



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

Appeal Number: IA/15027/2013

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 4<sup>th</sup> September, 2013**

**Determination  
Promulgated  
On 22<sup>nd</sup> October 2013**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**MR IDRIS CIFTEI**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

*For the Appellant: Mr J Collins, Counsel instructed by Kilick & Kilick  
For the Respondent: Mr J Kingham, Home Office Presenting Officer*

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Turkey who was born on 20<sup>th</sup> February, 1979.
2. The appellant arrived in the United Kingdom as a visitor with a six month visa on 7<sup>th</sup> October, 2011. His visa expired on 7<sup>th</sup> February, 2012. Before his visa expired, the appellant made application for leave to remain under

the Turkey-European Community Association Agreement on 22<sup>nd</sup> January, 2012. That application was refused by the respondent on 16<sup>th</sup> July, 2012. The appellant appealed that decision and his appeal was heard on 19<sup>th</sup> September, 2012, but dismissed in a determination promulgated on 2<sup>nd</sup> October, 2012. On 18<sup>th</sup> October, 2012, application was made for permission to appeal. On 28<sup>th</sup> November, 2012 that application was refused.

3. On 2<sup>nd</sup> March, 2013, the appellant underwent an Islamic wedding with Keely Ann Parkinson (“Ms Parkinson”). On 18<sup>th</sup> April, 2013 the appellant was encountered and detained and served with form IS151A. The following day, on 19<sup>th</sup> April, 2013, representations were made to the Secretary of State suggesting that he be allowed to remain in the United Kingdom because his rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms would be breached. Further evidence was submitted on 20<sup>th</sup> April, 2013 and on 8<sup>th</sup> May, 2013 those representations were rejected by the Secretary of State who decided to remove the appellant as an illegal entrant thereby giving the appellant a right of appeal.
4. The appellant appealed to the First-tier Tribunal and the appeal was heard by First-tier Tribunal Judge Hands on 13<sup>th</sup> June, 2013 at North Shields. In a determination promulgated on 25<sup>th</sup> June, 2013, the First-tier Tribunal Judge considered the appellant’s rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and concluded that the appellant’s removal from the United Kingdom would not be disproportionate, given the legitimate interest in the maintenance of effective immigration.
5. First-tier Tribunal Judge Mailer granted permission to appeal. The grounds are lengthy, but at paragraph 7 assert that the judge erred because at paragraph 28 of her determination she said, *“The entry of persons is necessary in a democratic society when one takes a wider view of immigration Regulation”* and suggests that that is difficult to fathom. It suggested that at paragraph 29 of the determination the judge concentrated on the fact that the appellant was an overstayer, but there was nowhere any analysis of the positive factual findings made by the judge. The grounds suggested that the analysis and assessment of the proportionality of the appellant’s removal and separation from his pregnant wife is “bare and wholly inadequate”.
6. Paragraph 8 of the grounds suggests that the judge adopted a “wholly erroneous approach in effect disqualifying a person succeeding in an appeal on Article 8 grounds because they were in the United Kingdom without permission” because at paragraph 34 of the determination the judge accepted that it is, “... not reasonable to expect someone to leave the country if they are only returning to their own country to apply to return in a lawful capacity ...” but then goes on to state that the appellant “... should not gain from his illegal actions.”
7. Paragraph 9 of the grounds suggests that the judge’s analysis of the reasonableness of the appellant leaving the United Kingdom and returning

to Turkey was inadequate and flawed. It referred to paragraph 13 of the determination, where the judge quoted the respondent as saying that if the couple were in a genuine relationship they could live in Turkey together and that there were no insurmountable obstacles.

8. At paragraph 10 of the lengthy grounds it is suggested again that there is no balanced judgment of what reasonably can be expected in the light of all material facts and relied on *Sanade and Others (British children - Zambrano - Dereci)* [2012] UKUT 00048. Paragraph 11 suggested that any assessment of the reasonableness of the spouse being expected to leave the United Kingdom when she is a British citizen is one that needs cogent and rigorous analysis which is lacking from the determination.
9. Mr Collins submitted that the judge had simply failed to act in all her findings when making her assessment of proportionality. The appellant has at all times been aware that he was required to leave the country. It is simply not reasonable to expect his wife to return to go to Turkey with the appellant. For the respondent the Presenting Officer suggested that the first ground was a failure on the part of the judge to apply his findings set out at paragraph 19 of the determination onwards but when one reads paragraph 29 of the determination the judge makes it clear that she has applied all the facts as she has found them. Of course she has considered the appellant's immigration history, but she is obliged to do that.
10. The grounds criticise paragraph 34 of the determination but, Mr Kingham submitted, the judge was not simply saying that the fact that the appellant should not gain from his illegal actions outweighs everything else. It is clear, he submitted, when the determination is read as a whole that the judge has taken fully into account the findings she made. At paragraph 35 the judge has simply suggested that it was open to Ms Parkinson for her to move to Turkey with the appellant. He points out that she may prefer not to but there was insufficient evidence laid before her to establish that Ms Parkinson could not live with the appellant in Turkey. That is something for her to decide and the judge makes it clear that it was a matter for her. The judge is simply pointing out that interference with family life could be avoided by the parties should Ms Parkinson choose to go to Turkey with the appellant and there is no evidence before her to suggest that she could not live with him. He was not suggesting that as a British subject Ms Parkinson should go to Turkey with the appellant.
11. Mr Collins pointed out that Ms Parkinson had made it clear that her position was that she did not wish to go to Turkey and on the evidence before the judge it was, he submitted unreasonable to expect her to go and live there.
12. I reserved my determination.
13. The first five paragraphs of the grounds of appeal set out information which is apparent from reading the determination and are, with respect,

