



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09691/2016

THE IMMIGRATION ACTS

Heard at Field House
On 13th August 2018

Decision & Reasons Promulgated
On 24th August 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SEBNEM OKUMUS
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Miss J Isherwood (Senior Home Office Presenting Officer)
For the Respondent: Mr R Solomon (instructed by McKenzie Solicitors)

DECISION AND REASONS

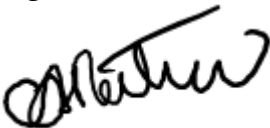
1. This is an appeal to the Upper Tribunal by the Secretary of State in relation to a Decision of Judge Cohen of the First-tier Tribunal following a hearing on 19th March 2018.
2. The Appellant before the First-tier Tribunal was a Turkish woman born in October 1984. She had come to the UK in April 2011 with leave as a student which was then extended as a business person in July 2013. That was extended again until December 2015 on the same basis. The application, which was refused and was the subject of the appeal before the First-tier Tribunal was an application to remain on the basis of her family life. The family life relied upon was a relationship with a Mr Waddada Balfour their child together who has learning difficulties and special needs, which are being met in the UK.

3. The Secretary of State had found that the Appellant met the suitability requirements but not the eligibility requirements on the basis that there was no evidence that Mr Balfour was either British or settled in the UK. When the matter came before the Judge there was a very considerable bundle of documents. The difficulty is Mr Balfour does not appear to have done anything about obtaining British nationality for himself. There is evidence on his mother's passport, they were all originally nationals of Guyana, that mother and her four children and in fact Mr Balfour was only months old at the time, entered the United Kingdom all on her passport in September 1982. A copy of that passport was in the bundle and the original, I am told, is with the Home Office. The passport, because of lack of room, has the appellant's name on page 17 separately from his siblings. There is an entry stamp into the UK in 1982 granting the passport holder, plus four, indefinite leave to enter. Confusion then arose because Mr Balbour's name is struck through on a date 1998. That would be when he was aged 16 and would have had to have, if he wished to travel, his own passport. His sister's name is similarly struck through.
4. The bundle also contained a wealth of evidence as to the fact that Mr Balfour had attended all of his education in the UK and has clearly not travelled outside the UK. The Judge in the Decision accepted on the basis of that passport that he was either British, entitled to be a British citizen or at the very least settled in the UK because he had ILR from the time of his entry. It seems clear from the evidence that he is not British because he has never made an application and indeed there is reference in an earlier Decision relating to this Appellant under the Ankara Agreement, when he confirmed that he had not applied as yet for British citizenship. However, he does have settled status, does meet the eligibility requirements and so the Judge, in allowing the appeal, did not make the error that he is accused of by the Secretary of State. The Secretary of State relies on the fact that the name is crossed through on the passport and therefore the Judge erred in relying on it. For the reasons I have indicated, the crossing out was on a date when he achieved the age of 16 and it is clear that he was given settled status on arrival. For those reasons the Secretary of State's appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date 16th August 2018



Upper Tribunal Judge Martin

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has

been paid or may be payable because the immigration status of Mr Balfour was a matter within the Secretary of State's knowledge.

Signed

Date 16th August 2018

A handwritten signature in black ink, appearing to be the name 'Martin', written in a cursive style.

Upper Tribunal Judge Martin