



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

Appeal Number: IA/19347/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 6th January 2015

**Determination
Promulgated**

On 19th January 2015

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**YUCEL EVIZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Anderson of Immigration Legal Advice Centre

For the Respondent: Mrs Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Dickson made following a hearing at Bradford on 22nd August 2014.
2. The appellant is a citizen of Turkey born on 18th September 1985. He married a British citizen on 17th July 2012. On 13th May 2013 he was

granted limited leave to enter the UK as a visitor, subsequently making an in time application for leave to remain in the UK as a self-employed person under the provisions of the European Community Association Agreement (the Ankara Agreement).

3. He was refused on 10th April 2014 and appealed to the Immigration Judge, who found that the appellant had not established that he had a genuine intention to set up a viable business, nor that he would bring sufficient funds to establish his business and nor that his share of the profits would be enough to support him and his family. Neither was he satisfied that the appellant had the skills and abilities necessary to set up the business or that it would be successful. There is no appeal against the judge's conclusions.
4. The judge said that, in reliance on SS (Turkey) [2006] UKAIT 00074 that it was insufficient to take a human rights claim for the first time in the Notice of Appeal and that he had no jurisdiction under the Nationality, Immigration and Asylum Act 2002 to hear the human rights appeal while the Appellant was in the UK.
5. The appellant filed grounds of appeal alleging that the judge had erred in law in not reaching any decision in respect of the Appellant's Article 8 claims which were raised in the Section 120 notice.
6. Permission to appeal was granted by Judge Nicholson on 10th November 2014. He noted that the application was filed out of time but extended time. He said that where a claimant already has an in country right of appeal and could not be removed until the appeal was finally determined, commonsense dictated that all grounds of challenge to the immigration decision should be considered at the one appeal in country (SA (Bangladesh) [2005] UKAIT 00178). Since the appellant had an in country right of appeal under the Immigration Rules human rights should have been considered at the same time.
7. In her reply dated 17th November 2014 the respondent acknowledged that the judge may have erred in not considering Article 8 but submitted that it could not be argued that the appellant met the requirements of the Article 8 Rules and any right-minded Tribunal properly directing itself would have dismissed the appeal on human rights grounds.

Submissions

8. Miss Anderson submitted that this was not an appeal which would inevitably have failed. Although the appellant would be able to make an out of country application to join his spouse, since she was a student, they would not meet the maintenance requirements. She is due to graduate in June 2015 but would then need to find work and provide six months' worth of payslips. His wife suffers from anxiety and would not be able to cope with living in Turkey, but in any event could not join him in Turkey because she had family responsibilities here. Her mother suffers from various

disabilities which restrict her ability to care for her children who have been at risk of going into care. They have a good relationship with the appellant, and he also helps care for her elderly grandmother. The sponsor's father suffers from sight problems and would become more isolated if she had to leave.

9. A letter from the Leeds Family Intervention Service dated 27th November 2014 records that the younger children were placed on a child protection plan due to concerns of neglect but were removed in May 2014 partly due to significant improvements to the home conditions and the support given by the sponsor and indeed the appellant. If they were not available the two older children, now aged 11 and 9, would need to take on further responsibilities.
10. So far as the requirements of paragraph 117 are concerned, the appellant speaks good English and would be able to obtain work. He has never been in breach of the Immigration Rules.
11. Mrs Petterson submitted that it was open to the sponsor to exercise choices, either to move to Turkey or to support the appellant in making the appropriate application. She observed that the couple had married in Turkey two and a half years ago and had not yet done so.

Findings and Conclusions

12. None of the facts are in dispute and accordingly Miss Anderson did not seek to call oral evidence. It is clear that the wider family are highly supportive of the appellant since a number attended the hearing.
13. Section 117B of the 2014 Immigration Act sets out the public interest considerations applicable in all cases. It is in the public interest, and in particular in the interests of the economic wellbeing of the UK, that persons who seek to enter or remain in the UK are able to speak English and that they are financially independent. Little weight should be given to a private life or a relationship formed with a qualifying partner which is established by a person at a time when the person is in the UK unlawfully, and to a private life established by a person at a time when the person's immigration status is precarious.
14. Removal would be an interference with the appellant's private and family life but would be lawful since he has no other basis of stay in the UK. The issue is whether it would be proportionate.
15. The starting point is the Immigration Rules. The judge's conclusions that the appellant does not meet the requirements for leave to remain under the Ankara agreement are not challenged. Nor is it argued that he is able to meet the requirements of paragraph 276ADE since he has not been in the UK for the requisite period of time, and he cannot benefit from EX.1 of Appendix FM because he arrived in the UK as a visitor.

16. The appellant clearly enjoys a family life with his wife, but there is insufficient evidence to establish a family life with the sponsor's wider family members. The witness statements refer to them both assisting, but it is clear from the Family Support Service letter that, unsurprisingly, it is the sponsor who provides the principal support to her family. There would undoubtedly be a detriment to the children if she left the UK but it is much less clear what effect there would be if the appellant had to return to Turkey in order to make an application for entry clearance.
17. Moreover, according to the determination of the original judge, the sponsor's evidence was that when the couple married they had no idea where they intended to live. She also temporarily suspended her studies whilst living in Turkey, which is not consistent with the present evidence that the couple are a vital part of the care required for the sponsor's family.
18. In any event, whilst the relationships form a part of his private life, private life developed at a time when immigration status is precarious, such as here, must be given little weight.
19. It is clear that the appellant speaks some English and communicates well with the sponsor's family, although no English language qualifications have been produced.
20. So far as financial independence is concerned, the appellant was not able to establish that he met the requirements of the Rules in respect of setting up a viable business. He has never worked in Turkey although he has done some work in the Emirates. Although he says that he would be able to obtain work in the UK, possibly through the sponsor's family, there is absolutely no evidence of that and his work record to date does not establish that his intentions are necessarily realistic.
21. There is no issue in relation to the appellant's relationship with his wife, his qualifying partner, which did not develop at a time when he was in the UK unlawfully. Indeed he has never been here unlawfully. On the other hand the sponsor is due to graduate in six months' time. There is no reason why she should not obtain employment and would be in a position to support the proper application for entry clearance, which is yet to be made. Taking into account all of the above considerations that is the proportionate course for the appellant to take.

Notice of Decision

22. The original judge erred in law insofar as Article 8 is concerned. The following decision is made. The appeal is dismissed under the Immigration Rules and with respect to Article 8.

Signed

Date

Upper Tribunal Judge Taylor