

Heard at Field House
On 22 July 2002

Appeal No HX52873-2001
MU (Documentation-Nufus Card) Turkey CG [2002] UKIAT 03528

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

06/08/02

Before

Mr S L Batiste (Chairman)
Mrs W Jordan
Dr A U Chaudhry

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MIRBEY UZAR

Respondent

DETERMINATION AND REASONS

1. The Respondent is a citizen of Turkey. The Appellant appeals, with leave, against the determination of an Adjudicator, Miss M E Lewis, allowing the Respondent's appeal against the decision of the Appellant on 24 July 2001 to refuse leave to enter and refuse asylum
2. Mr P Deller, a Home Office Presenting Officer, represented the Appellant. Mr P Richmond represented the Respondent.
3. This appeal is against the Adjudicator's conclusions but her basic findings of fact about the Respondent's claim have not been challenged. As to the facts, she held that
"He comes from an area [Bingol province in South-East Turkey] where the PKK have been very active. His support was general rather than specific. He did no more than many other villagers did. He himself was not particularly targeted. He was taken in for questioning in 1993 and 1994, but again this appears to have been part of the general and very harsh regime that was operating at the time by the Turkish authorities. He did his military service..... The [Respondent's] record of detentions was no doubt similar to many other young men from his region..... His family appear to have suffered from the authorities. Again he is not claiming that their support for the PKK was very specific..... [His] case is really based on what happened in 1998. I find that his account of the way the young men were recruited into the

village guards, which was in fact a divide and rule policy by the authorities, fits well with the background evidence..... Refusal by individuals or entire villages to participate in the system is usually considered by the local forces as an indication of active or passive support for the guerrillas. Evacuation of the village and its subsequent complete or partial destruction on security grounds can follow a refusal to join.... Since 1991 over 3000 villages have been emptied. However the rate of evacuations is now reduced to almost nil..... Voluntary and assisted settlements have now begun..... Therefore it appears that the harsh regime has now ended. The Respondent's evidence was that there does not appear to have been a serious fallout from his action in refusing to join, or that of the other 10 young men in the village all of whom also left."

4. She then analysed the risk on return and it is at the point that the Appellant's challenge arises. She concluded that
"On the basis of material put before me and my positive findings of credibility, it appears to me to present a picture of someone whose family has a history of being dealt with by the Turkish authorities. There is a reasonable likelihood that there is a record of his detentions and past interest in him..... Were he to return there is a reasonable likelihood that he would be identified by reference to past records and subject to detention with a serious risk of mistreatment. On the evidence I am satisfied that although his support for the PKK was only general and common to many other villagers, his refusal to join the village guards put him in a higher risk category."
5. Leave to appeal was granted to the Appellant on three grounds.
6. The first was that as the Adjudicator had accepted that there did not appear to have been a serious fallout from his action in refusing to join the village guards and based her decision only on his treatment on return, she erred in assessing that risk by treating him an undocumented returnee when he would in fact have his own genuine Nufus card with him.
7. Mr Deller argued that because the Respondent would return with his own Nufus card he would not be stopped at the airport and detailed enquiries by the Turkish border guards into his identity and record would not be triggered. Mr Richmond responded by saying that the Adjudicator was aware that the Respondent had his Nufus card and she recorded the evidence and submissions to this effect. In any event, even if she had overlooked this point in her conclusions it did not undermine the determination for two reasons. The first was that the Adjudicator examined the risk on return to the Respondent holistically in paragraph 11.6 of the determination and documentation was only one factor. The second was that on return the Nufus card would be put through the computer and the Respondent's history would become immediately apparent.
8. The Tribunal considers that whilst the Adjudicator did indeed record the fact that the Respondent had his Nufus card, she did not appear to take on board its significance when assessing the risk on return. The paragraphs of the CIPU report cited by the Adjudicator in her assessment relate to returnees without their own documents and are not therefore directly relevant to the Respondent. She was not merely undertaking a tour d'horizon as Mr Richmond suggested. If she were she would have mentioned a number of other important factors, which emerge from the objective material, which

should have formed the context for informing her decision. The most relevant passages in the current CIPU report are from 5.80 to 5.84 and are as follows.

