

SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: SN/92/2020
Hearing Date: 19th October 2021
Date of Judgment: 24th November 2021

Before

**THE HONOURABLE MR JUSTICE DOVE
UPPER TRIBUNAL JUDGE RIMINGTON
MRS JILL BATTLE**

Between

GUN

Appellant

and

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

Respondent

OPEN JUDGMENT

Mr Edward Grieves and Mr K. Joshi (instructed by Wilson Solicitors LLP) appeared on behalf of the Appellant.

Mr Jon Darby (instructed by the Government Legal Department) appeared on behalf of the Secretary of State

Mr Dominic Lewis (instructed by Special Advocates' Support Office) appeared as Special Advocate

Introduction:

1. The Applicant is a citizen of Turkey who was born on 23rd April 1983. On 26th October 2018 she made an application for naturalisation and this was refused, as set out below, on 26th August 2020. In these proceedings the Applicant seeks to have that refusal set aside.
2. In the light of the nature of the refusal in this case we have proceeded to receive evidence and submissions in both open and closed session. As matters turned out, whilst we have received a significant amount of material in the open part of these proceedings, the open hearing was brief. Unfortunately, counsel on behalf of the Applicant was unwell and for good reason unable to attend the hearing. It was agreed on behalf of the Applicant that the reality of the case was that the issues raised in open could be satisfactorily resolved on the basis of the papers before us, and that the significant and dispositive issues in the case arose in closed, in which the interests of the Applicant were fully and properly represented by the Special Advocate.
3. In this open judgment we address the background to the case, focussing in particular on matters which were before the Respondent and not matters raised in the materials introduced in SIAC but which were no part of the decision-making process, as well as the grounds which are raised by the Applicant in open. We also set out our decision in relation to the Applicant's application.

The evidence in open:

4. As set out above the Applicant is a citizen of Turkey. She came to the UK on 20th January 2006 and claimed asylum on 23rd January 2006. Her application for asylum was initially refused by the Respondent on 2nd February 2006 but the Applicant appealed. Her appeal was allowed on 31st March 2006, on the basis that the Immigration Judge accepted the core of her account. In her evidence she explained that she was of Kurdish ethnicity and an Alevi by religion, and that she was an active supporter of the activities of DEHAP, a pro-Kurdish party, and belonged to a family who were supporters of the PKK. The Immigration Judge accepted that as a result of her ethnicity and political affiliations the Applicant had been arrested and ill-treated by the Turkish authorities on several occasions. The Immigration Judge therefore accepted that the Applicant had been the subject of persecution for reasons qualifying her for recognition as a refugee.
5. Following her appeal being allowed the Applicant was granted refugee status on 23rd May 2006. Subsequently she was granted indefinite leave to remain on 4th July 2011.
6. On 26th October 2018 the Applicant made her application for naturalisation as a British citizen. She completed the necessary form with the assistance of a solicitor. Within the form she explained that she was registered blind, a condition which had arisen as a consequence of her suffering a stroke in 2018. She also explained that she had a son who is a British citizen.
7. On 26th August 2020 the Respondent communicated her decision in relation to the

application to the Applicant by letter. The application was refused and the letter stated:

"The Home Secretary has refused your application for citizenship on the grounds that you do not meet the requirement of good character. It would be contrary to the public interest to give reasons in this case."

Within the letter the Respondent certified the decision under section 2D of the Special Immigration Appeals Commission Act 1997. As a result of the certification the Applicant applied to SIAC for the decision to be set aside on 11th September 2020.

The Grounds:

8. The Applicant advances three grounds in support of this application in open. Firstly, it is contended that the Applicant was not provided with a fair opportunity to address the matters which have been held against her so as to refuse this application. Secondly, it is submitted that the decision has been reached on the basis of irrationality or a mistake of fact. Thirdly, it is submitted that the Respondent must have taken into account an irrelevant consideration or failed to take account of a relevant consideration.
9. Having advanced these propositions in amended grounds on 28th July 2021, the Applicant's more recent open skeleton argument realistically reflects that in circumstances where no reasons or evidence have been provided to the Applicant to justify the decision taken in her case, it is difficult for the Applicant to meaningfully advance detailed argument in the open part of the proceedings. The Applicant supports and relies upon the grounds advanced on her behalf by the Special Advocate. Detailed submissions are advanced in the Applicant's open skeleton argument in relation to the exercise of discretion were it to be concluded that there was an error of law in the Respondent's decision. The Applicant contends that in the event of a finding that the Respondent's decision was affected by illegality then the *Simplex* principle ought not to apply as it is not possible to say that the Respondent's decision would inevitably be the same.

Conclusions:

10. The legal framework in relation to the decision that the Respondent reached is set out in section 6 of the British Nationality Act 1981. By virtue of section 6(1) the Respondent needs to be satisfied that the requirements in Schedule 1 of the 1981 Act are fulfilled before an application for naturalisation can be granted. The requirements under Schedule 1 include that the applicant is of good character. The Respondent has adopted guidance which is set out in the open material in relation to how the question of whether a person satisfies the good character requirement is to be assessed.
11. Where the Respondent certifies, as here, that the decision has been reached wholly or partly on material that should remain in closed then there is a right, as set out above, to apply to SIAC under section 2D of the 1997 Act. As is clear from what has been set out above, that is the right that the Applicant is exercising in the present case.
12. In assessing the application, as noted in *AHK and others v Secretary of State for the*

Home Department (Preliminary Issue Judgment dated 18th July 2014), SIAC is undertaking a statutory review applying the principles which would be applied in judicial review proceedings. The facts or factual inferences will be closely and anxiously reviewed, but if they were reasonable findings then they will not be interfered with as the task is a review rather than an appeal on the facts (see paragraphs 14 and 31). This review exercise will, on the basis that it is an exercise in judicial review, proceed on the basis of the material that was before the decision-maker at the time of making the decision, and not material furnished subsequently. Thus, whilst there has been the subsequent introduction of material which was not before the Respondent in the open materials before us, for instance in the form of the Applicant's witness statement in these proceedings, these are not matters which are relevant to the task at hand. It is the material which was before the Respondent which must form the basis for our analysis.

13. As is effectively conceded in the Applicant's recent open skeleton argument, the points advanced as the second and third grounds in open for setting aside the Respondent's decision are not matters which the Applicant can make detailed submissions about in open, as she has not been furnished with the reasons for or the underlying material supporting the decision in her case. These grounds do, however, identify cardinal principles of public law and therefore have the capability to form the basis of the scrutiny which will be applied to the decision in closed.
14. Turning to the first of the open grounds on which the application is advanced it is, of course, the case that the Applicant must be treated fairly in the consideration of her application. It is accepted that, generally speaking, an applicant should be afforded an opportunity to understand any areas of concern for a decision-maker and given the chance to address them. It is, however, clear that in cases involving National Security the balance required by fairness is established by the provision of clear material as part of the application process specifying the information required in support of an application, and the scrutiny provided by closed hearing sessions assisted by Special Advocates. Whilst, therefore, the Applicant was not provided with any material before refusal in this case, on the authorities we are satisfied that this has not given rise to unfairness in the particular circumstances of her case.
15. As a result of what has been set out above, we do not consider that there is substance in the grounds advanced by the Applicant in open. For the reasons given in the closed judgment we are not satisfied that there is any legal error in the decision which the Respondent reached in the present case. It follows from this that the Applicant is not entitled to have the decision set aside, and that the submissions made in open on her behalf in relation to discretion and relief do not arise. The Applicant's application must be dismissed.