclosed to the Applicant. The Commission has reviewed that evidence and has upheld the Secretary of State's objections to disclosure in accordance with rule 38 of the 2003 Rules. The Special Advocate did not suggest that (having regard to the closed evidence) the decision to refuse naturalisation was unreasonable in the *Wednesbury* sense (but did advance other "closed" grounds of challenge). We have, separately, reviewed the closed evidence. We are quite satisfied that it justifies a conclusion that the Applicant has associated with the PKK and that he has done so in a way that indicates that he has been supportive of the PKK.
31. We therefore dismiss this ground of review.

Proposed ground 2: unfairness

Submissions

32. The Applicant says that the guidance that was published at the time he made his application did not indicate that the Respondent would consider that association by the Applicant with individuals who had been involved in terrorism would be relevant to her assessment of the Applicant's character. He did not therefore have a fair opportunity to address the Respondent's concerns. He was not given the opportunity to respond to a "minded to" letter. The decision to refuse him naturalisation on the grounds of association with the PKK was therefore made in circumstances where he had not been given an opportunity to make representations. It was therefore procedurally unfair and thus unlawful in a public law sense.

Discussion

33. The question of whether a decision is procedurally unfair is fact sensitive. We were shown a number of decisions on both sides of the line. The Applicant placed particular reliance on *LA and others v SSHD* SN/63/2015 at [92]-[93]. In that case, the application for naturalisation had been refused because of the Applicant's familial relationship with President Al-Assad of Syria. It was not suggested that the Applicant did not satisfy the good character test. However, her relationship with President Al-Assad was such that a grant of naturalisation would be detrimental to the UK's international relations and thus would be contrary to the public interest. The Applicant could not have known that her application

might be refused on this basis. There was nothing in the statutory or published policy framework to indicate this possibility. The Commission considered that the decision was procedurally unfair.

34. The present case is very different from *LA*. The statutory framework makes it clear that it is necessary for an applicant to demonstrate his good character. The guidance that was published at the time of the application shows that “good character” does not simply mean that the applicant has not been convicted of a criminal offence – it has much broader connotations. The questions that are asked on the form make it clear that it is necessary to declare whether an applicant has ever supported a terrorist organisation. The guidance that was published at the time of the application makes it clear that an applicant must declare anything which might indicate that he is not of good character, no matter how long ago that was. We consider that this guidance was sufficiently broad so as to require the Applicant to declare whether he had ever done anything that might indicate that he had shown support for a terrorist organisation.
35. The fact that later guidance made explicit provision in respect of association with terrorist organisations does not show that the Applicant did not have a fair opportunity to make representations in support of his application at the time the application was made.
36. The position might arguably have been different if the Secretary of State’s case had been based simply on the Applicant having met, in his capacity as a journalist, a member of the PKK. We have, however, already indicated that the open evidence is not capable (in itself) of sustaining the decision that was made. The closed evidence does justify the decision that was made, and does not indicate that there was any unfairness in the decision making process. The published guidance that was in place at the time of the application was sufficient to give the Applicant a fair opportunity to declare, and explain, any past activity that might be indicative of support for a terrorist organisation. In the factual context of this case a fair procedure was adopted. The change in policy guidance, and the lack of any interview process, did not cause any unfairness.

Closed grounds of review

37. The Special Advocate separately advanced closed grounds for reviewing the Secretary of State’s decision. We have rejected these for the reasons we give in a separate, closed, judgment.

Application to rely on new evidence and grounds

38. In the event it is not necessary for us finally to rule on the application to rely on the new evidence and grounds. We have fully taken them into account, but having done so we are satisfied that the application falls to be dismissed.

Outcome

39. The Secretary of State was entitled to conclude that the Applicant had associated with the PKK, that he had not therefore satisfied the good character requirement in section 6 of the 1981 Act, and that his application should therefore be refused. There was nothing procedurally unfair in the process that was adopted.
40. We therefore dismiss this application for a review.