5.80 There is no organisation or government that consistently and formally monitors the treatment of returnees to Turkey..... in principle the Turkish police can questioning any deported citizen upon their arrival at the airport. This interrogation aims to establish the identity of the individual and also to check whether they have been implicated in any common-law case. In general there is no follow-up unless the individual is the subject of legal proceedings. If the returnee is known to the police for whatever reasons, he is possibly taken into custody for more interviews. Amnesty International in Germany takes the view that while it is still true that most asylum seekers all returnees are released after the routine interview, there has been increasing number of cases where returned asylum seekers were picked up later by unknown men and beaten up or arrested by the police and taken into police custody. The report goes on to say that this mistreatment is carried out in order to obtain confessions from suspected persons.

5.81 The German immigration authorities state that in general rejected asylum seekers returning to Turkey do not risk persecution. A rejected asylum seeker returning voluntarily can pass through entry control unhindered provided that he/she is in possession of a valid Turkish travel document. The fact that the returnee is a failed asylum seeker does not lead to different treatment. The Turkish authorities are well aware of the fact that many Turkish nationals apply for asylum only for the purpose of getting temporary authorisation to remain in Germany.....The Turkish government now recognised that the overwhelming majority of Turkish nationals who had applied for asylum overseas had done so purely for economic reasons. They were of no interest to Turkish government and would not be imprisoned on return.

5.83 Returnees without documents will be questioned. This is likely to be an in-depth questioning by the Turkish border police and is to be distinguished from the routine identity check on arrival. The German authorities state that, as a rule, the questions refer to personal data, date and the reasons for departing Turkey, possible criminal record in Germany and contacts with illegal Turkish organisations. In some cases further enquiries will be made via other offices (e.g. prosecutor's office, registrar's office at the last Turkish residence of the returnee) in order to find out if the returnee is liable to prosecution for a criminal offence. These enquiries can take from several hours to several days, during which time the returnee will be kept in custody. Currently available information indicates that undocumented returnees generally are not ill treated while being kept in custody. However ill treatment cannot be ruled out in cases where returnees are suspected separatists.

5.84 Amnesty International in Germany states, in relation to returns from Germany, that the Turkish authorities are more likely to be suspicious in cases where a person returning to Turkey is not carrying any valid personal documents in accordance with regulations, or is carrying documents indicating asylum proceedings abroad.

5.85 Being of Kurdish origin does not in itself constitute a higher risk of inhuman treatment. Everything depends on the individual and his activities in Turkey and abroad. The Dutch Ministry of Foreign Affairs notes that PKK activist and sympathisers who are thought to be of great interest to the Turkish authorities risk being insulted, threatened, maltreated or tortured during the questioning. A representative of the Turkish Human Rights Foundation stated that a clear shift from physical to more psychological pressure on detainees had recently been observed

9. This summary of the objective material is a useful starting point for assessing the level of risk on return for an individual failed asylum seeker. It identifies a very sharp distinction in terms of risk between a person returning undocumented and one with proper and genuine papers. The latter will be able to pass through entry control unhindered. The former will face in-depth questioning by the Turkish border police, during which enquiries will be made of other databases in order to establish their identity and history. It follows therefore that as the Respondent will return with a Nufus card and, in the event of the refusal of his asylum claim, has the option of returning voluntarily, the risk to him is very much reduced and the reasonable likelihood is that he will be able to pass through entry control unhindered, without facing the in-depth investigation by the Turkish border police. We accept that if a person is wanted actively by the Turkish authorities, then his return even on his own papers could trigger his arrest. But that is not the Respondent's case. On the facts as established, Mr Richmond's submission that return with the Nufus card would trigger a full inquiry into the Respondent's background in the same way as an undocumented return, is simply not borne out by the objective material. We consider the Adjudicator erred materially in failing to appreciate the significance of the Nufus card to the risk profile when making her assessment. We shall deal with Mr Richmond's other point about the holistic assessment of risk, after we have considered the other issues raised.
10. We should mention at this point that we have focused in our quotations on the current CIPU report because in our view it offers a proportionate and balanced overview drawn from a wide variety of sources, sometimes offering conflicting views, but all of which are properly cited. There is other objective material before us, which we have considered. Some of it supplies source material for the CIPU report itself and some we shall refer to specifically later. We consider however that the CIPU report offers a fair and balanced picture of the situation as a whole.
11. The second ground of appeal is that the Adjudicator's finding that the Respondent's support of the PKK was only general and common to many other villagers but that his refusal to join the village guards put him in a higher risk category, contradicts her earlier findings of fact and is not borne out by the objective material.
12. Mr Deller argued this in terms that the Adjudicator erred, in the light of her findings of fact, to conclude that the Respondent was at a higher risk than ordinary returnees as a consequence of his refusal to be a village guard. This contradicted her previous finding that his refusal to be a village guard did not cause any serious fallout. This contradiction further undermined her assessment of risk. Mr Richmond argued that the refusal to act as a village guard was not the only reason for allowing the appeal and referred again to the holistic approach adopted by the Adjudicator in paragraph 11.6 of the determination. He also argued that there was in fact no contradiction as described

