

IMMIGRATION APPEAL TRIBUNAL

Heard at: Field House
 On: 30 July 2003
 Prepared: 30 July 2003

Determination notified
 5th September 2003.

Before:

Mr L V Waumsley (Chairman)
The Rt Hon the Countess of Mar

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

For the Appellant: Mr E Boateng-Addo of counsel, instructed by Howe & Co, solicitors
 For the Respondent: Mr G Elks, Home Office Presenting Officer

1. The appellant, a citizen of Turkey, appeals with leave against the determination of an adjudicator (Mr S Qureshi) sitting in Cardiff, in which he dismissed the appellant's appeal on both asylum and human rights grounds against the respondent's decision to refuse him leave to enter the United Kingdom after refusing an application for asylum made by him.
2. The basis on which the appellant sought asylum in the United Kingdom may be stated shortly. Prior to his departure from Turkey in September 2002, he was a member of his local branch of HADEP. He was in fact the leader of the youth section of his local branch. He had been detained and ill-treated by the Turkish police on two occasions.
3. The first time was in May 2002 when he was detained on suspicion of involvement with the PKK (Kurdistan Workers Party). On this occasion, he was detained for four days and ill-treated badly in custody before being released without charge. His second detention took place in August 2002 when the police raided a meeting of the

youth section which the appellant was chairing at the local HADEP offices. He was detained for one week and ill-treated before being released once again without charge. He left Turkey shortly afterwards hidden at a lorry. He states that he fears that if he were to be returned to Turkey, he would be at risk of being detained and ill-treated on arrival because of his previous involvement with HADEP.

4. In his determination, the adjudicator dismissed the appellant's appeal on both asylum and human rights grounds. His main reason for doing so was that he had rejected the appellant's evidence regarding his claimed connection with HADEP. He found in paragraph 15 of his determination that the appellant had no identified connection with HADEP, and had never been arrested or detained as claimed.
5. In particular, at paragraph 10 of his determination, the adjudicator rejected the appellant's evidence in the form of a membership card allegedly issued to him by HADEP confirming that he was the leader of the youth section of his local branch of the party.
6. The grounds of appeal lodged on the appellant's behalf may be summarised as follows:
 1. The adjudicator erred in rejecting the appellant's evidence in the form of the HADEP card which was produced by him at the hearing before the adjudicator;
 2. He misdirected himself as to the correct standard of proof when considering the appellant's evidence regarding his claimed ill-treatment whilst in custody;
 3. He erred in his conclusion regarding the risks which the appellant would face on return to Turkey as a suspected separatist.
7. In his submissions on behalf of the appellant, Mr Boateng-Addo argued that the adjudicator's adverse credibility findings were flawed and unsustainable. They were based on a misunderstanding by the adjudicator of the evidence which was before him. The stamp on the HADEP card produced by the appellant bore the date "1995" on both sides of the card.
8. However, this was the date on which the appellant's local branch of HADEP was founded, *not* the date on which the appellant himself joined the party. The adjudicator had therefore erred by concluding that the date "1995" could not be correct because the appellant was only 13 years old at that time. He submitted that this fact been brought to the adjudicator's attention during the course of the hearing before him, but had not been taken into account by him in arriving at his conclusions.
9. He also submitted that the adjudicator had erred in basing his adverse credibility finding, at least in part, on the fact that the HADEP card was not issued to the appellant until he was 20½ years old, some 2½ years after he joined HADEP. He did not take account of the explanation provided by the appellant during his evidence, namely that the card in question was issued to him when he became head of the youth section of his local branch. It was not his HADEP membership card as such.
10. He argued that the adjudicator had also erred in stating at paragraph 13 of his determination that if the appellant had been ill-treated in custody in the manner claimed, it was remarkable that he had suffered no injuries and did not require medical treatment on release. The adjudicator did not put his concerns on that issue

to the appellant during the course of the hearing. He should have done. It was dangerous for him to arrive at an adverse credibility conclusion on the point without first inviting the appellant to give an explanation.

11. Finally, as regards ground 3 of the appellant's grounds of appeal, he submitted that the adjudicator had erred in failing to consider the risk to the appellant on return to Turkey as a suspected separatist. In support of that submission, he cited the recent determination of this Tribunal in the guideline case known as [2003] UKIAT 00034 A (Turkey). He invited us to remit the appeal for a fresh hearing before another adjudicator.
12. In his submissions on behalf of the respondent, Mr Elks agreed that the issue of credibility was the central issue before the adjudicator. He argued that the adjudicator's adverse credibility findings were sustainable, and that this Tribunal should not interfere with them unless they could be shown to be "plainly wrong or unsustainable" -- see the judgment of Lord Justice Schiemann in *Oleed v Secretary of State for the Home Department* [2003] INLR 179 at paragraph 29. That was not case here.
13. As regards the adjudicator's adverse finding in relation to the HADEP card produced by the appellant, the adjudicator was entitled to arrive at his conclusion rejecting the that evidence. As shown by the adjudicator's record of proceedings, the point regarding the date "1995" stamped on both sides of card had been put to the appellant during his oral evidence. He had failed to give the explanation now put forward on his behalf, namely that "1995" was the date on which his local branch of HADEP was founded, *not* the date on which he himself became a member of the party. In the absence of that or some other credible explanation, the adjudicator had had no alternative save to arrive at his conclusion that the card was not evidence on which any reliance could be placed.
14. There was no certified translation of the HADEP card before the adjudicator at the time of the hearing as required under the Procedure Rules. Indeed, there is still no certified translation in evidence before this Tribunal as required by the Procedure Rules. It would therefore have been properly open to the adjudicator to refuse to receive the HADEP card in evidence. He had not done so.
15. He cited the starred determination of this Tribunal in *Tanveer Ahmed v Secretary of State for the Home Department* [2002] INLR 345. In light of that authority, he submitted that it was properly open to the adjudicator to make his adverse credibility finding regarding the HADEP card.
16. As regards the second ground raised by the appellant in his grounds of appeal, namely the issue of medical treatment, he pointed out that this was an issue which had been raised expressly by the respondent at paragraph 13 of his reasons for refusal letter. It was therefore not a matter which should have taken the appellant or his representative by surprise at the hearing before the adjudicator. He invited us to dismiss the appeal.
17. In reply, Mr Boateng-Addo submitted that the adjudicator had not rejected the HADEP card in terms in his determination. He reiterated that the adjudicator should

have put his concerns regarding the appellant's evidence to him during the hearing so as to enable him to give his explanation in response to those concerns.

