



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

Appeal Number: IA/36242/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8th August 2014**

**Determination**

**Promulgated**

**On 08<sup>th</sup> Aug 2014**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MS FAZILET KARAMESE**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Blundell (instructed by Kilic & Kilic Solicitors)

For the Respondent: Mr I Jarvis (Senior Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant with regard to a determination of the First-tier Tribunal (Judge Cary) promulgated on 23<sup>rd</sup> May 2014.
2. The Appellant, a Turkish national, had applied for leave to remain in the United Kingdom as the wife of Mr Veyis Poyraz, a British citizen of Turkish origin.

3. Being unable to meet the requirements of the Immigration Rules, the appeal was on the basis of Article 8 only and was dismissed by the First-tier Tribunal.
4. Permission to appeal was granted on the basis that it was arguable that the First-tier Tribunal had given insufficient reasons for coming to the conclusion it did in relation to Article 8; in particular making no findings as to whether the Appellant's husband would return to Turkey with her or the likely effect on the Appellant if she had to return given her past medical history. My first task is to decide whether the First-tier Tribunal made an error of law and if so whether and to what extent its determination should be set aside.
5. The grounds upon which permission to appeal was sought run across seven pages and 13 paragraphs although before me Mr Blundell relied upon only one ground and that was at paragraph 10 of the grounds. It is asserted that the judge erred about information not being available in relation to the Children Act proceedings regarding the Sponsor's son Eren. A letter which the Judge referred to as being missing was in fact included at page 34 of the bundle. It was argued by Mr Blundell that had that error not been made a different conclusion may have been reached.
6. I disagree. Mr Blundell accepted that the error arose through no fault of the Judge as in fact the representative confirmed [36] that the letter was not available and the Judge proceeded on that basis. The letter in fact was available and contained in the Appellant's bundle. However, while it was clearly a mistake of fact and thus an error for the Judge to say evidence was not available when it was, so far as materiality is concerned it is necessary to refer to the evidence as a whole and the content of the letter in particular.
7. The Sponsor's case as set out at paragraph 52 was that he had a child from his previous relationship who is now aged four in respect of whom he was trying to gain a contact order through the courts. He had said that a letter from his solicitors was enclosed which provided more detail.
8. The Sponsor's oral evidence is set out at paragraph 27 and he told the Judge that he had applied for contact with his son. He was currently waiting for a contact date to be arranged. He would be initially allowed to see his child for a few hours and then the time would increase in stages. The first visits were likely to be at a contact centre. He said that a contact order was made about four months before the hearing and that he had still not been given a date for his first contact visit. He was also waiting for a final hearing. He told the Judge that a court welfare officer (who I take to be a Cafcass officer) had intervened and a report had been prepared. His former wife no longer opposed contact although she wanted the arrangements to be official and secure. He confirmed that he was represented in the contact proceedings by the same solicitors who represent him in the immigration proceedings.

9. It is also apparent from paragraph 20 of the determination that the Sponsor had last seen the child concerned when he was aged four months and he was, by the date of the hearing, four years old.

10. If the judge had had sight of the letter to which I was referred he would have seen that it said:-

"We write to confirm we are instructed by the above named client in relation to his child contact matter.

We hereby confirm that our client applied to the Family Court in Brighton in 2012 for a contact order, these proceedings are ongoing and no final hearing has yet been listed. We anticipate that the matter will conclude in 6 to 12 months.

We further confirm that since June 2013 the court has made an indirect contact order granting our client permission to send his son monthly letter/card and small gifts. We confirm that our client has committed to this and has been sending monthly letter.

We are currently waiting for the court to list our client's application for further hearing at which point the court will decide whether further contact should be ordered, including direct contact with his son."

11. That letter in fact contradicts the evidence given by the Sponsor. It does not assist his case. It certainly does not confirm his evidence that he is about to have direct contact; that seemingly is dependent upon a further hearing not yet listed. It also makes clear that despite proceedings having commenced in 2012, by May of 2014 he had not progressed beyond indirect contact.

12. The Judge made reference at paragraphs 53 and 54 to a lack of evidence regarding the contact proceedings and the discrepancies in what evidence there was. The solicitor's letter indeed does not support the Sponsor's evidence indicating that he still has not achieved contact on a face-to-face basis despite lengthy proceedings. It would have been open to the representatives to seek the court's consent to disclose any Cafcass report that had been obtained, if indeed it supported the Sponsor's case.

13. On the basis of the evidence before him therefore the Judge was entitled to find, as he did at paragraph 51, that there is no evidence indicating that the child's best interests required the Sponsor to remain in the UK. The Judge was also entitled to find, as he did at paragraph 53, that as a British citizen the Sponsor would be entitled to return to the United Kingdom to pursue any court proceedings or indeed to exercise contact if he chose to relocate to Turkey with the Appellant.

14. This claim was always doomed to failure on Article 8 grounds and indeed I am surprised that permission to appeal was granted. The background to the case is that the Appellant arrived in the UK only in January 2013 with leave to enter as a visitor valid until July 2013. She and the Sponsor

married the day after her leave expired and she then sought leave to remain as a spouse.

15. She could never meet the requirements of the Rules for leave to remain as a spouse as the Rules do not permit such leave when an applicant entered as a visitor. This therefore is not a case where Chikwamba [2008] UKHL40 could be argued. There was no evidence that it was unreasonable for her husband who is of Turkish origin to accompany her to Turkey. Despite the fact that he had previously been granted asylum as being at risk of persecution in Turkey, he had travelled there on several occasions without difficulty and therefore there was no issue as to his returning there with her either on a permanent basis or temporarily while she pursues an application for leave to enter the UK as a spouse.
16. The Judge in the First-tier Tribunal gave detailed reasons for his conclusions from paragraph 47 to 55 of the determination and I find that there is no error of law that could have made any difference to the outcome. There is no prospect of another Judge reaching a different conclusion on this matter notwithstanding the error as to the existence of the solicitor's letter.
17. The appeal to the Upper Tribunal is dismissed.

Signed

Date 8th August 2014

Upper Tribunal Judge Martin