by Mr Deller. The fact that there was no serious fallout from the refusal in the short time before the Respondent left the country and whilst he was avoiding the authorities, did not mean there would not be a risk on return as a consequence. He relied on an Asylum Aid Report and also on Tribunal decisions in **Mehmet 00/TH/02493** and **Zengin [2002] UKIAT 00417**.

13. The Tribunal considers that the Adjudicator made a fair and balanced assessment of the background material relating to village guards, which we have quoted above in paragraph 3. It shows that the scheme, and the view taken by the authorities of those who did not participate, may well have been applied oppressively in the past, but it is now being run down and may well soon be ended altogether. We agree however with Mr Deller that there is a sharp inconsistency between the Adjudicator's further finding that the refusal by the Respondent and the other 10 young men in his village to participate did not appear to have resulted in a serious fallout, and her conclusion in paragraph 11.6 that "his refusal to join the village guards puts him in a higher risk category." The Adjudicator offered no specific reasoning to explain this apparent inconsistency and Mr Richmond's explanation that there was no time between the Respondent's refusal and his leaving the country for there to be any fallout, is not persuasive. Such a fall-out would have been felt in the village itself in the context of the policy of forced evacuation to which the Adjudicator referred. That there was no such fallout suggests that the authorities did not draw any serious adverse conclusions on this occasion and that consequently little risk would now attach to the Respondent therefrom. The findings of fact by the Adjudicator simply do not bear out her conclusion that the Respondent's refusal to join the village guards was in itself a matter, which raised him to a higher risk category.
14. We have reached this conclusion after considering page 131 of Mr Richmond's objective bundle, to which he referred us. It is an extract about the village guards from a report prepared by three people as a result of a visit to Turkey, which was then published by Asylum Aid. The three people were Navita Atreya, a barrister who specialises in representing asylum seekers and appears before us frequently, David McDowall, a writer on Kurdish affairs with a distinct viewpoint who frequently writes reports to support claims by asylum seekers, and Perihan Ozbolat, herself a Kurdish emigrant from Turkey who currently works with Kurdish immigrants in London. In describing their backgrounds we do not mean to undermine their personal credentials or to suggest that they would not report accurately what was said to them during their visit. However when they express personal opinions, as on occasion they do in this report, those opinions have to be evaluated in the context of their own viewpoints and whether the evidence they produce properly supports their opinions. We mention this because the passage to which we have been referred first offers an analysis of the village guards' scheme, which is in the main in line with the situation described the CIPU report and repeated by the Adjudicator in the determination. However, it then goes on to state that
"Those who enrolled and those villagers and villages that refuse to enrol were duly listed by gendarmerie intelligence. According to Dr Akin of TIHV Istanbul [a Turkish human rights organisation] these lists are available to the national security organisation. This means that all those who desert or refuse service in the village guards are supposedly on record. We believe this has clear implications when considering the return of a refused asylum seeker in one of these categories."

