



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/02786/2013

THE IMMIGRATION ACTS

Heard at : Field House
On : 30th September 2013

Determination Promulgated
On: 4th October 2013

Before

Upper Tribunal Judge McKee

Between

M. G.
(anonymity direction continued)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S. Panagiotopoulou, instructed by Trott & Gentry Solicitors
For the Respondent: Mr Steven Walker of the Specialist Appeals Team

DETERMINATION AND REASONS

1. On 4th January this year the appellant, a Turkish citizen of Kurdish ethnicity, came to the attention of the police in Milton Keynes, having arrived clandestinely by lorry. On 5th January he was served with an IS 151A notice as an illegal entrant and, having claimed asylum, was taken to Campsfield House. There he underwent a Screening Interview ('SCR') on 12th January. Giving his date of birth as 23rd October 1994, and

his occupation as 'shepherd', the appellant said that at the end of 2011 he had been arrested by the police on suspicion of helping the PKK. He was held for about one hour at a police station in Gaziantep and, although he was released without charge, he was tortured during his detention. Fearing a repetition of this torture, the appellant came to the United Kingdom, where he has relatives. He gave the telephone number of his sister, Ms NG.

2. The appellant gave a detailed account of his journey to this country. Leaving his native village on 17th December 2012, he travelled by coach to Istanbul, which took about 13 hours. There his father handed him to an agent, who was paid €5,000. The agent destroyed the appellant's identity card before putting him on board a lorry, which drove for five days before depositing the appellant in an unknown country. The appellant continued his journey in another lorry, ending up in this country about a week later.
3. On 30th January the appellant was assessed by two social workers from the London Borough of Waltham Forest concerning his age, because subsequent to the SCR he had given his date of birth as 3rd October 1997, which would make him a minor. The appellant was now living in London with his aunt, although it was NG who accompanied him to the assessment. The social workers got the impression that she was his cousin, an impression not corrected when the appellant was asked about his siblings, and said that his sister, NG, was 6 years old and was living with his parents in Turkey. His relatives in this country comprised aunts, uncles and cousins. As to his age, the social workers concluded that the appellant was at least 18 years old.
4. On 13th February the appellant signed a Witness Statement ('WS'), in which he said that his ID card gave his date of birth as 20th January 1994, which was wrong. According to what he had heard from his parents, he was actually born on 3rd October 1997. But his father did not correct this; he did not know why.
5. Also in the WS, the appellant said that he was arrested on 17th November 2012 and held at the local *gendarmerie* for three days, during which he was beaten and subjected to pressurized cold water. On release, he had to report back every week, and bring information about the PKK. Because he had no information to give, he was beaten each time he reported. His father decided that he should leave Turkey, and around 14th December 2012 the appellant departed for Istanbul, whence he set off by lorry three days later.
6. The appellant did not know, he continued, why his detention on 17th November 2012 was stated at the SCR to have taken place in 2011. "*I may*", he said, "*have made a mistake with the year. I am quite forgetful of years and feel confused in mind most of the time after what happened to me in Turkey.*"
7. At his substantive asylum interview ('AIR') on 14th February, the appellant said that his sister, NG, was 24 years old and living in Crawley. Indeed, she accompanied him to the interview. The appellant was questioned about the inconsistencies concerning when he was born and when he was detained in Turkey. Despite having said in his WS that the wrong date of birth (20th January 1994) had been put on his ID ('Nufus') card, the appellant now insisted that the card had all along given his date of birth as 3rd October 1997. This was the card which the agent had taken and destroyed.

