



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

Appeal Number: IA/33931/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 February 2016**

**Decision & Reasons Promulgated
On 24 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

v

MRS AREFE CHRISTOFOROU

Respondent

Representation:

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Mr A Mills, instructed by Ahmed Rahman Carr solicitors

DECISION & REASONS

1. The Respondent is a national of Turkey, born on 1 June 1970. On 13 September 2010, she married George Christoforou, a British citizen of Greek Cypriot origin. She applied for entry clearance as a spouse on 1 November 2010 but this application was refused and her appeal against this decision was dismissed on 22 February 2011 on the basis that the maintenance and accommodation requirements were not met, albeit the Judge found that the relationship was genuine and subsisting and the parties intended to live together. A second application for entry clearance as a spouse was also refused on 12 October 2012.

2. On 11 December 2012, the Respondent entered the United Kingdom utilizing a Bulgarian passport to which she was not entitled. On 8 January 2013, she gave birth to her son, [S] in the United Kingdom. An application for leave to remain on the basis of the Respondent's family life with her husband and son was made on 30 October 2013. This application was refused on 22 January 2014 without the right of appeal. An application for judicial review was made and on 15 May 2014 a consent order was signed on the basis that the Secretary of State would issue a removal decision triggering the right of appeal. That decision was made on 5 August 2014 and an appeal was lodged against the decision.

3. The appeal came before First-tier Tribunal Judge Sweet for hearing on 13 August 2015. In a decision and reasons promulgated on 28 August 2015 he allowed the appeal under both the Immigration Rules [R-LTRP1.1.(d)] and Article 8, outside the Rules.

4. An application for permission to appeal was made in-time by the Secretary of State for the Home Department on the basis that the Judge had erred materially in law: (i) in failing to consider section 117B and the public interest; (ii) in failing at [43] to give reasons why it would not be reasonable to expect the Appellant's spouse, who has a 16 year old daughter in the UK by a previous relationship, to relocate to Turkey and (iii) at [43] in making reference to the fact that it would not be reasonable and proportionate for the Appellant to move to Turkey because of difficulties with employment and integration. Permission to appeal was granted by First-tier Tribunal Judge Grimmett on 31 December 2015 on the basis that the grounds were arguable.

Hearing

5. At the hearing before me, Mr Jarvis, for the Appellant Secretary of State, sought to amend the grounds of appeal by way of a skeleton argument dated 16 February 2016 with reference to rule 5(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to include a challenge to the First-tier Tribunal Judge's interpretation of R-LTRP 1.1.(d) (iii) on the basis that there was no expectation that a British child would leave the UK but would remain with his father in the UK and thus the Judge should have found that EX1(a) did not apply. He acknowledged that if I was not minded to admit the amendment to the grounds of appeal the grounds as they currently stand do not challenge the findings of the First-tier Tribunal Judge in respect of the Appellant's ability to meet the requirements of the Immigration Rules, but are concerned with Article 8 of ECHR.

6. Mr Mills objected to the admission of a further ground of appeal at such a late stage and in light of VV (grounds of appeal) Lithuania [2016] UKUT 00053 (IAC) which provides *inter alia* at [30]:

"But where points are abandoned, there is a tendency then to seek to rely upon a skeleton argument, served only just before or even on the day of the hearing, so as to advance one or more new arguments not previously notified to either party or to the Tribunal. Raising new points in this manner plainly can cause unfairness

to the opposing party and, if so, the Upper Tribunal may well refuse to allow the new point to be argued.”

7. Permission to appeal had been granted on 31 December 2015 and there was clearly sufficient time for the Secretary of State to seek permission to raise any further grounds of appeal before 16 February 2016, 2 days prior to the hearing date. I did not consider that acceding to Mr Jarvis’ request to amend the grounds of appeal would be in accordance with the overriding objective set out in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to deal with the case fairly and justly, given that the Respondent has been married to a British citizen and has been attempting to resolve her immigration status for more than 5 years and now has a British citizen child with her husband. Moreover, her appeal had been allowed by the First-tier Tribunal almost 6 months ago but the family’s circumstances remained uncertain pending the outcome of the appeal by the Secretary of State for the Home Department. Therefore, I refused to permit Mr Jarvis to amend the grounds of appeal, drafted on 9 September 2015.

8. It is clear that this is a case where permission to appeal to the Upper Tribunal ought not to have been granted, as the grounds of appeal did not challenge the findings by the First-tier Tribunal Judge in respect of his decision to allow the appeal under the Immigration Rules. Even if there was merit in the challenge to the Judge’s findings in respect of Article 8 this matters not because the First-tier Tribunal Judge’s decision in respect of the Appellant’s ability to meet the requirements of R-LTRP 1.1.(d) of the Rules stands.

Decision

9. The appeal by the Secretary of State for the Home Department is dismissed. The decision by First-tier Tribunal Judge Sweet to allow the appeal in respect of the Immigration Rules stands.

Deputy Upper Tribunal Judge Chapman

18 February 2016