15. The latter sentence about the risk on return is an expression of opinion by the writers rather than the expressed opinion of Dr Akin. It does not say clearly what the writers believe those implications may be. It does not offer any proportionate analysis of any risk. We are left to guess and evaluate their meaning. We agree with Mr Richmond that all the evidence has to be assessed holistically to arrive at a risk assessment in each case, and we shall come to that later in respect of the Respondent. However we do not consider that the objective material as a whole offers support for the view that to refuse to be a village guard would per se elevate an otherwise unmeritorious asylum claim into a higher risk category. Yet this is what the Adjudicator appears to have concluded in paragraph 11.6 when she finished her assessment with the words
“On the evidence I am satisfied that although his support of the PKK was only general and common to many other villagers, his refusal to join the village guards puts him in a higher risk category.”
16. We therefore consider that the Adjudicator's conclusion on this point is inconsistent with her other findings of fact and the objective material as a whole, and is undermined by that inconsistency. The two decisions of the Tribunal cited by Mr Richmond do not really take the matter any further.
17. The third ground is that the Adjudicator took into account the evidence of the leading human rights organisations in Turkey who recommend that failed asylum seekers should not be returned but failed to consider the contrary position of UNHCR which is that they have no objection to the return the Turkish asylum seekers who, after a fair and efficient procedure, had been found not be refugees.
18. Mr Deller relied on the ground as stated above. Mr Richmond argued that the UNHCR report was irrelevant as it related to failed asylum seekers per se rather than those with additional risk factors involved. With respect to Mr Richmond the UNHCR advice and the advice of the Turkish human rights organisations are on the same point and should together have been taken into account by the Adjudicator. The failure to do so further undermines her conclusions.
19. As we have described above, and we consider that there is merit in all three grounds of appeal upon which leave was granted. The Adjudicator's assessment of risk is consequently unsound and cannot stand. However, because there is no dispute as to the basic facts, we are in a position to be able to cure the errors and make our own risk assessment, rather than remit the appeal for a fresh hearing
20. We agree with Mr Richmond that a holistic approach must be adopted and all the material factors should be taken into account. However, we must start from the proposition that as the Respondent has his own Nufus card, and is not wanted by the Turkish authorities, there is no real risk that he will face an in depth interrogation on return by the Turkish border police. As it is essentially in the context of such an interrogation that risk of ill treatment on return can arise, it follows that the Respondent's likely exposure to any risk would be negligible, if it exists at all.
21. However, on the facts as established, we can go further. We conclude that the Respondent would still not face any real risk of persecution or ill-treatment in breach of

Article 3 even if he were identified on return as a failed asylum seeker and faced an in-depth investigation by the Turkish border guards.

22. The evidential basis for the existence of risk on return is summarised in the statement at paragraph 5.83 of the CIPU report, which says that;

“Currently available information indicates that undocumented returnees generally are not ill treated while being kept in custody. However ill treatment cannot be ruled out in cases where returnees are suspected separatists.”
23. However, the expression “cannot be ruled out,” is significantly more stringent than the applicable standard of proof of whether there is a “real risk” of persecution or a breach of protected human rights, which as the Tribunal stated in **Kacaj 01/TH/0634***, must be more than a mere possibility. This objective evidence does not justify the conclusion, as is sometimes advanced, that everybody who may have come to the attention of the Turkish authorities in the context of the conflict with the PKK will as a consequence be entitled to asylum. A qualitative analysis of the likelihood and level of suspicion on a case by case basis is necessary in order to reach a valid assessment of the risk on return.
24. The Adjudicator found that the Respondent had been detained for questioning and was ill-treated in 1993 and 1994 but this was part of the general and harsh regime operating at that time. He did no more than many other villagers did. Most significantly she found that he was not particularly targeted himself. Whilst some members of his family had problems thereafter the Respondent had no further difficulties himself until 1998, even though, apart from his period of military service, he continued to live in his village in an area where PKK activity was intense. If there were any continuing adverse interest in him it would have manifested itself in this period. There is no credible reason to believe that such records as might have been kept about the Respondent would show anything other than that he had been detained for questioning on two occasions long ago, but he was not targeted specifically, and the authorities had no continuing adverse interest in him.
25. We find he would not be at real risk of ill-treatment on return as a consequence of this record. To this must be added any additional risk arising from his refusal to be a village guard. However the facts as established show that there was no serious fallout from his refusal and those of other young men in the village to serve as guards. If there had been it would have been manifested not just against him but the village as a whole. This implies that the authorities did not in reality suspect the village or its members of being separatists to any material degree. This reinforces the view we have reached that the Respondent’s refusal, even if known to the Turkish border guards, would not be a sufficiently material factor as to elevate his otherwise low risk status, and entitle him to international protection.
26. In summary we find that the Respondent can return to Turkey with his own Nufus card and will not therefore be an undocumented failed asylum seeker. As he is not wanted by the authorities, there is little or no risk attaching to his return. Even if the authorities become aware that he is a failed asylum seeker and he were to be detained for in-depth investigation by the Turkish border guards, his record would not be sufficient to create the suspicion that he is a separatist, and he would not be at real risk of any material ill-treatment

27. For the reasons given above, we conclude that the determination by the Adjudicator is unsound and cannot stand. The Respondent has not established any entitlement to the protection of either the 1950 or the 1951 Conventions. This appeal is allowed.

Spencer Batiste
Vice-President