8. As well as his sister, the appellant was accompanied to the interview by a legal representative and his own interpreter. It was clarified at the outset that the appellant was detained not for one hour in 2011, but for three days in 2012. Relating his experiences while in detention, the appellant said that he had been taken from the *gendarmerie* to Gaziantep and put before a judge, but the judge released him for lack of evidence.
9. On 4th March a Reasons for Refusal Letter ('RFRL') was produced, rejecting the asylum claim because of the inconsistencies outlined above. Notice of appeal was lodged with the First-tier Tribunal, and a Respondent's Bundle was prepared, which included the Screening Interview of Ms NG in April 2009, when she had claimed asylum. Listing her siblings on that occasion, she gave the appellant's age as 6. But in the Bio-Data Information given on the same date, the appellant is said to have been born in 1993.
10. On 28th June the appeal came before Judge Andonian, who dismissed it. Permission to appeal to the Upper Tribunal was sought, principally on the basis that the judge had not taken account of a rival age assessment included in the Appellant's Bundle, taking the view that the appellant was indeed born on 3rd October 1997. A secondary ground was that the judge had not paid due attention to the fact that the appellant's sister, who gave evidence before him, had been recognised as a refugee for reasons similar to the appellant's claim, i.e. ill-treatment as a perceived supporter of the PKK. Permission was granted because the Appellant's Bundle was before the judge, and he should have considered that report.
11. When the appeal came before me today, Miss Panagiotopoulou strove valiantly to persuade me that Judge Andonian had made material errors of law, and she was ably rebutted by Mr Walker. By the end of the hearing it was clear to me that no material error had been made. I shall give my reasons briefly below.
12. To begin with, it is far from certain that the Appellant's Bundle was before Judge Andonian, or indeed that the appellant's representative had it herself. The bundle was stamped as received at Taylor House on 27th June, the day before the hearing, despite directions that any documentary evidence was to be filed and served no later than five working days before the hearing. Trott & Gentry had had plenty of time to prepare the Appellant's Bundle. Notice of the hearing had gone out on 23rd April, by which time the age assessment by two social workers from Waltham Forest Community Services had been completed. Someone at Taylor House wrote "IJ Andonian 28/6/13" on the front sheet of the bundle, but that does not mean it reached the fee-paid judge in time. That it did not is suggested by what Judge Andonian writes at paragraph 8 of his determination, namely that the appellant's own testimony gives conflicting dates of birth, that he has been assessed by Social Services as over 18, and that he has provided no age assessment of his own. "*His counsel*", he records, "*said that by looking at him one would not think that he is over 18.*" The appellant's representative would not have had recourse to such a forlorn gambit if she could have pointed to an age assessment prepared by professionals, supporting the appellant's contention that he was a minor. It would seem that no one in the hearing room was aware of the Appellant's Bundle.

13. But even if the judge had perused the more recent age assessment, it would have made no difference to the outcome. Two different sets of social workers, both under the aegis of Waltham Forest, had reached opposite views as to whether the appellant was a minor. The appellant himself had given conflicting evidence about his age. At paragraph 13, the judge noted the discrepancy in Ms NG's Screening Interview and Bio-Data Information about the appellant's age. The judge would still have been entitled to withhold, as he does at the foot of paragraph 8, the benefit of the doubt *vis-à-vis* the appellant's age, taking into account that he did not find the appellant credible in other respects. It is not the case, as contended by the grounds, that the judge's adverse view of the appellant's credibility was based upon the disputed age.
14. Miss Panagiotopoulou drew my attention to the Nufus card faxed from Turkey to the social workers (who describe it as a birth certificate) on 17th April, giving the appellant's date of birth as 3rd October 1997. This would not have persuaded Judge Andonian of the reliability of the latter date. On the contrary, the Nufus card itself is a wholly unreliable document. Both at the SCR and the AIR, the appellant was adamant that the agent took his Nufus card from him in December last year and destroyed it.
15. In any event, whether the appellant was 15 or 18 years old, the judge was equally entitled to find the discrepancy as to the appellant's detention highly damaging to his credibility, as he explains at paragraph 10 of his determination. At three points in the SCR the appellant says that he was detained at the end of 2011, and in two places he says it was for one hour. Miss Panagiotopoulou points to the explanation in the WS that the appellant gets confused about time, but in his SCR the appellant was able to give a precise account of his journey from Turkey the previous month. If his detention and ill-treatment had taken place only a month before that, the appellant would have said so, and would not have set it back to the previous year. He was also unlikely to get confused between one hour and three days. A 15-year old was no more likely to get these basic facts wrong than an 18-year old.
16. At paragraph 11 Judge Andonian refers to the appellant's account in the AIR of being released without charge by a judge in Gaziantep. In a statement in the Appellant's Bundle, not seen by the judge, the appellant now says that it was not a judge, but a military officer. Had the judge seen this amendment, it would only have confirmed his negative view of the appellant's credibility. In the AIR it could not be clearer that a judge in a courtroom setting is being talked about. Miss Panagiotopoulou draws attention to the appellant's complaint at the end of the AIR that he feels dizzy and is sweating, but the interviewing officer notes that neither the appellant nor any of the three adults who accompanied him asked for a break at any point in the interview.
17. At paragraph 13 Judge Andonian notes that there is no evidence that the appellant and his sister are related as siblings. That a doubt about this should have arisen can be ascribed to the age assessment carried out on 30th January, when the appellant was accompanied by a young lady said to be his cousin, and said that his sister, NG, was 6 years old and living in Turkey. In any event, one cannot fault the judge's observation that "*the fact that the appellant's sister has been granted refugee status for a well founded fear of persecution does not mean that the appellant has a well-founded fear.*" The judge was entitled to disbelieve Ms NG's testimony that her brother is wanted in Turkey.

18. The upshot of all this is that the First-tier Tribunal did not make an error of law, and its determination therefore stands.

DECISION

The appeal is dismissed.

Richard McKee
Judge of the Upper Tribunal

1st October 2013