18. As stated above, the appellant's challenge to the adjudicator's determination is based on three separate grounds. We will therefore deal with each of them in turn.
19. The first of those grounds is that the adjudicator erred in basing his adverse credibility finding, at least in part, on the date "1995" stamped on the appellant's HADEP card. The adjudicator's record of proceedings discloses that this is an issue which was raised by him with the appellant during the course of his oral evidence. The relevant section of the record of proceedings reads as follows:
 - Q. When join HADEP?
 - R. About 5 yrs – Dec '97
 - S. Stamp on memb. card says "1995". Is that right?
 - A. Yes
 - Q. But you wd be aged 13 then
 - A. No – I was given the card when I was leader of youth section. The card was issued to me when I was elected youth leader in March 2002
 - Q. Does memb. card usually not state date of issue?
 - A. When I joined in 1995 I was too young so I cd not have a card – only have card when you become a member aged 18. Bec this was a small town the appn. was sent to Ankara – they look into it – takes months, even longer before issuing card
 - Q. Did you become member at 18?
 - A. No – I cannot remember when I became member.
20. It is clear from that part of the record of proceedings that the question of the date "1995" on the HADEP card was expressly put to the appellant during the course of his oral evidence. He therefore had the opportunity to offer the explanation which has now been put forward on his behalf, namely that it represented the date on which his local branch of HADEP was founded, *not* the date on which he himself became a member of the party. He did not do so.
21. In the absence of that or some other plausible explanation, it was properly open to the adjudicator to arrive at the conclusion that the HADEP card was not evidence to which he was prepared to attach any weight. The submission made on the appellant's behalf that the adjudicator erred in arriving at that conclusion is clearly unsustainable.
22. The second ground is that the adjudicator erred in arriving at his conclusion at paragraph 13 of his determination in relation to the ill-treatment to which the appellant was, he claimed, subjected whilst in police custody. It is argued on the appellant's behalf that the adjudicator misdirected himself by applying the wrong standard of proof. Once again, we disagree.
23. It is clear from paragraph 13, read in the context of the determination as a whole, that the adjudicator was concerned by the appellant's evidence that he had been subjected to ill-treatment whilst in police custody on two separate occasions, but had not needed any medical treatment following his release on either occasion. The adjudicator concluded at paragraph 13, "Whilst the appellant is not expected to

adduce medical evidence, it is reasonable to infer that if he did not need any medical treatment, *perhaps* he was not tortured as alleged" (our emphasis).

24. That is a conclusion which was properly open to the adjudicator on the evidence. During the course of his submissions, Mr Boateng-Addo argued that the adjudicator was under an obligation to put his concerns regarding that part of the appellant's evidence expressly to him so as to enable him to address those concerns, if he could. We disagree. Whilst it is not an authority which is technically binding on an adjudicator sitting outside Scotland, nevertheless the judgment of the Outer House of the Court of Session in *Mehmet Koca v Secretary of State for the Home Department* (22 November 2002) is persuasive authority to the contrary. As stated by Lord Carloway in his Opinion at paragraph 36:

"For these reasons, I hold that there was no obligation upon the Adjudicator to put the HADEP discrepancy to the petitioner either at the stage of examination or submission. Its full significance may not have even have (sic) been recognised by her at that time but whether that is so or not, it remains the case that a court or tribunal is not obliged to reveal what it might be thinking during the course of a hearing so that parties can make additional comments on that thinking. Nor is it bound to disclose, in advance of the announcement of its decision, how its reasoning process is developing with a view to affording parties yet another chance to address that".

25. We agree. It was for the appellant himself, and the representative [*not* Mr Boateng-Addo] who appeared for him before the adjudicator, to present his case in the best possible light from his point of view. It was no part of the adjudicator's responsibility to point out to the appellant or his representative any actual or perceived weaknesses in the appellant's evidence. The second ground on which the appellant bases his challenge to the adjudicator's determination is not sustainable.
26. We now turn to the third ground, namely the submission that the adjudicator erred in his consideration of the risks which the appellant would face on return to Turkey as a suspected separatist. In light of the adjudicator's finding at paragraph 15 of his determination that the appellant had no identified connection with HADEP, and had not been arrested, that is not an issue on which he was necessary for him to arrive at any conclusion. It was predicated on the assumption that the appellant would be returning to Turkey as a suspected separatist. It was the adjudicator's conclusion that he was not one. In the circumstances, consideration of the risks which a suspected separatist would face on return was not a relevant issue. Once again, the third ground on which the appellant relies is unsustainable.
27. Read as a whole, it is clear from the determination that the adjudicator gave careful consideration to the evidence which was before him. Having done so, he made clear findings of fact on the material issues. In particular, he rejected the whole of the appellant's account.
28. He gave proper, intelligible and adequate reasons for arriving at those findings. They are findings which were properly open to him on the evidence before him. There is no arguable basis for interfering with his findings and conclusions.
29. This appeal is dismissed.

Signed

Dated

L V Waumsley
Vice President