



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

Appeal Number: IA/16923/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 26th November 2014**

**Determination issued on
On 28th November 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

OZLEM ERGUN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C McGinley, of Gray & Co., Solicitors
For the Respondent: Mrs M O'Brien, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against a determination by First-tier Tribunal Judge Clough, promulgated on 9th July 2014, dismissing her appeal under the Immigration Rules and under Article 8 of the ECHR.
2. The appellant's first Ground of Appeal to the Upper Tribunal is that the appellant provided sufficient evidence to show that she was a victim of domestic violence and that as such she met the requirements of the Immigration Rules.

3. The second Ground of Appeal is directed at the finding that “the appellant has a private life, if not a family life, in the UK and removing her would interfere with her private life”. The appellant has a minor son living in the UK with his father. The grounds complain that the observation that the appellant could keep in touch with him by electronic means is an error of law; that the judge failed to find that the appellant has family life in the UK with her son; and the judge has erred in failing to find that removal would be disproportionate.
4. Mr McGinley did not pursue the argument that the appellant had established her case of domestic violence under the Immigration Rules. He was plainly correct not to do so.
5. In relation to the second ground, Mrs O’Brien, also correctly, conceded that the judge erred in not making a finding that family life exists between the appellant and her son. There is a very strong presumption that such family life exists for Article 8 purposes, and there was nothing in the case to suggest otherwise.
6. The appellant on her uncontradicted evidence has an unfortunate marital history. She and her son lived together in Turkey until 2011. Her son is now living with his father in the UK. His father has become a UK citizen. So far as is known, the boy is a citizen only of Turkey. There was before the First-tier Tribunal only sketchy information regarding the present circumstances and the child’s attitude towards living with his mother or father. A letter from him, running to only four lines, says that he lives with his father in Carlisle, at weekends travels to Dumfries to see his mother, is in daily contact with her on the phone and by Facebook, and that if she had her own place he would like to stay with her. He does not comment on whether he sees his future as lying in the UK or in Turkey, or where he would prefer to be, if his mother were to return to Turkey. There is nothing to suggest that it would be disadvantageous to the child or in any way unreasonable for him to return to Turkey. He has reached an age when, although he is still a child, it is probably up to him where he lives and with which parent.
7. It is now accepted that the appellant cannot meet the requirements of the Immigration Rules. The child is not, as far as known, a British citizen. He has not lived in the UK for seven years or more, and has spent most of his life with his mother in Turkey.
8. All that is known about the appellant’s private life is that she has friends in Dumfries who are apparently prepared to assist and accommodate her at least for the time being. There is nothing to suggest that she has any private life interests which would weigh heavily against removal to Turkey. The only relevant family life is her relationship with her child. As I have already observe, there are no known circumstances which suggest that it would be significantly adverse to the child’s interests if she were to return to Turkey, or that it would be unreasonable to expect him to leave the UK.

9. In short, the evidence discloses no case that the appellant has a right to remain in the UK outside the requirements of the Rules, on any approach.
10. The determination of the First-tier Tribunal is **set aside**, for failure to determine a material matter, the existence of family life between the appellant and her son, both presently in the UK. However, as there is no evidence to show that her removal from the UK would involve any significant interference with that family life, or any significant disadvantage to her son's best interests, the appeal is **dismissed**.
11. No order for anonymity has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

27 November 2014
Upper Tribunal Judge Macleman