



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/00919/2013

THE IMMIGRATION ACTS

Heard at Field House

On 11th June, 2013

Determination

Promulgated

On 2nd July 2013

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Before

Upper Tribunal Judge Chalkley

Between

AHLA KILIC

(No anonymity Order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr A Burrett instructed by Ozoran Turkan Solicitors

For the Respondent:

Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Turkey, who was born on 27th August, 1968. She made an application to the respondent to vary her leave to remain in the United Kingdom on the basis of her self-employment under the EU Turkish Association Agreement ,but on 27th December, 2012, the respondent refused to vary leave. She gave Notice of Appeal and her

appeal was heard at Taylor House by First-tier Tribunal Judge Callow who, in a determination promulgated on 9th April, 2013, dismissed her appeal. Dissatisfied with the judge's decision, the appellant challenged the determination and Designated First-tier Tribunal Judge McDonald granted permission to appeal on the basis of the lack of clear factual findings made by the judge.

2. Before me this afternoon Mr Burrett appeared on behalf of the appellant and Mr L Tarlow, a senior Home Office Presenting Officer appeared on behalf of the respondent. Mr Burrett took me to paragraph 12 of the judges' determination and suggested that the judge had found that the appellant was a self-employed person, at least during part of the period in question. Paragraph 12 says this:

“In broad terms it is accepted that the appellant has told the truth about some matters but exaggerated others. In the absence of any invoices for work done for Dry Cleaning Tailors and noting their very recent letter that ‘... we will be able to work with her once she sets up her own business in the UK’ she has exaggerated her claim to additionally provide services to Dry Cleaning Tailors. However it has been established that up until 3rd July 2012 the date of her last invoice for services rendered to De’ Atelier, she was, viewing all the evidence in the round, a self-employed person and not a person in the employment of De’ Atelier. Whilst not in itself decisive it is accepted that the services provided to De’ Atelier, the appellant's sole customer, were not controlled by De’ Atelier. They simply instructed her to carry out certain work for them from time to time. In establishing her business the appellant has advertised her business and personally accounts for it by way of business balance sheets and the payment of tax, including National Insurance contributions as a self-employed person.”

3. I pointed out to Mr Burrett that I had some difficulty in understanding what it was that the judge meant by use of the words “in broad terms” and I was slightly concerned that the judge appears to have accepted that the appellant and told the truth about some matters, but exaggerated others without explaining what they were. The judge has not explained what he meant by “exaggerated others.” I formed the view that there was a clear lack of clear, well reasoned findings in the determination and Mr Tarlow, entirely properly, told me that he agreed.
4. Both representatives having agreed that the judge's determination cannot stand, I set it aside. I drew the attention of the representatives to Section 7 of the Senior President's Practice Statement. This provides

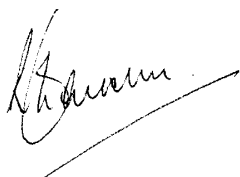
“7. Disposals of Appeal in the Upper Tribunal

7.1 Where under Section 12.1 of the 2002 Act (Proceedings on Appeal to the Upper Tribunal) the Upper Tribunal finds that the making of a decision involved the making of an error on a point of law the Upper Tribunal may set aside the decision and if it does so must either remit the case to the First-tier Tribunal under Section 12.2(b)(i) or proceed in accordance with the relevant Practice Directions to remake the decision under Section 12.2(b)(ii).

7.2 The Upper Tribunal is likely on each occasion to proceed to remake the decision instead of remitting the case to the First-tier Tribunal unless the Upper Tribunal is satisfied that (a) the effect of the error has been to deprive the party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal or (b) the nature and extent of any judicial fact finding which is necessary in order for the decision in the appeal to be remade is such that having regard to the overriding objective in Rule ... it is more appropriate for the matter to be remitted to the First-tier Tribunal.”

Both representatives agreed and neither sought to persuade me to adopt another course.

5. I am satisfied that this is a case which falls squarely within paragraph 7 of the Senior President's Practice Statement, given that witnesses are not present today and given the length of time the parties would have to wait for the matter to be relisted before me at Field House and that it could conversely be heard relatively speedily by the First-tier Tribunal, and in view of the overriding objective in forming the onward conduct of this appeal I have decided that the appeal be remitted to the First-tier Tribunal for a hearing afresh before a First-tier Tribunal Judge other than Judge Callow.

A handwritten signature in black ink, appearing to read 'Chalkley', with a long horizontal stroke extending to the right.

Upper Tribunal Judge Chalkley