



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/11901/2015

THE IMMIGRATION ACTS

Heard at Birmingham
On 17 March 2016

Decision & Reasons Promulgated
On 25 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EMINE ZEREN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr I Richards, Home Office Presenting Officer

For the Respondent: Ms F Shaw, Counsel, instructed by Ozoran Turkan Solicitors

DECISION AND REASONS

Introduction

1. For ease of reference, I shall refer to the parties as they were before the First-tier Tribunal. The Secretary of State is the Respondent and Miss Zeren is once more the Appellant.

2. This is an appeal by the Respondent against the decision of First-tier Tribunal Judge Parkes (the judge), promulgated on 3 September 2015, in which he allowed the Appellant's appeal. That appeal was against the Respondent's decisions of 10 March 2015, refusing to vary leave to remain and to remove the Appellant from the United Kingdom under section 47 of the Immigration, Asylum and Nationality Act 2006.
3. The Appellant is a national of Turkey and her application to the Respondent was based on claimed establishment under the ECAA (the Ankara Agreement). The application had been refused on the ground that the Respondent believed the Appellant to have been working in breach of the conditions of her previous leave.

The judge's decision

4. In a brief decision the judge sets out evidence from the Appellant on the breach of conditions issue which, on a fair reading of the text, he regarded as problematic to say the least (paragraphs 10-11). However, there is no finding on the matter. In paragraphs 12 to 14 the judge accepts that as at the date of hearing the Appellant had set herself in business and that the business was genuine. On that basis alone he allowed the appeal.

The grounds of appeal and grant of permission

5. The Respondent challenged the decision on the basis that there was no finding on the breach of conditions issue, and that this was important given the discretionary nature of paragraphs 4 and 21 of HC 510.
6. Permission to appeal was granted by First-tier Tribunal Judge Holmes on 15 January 2016. In addition to the content of the grounds, the grant comments on the arguably erroneous approach taken by the judge as to what was required by the Appellant in order for leave to be granted under the ECAA.

The hearing before me

7. I received and took note of Ms Shaw's rule 24 response. Mr Richards relied on the grounds of appeal.
8. I have little hesitation in finding that the judge materially erred in law.
9. It is apparent on the face of the decision that there is no express finding on whether the Appellant in fact breached the conditions of her previous leave. That was a live issue, as raised by the Respondent in her refusal notice. There was evidence on the issue before the judge. It might appear as though the judge was in effect finding against the Appellant on the point, but it required a clear expression.

10. The error was clearly material, as paragraphs 4 and 21 of HC 510 are inherently discretionary in their nature and a matter such as breach of conditions is highly pertinent to the outcome of an application or indeed an appeal.
11. Further, as highlighted in the grant of permission, the judge appears to have proceeded on the basis that all the Appellant needed to do was show that she was in business as at the date of hearing. That is not correct.
12. It is also true that notwithstanding the existence of financial information from the Appellant, there are no findings on whether she was able to support herself from the profits of the enterprise.
13. In light of the above, I set aside the judge's decision.

Disposal

14. Both representatives agreed that this case should be remitted to the First-tier Tribunal. Having regard to paragraph 7 of the Practice Statements, I do remit this case. As a result of the judge's failure to address particular matters, significant findings of fact are yet to be made.
15. I issue relevant directions, below.

Anonymity

16. No direction has been sought and none is appropriate.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions to the parties:

1. **The judge's findings at paragraphs 12-14 are preserved insofar as they establish that the Appellant's business in Coventry is a genuine one;**
2. **At the remitted hearing the issues to be addressed will include whether or not the Appellant breached the conditions of her previous leave, the effect**

of any breach (should this be found to have occurred) on the Appellant's case, and whether the current business provides sufficient profit to support her;

3. Any further evidence relied on by either party must be filed with the First-tier Tribunal and served on the other side no later than 10 working days before the remitted hearing;
4. Both parties must comply with any further directions issued by the First-tier Tribunal.

Directions for listing:

1. The appeal is remitted to the First-tier Tribunal at the Sheldon Court hearing centre, to be heard on a date to be fixed by that centre;
2. First-tier Tribunal Judge Parkes shall not be involved in the remitted hearing;
3. No interpreter is required for the remitted hearing;
4. There is a 1 ½ hour time estimate for the remitted hearing.

Signed

Date: 20 April 2016

H B Norton-Taylor

Deputy Judge of the Upper Tribunal