otiose. At paragraph 6 it is suggested that the judge's attempt at an analysis of the facts pursuant to the guidance of the House of Lords in *Razgar* was inadequate and confused. Paragraph 7 makes criticism of a sentence in paragraph 28 of the determination. What the judge said at paragraph 28 was this:-

“Returning now to the questions to be asked in terms of Article 8, I find that there will be an interference with the appellant's private and chosen family life. The decision to remove the appellant is in accordance with the law since the appellant has no legitimate basis to enter the United Kingdom after the outcome of his appeal. The entry of persons is necessary in a democratic society when one takes a wider view of immigration Regulation. The issue then becomes whether the refusal of entry clearance is proportionate in these particular circumstances.”

I agree, the penultimate sentence in that paragraph is clearly missing several words. What the judge was attempting to do, I believe, was to answer question 4 posed by Lord Bingham in paragraph 17 of *R v Secretary of State for the Home Department ex parte Razgar* [2004] UKHL 47. It is regrettable that the judge did not carefully read her determination and correct it before it was promulgated, but I do not believe that it amounts to a material error, since it is not capable of altering the outcome of the appeal.

14. In paragraph 7 of the grounds, criticism was made of the analysis of proportionality of the appellant's removal and suggests that at paragraph 29 the judge has concentrated on the fact that the appellant is an overstayer. Paragraph 7 of the grounds argue that reading paragraph 29 of the determination, one might think that the appellant had absconded, “and gone to ground”. It is suggested that there is no analysis anywhere of the positive findings made and the analysis and assessment of the proportionality of the appellant's removal and separation from his pregnant wife is, “bare and wholly inadequate”.
15. At paragraph 18 of the determination the judge records that she has heard oral evidence from the sponsor and found her to be credible and reliable. At paragraph 19 the judge concluded that the appellant and Ms Parkinson are in a genuine and subsisting relationship. The judge noted that the appellant had now taken three English ability tests from ESOL and that the sponsor could not speak Turkish or any other languages spoken in Turkey. The judge noted also that the sponsor was pregnant and pointed out that the appellant's removal would have no impact on the child's life at this stage because the baby was unborn. She noted that the appellant did not meet the requirements of the Immigration Rules (paragraph 276ADE of Statement of Changes in Immigration Rules HC 395, as amended). She noted that the appellant works in a takeaway business owned by the appellant and run by the appellant's brother and she heard evidence as to accommodation available for the couple with the appellant's brother. At paragraph 28 she reminded herself that it was necessary for her to consider whether the appellant's removal would be proportionate.

16. At paragraph 29 the judge said this:-

“I bear in mind the test as set out in paragraph 20 of *Huang* applying the facts as I have found them. Having considered all the evidence before me I find the following facts:

- (a) The appellant has remained in this country illegally from 28 November, 2012. He has been fully aware of his status. He would have been aware therefore that any relationships he established would, of necessity, be interrupted by his removal from this country. He has shown no respect or observance of the laws of the land by remaining in the country after his appeal rights were exhausted.
- (b) The appellant did not bring himself to the attention of the authorities and had to be encountered by them. I note that it was in fact the authorities who found the appellant at his brother’s home in what is colloquially known as ‘a dawn raid’. There is no dispute that the appellant was encountered in bed and that the sponsor was there with him.
- (c) The appellant and the sponsor have participated in an Islamic marriage ceremony and this has not been disputed by the respondent. The sponsor advised me that the ceremony was explained to her and the purpose of it but the actual ceremony was undertaken in a language she did not understand. Mr Keane [the Presenting Officer appearing before the First-tier Tribunal Judge] has made an issue of the ceremony in his submissions as the evidence is restricted to two photographs and the fact that her father did not attend. The photographs show that it was not an elaborate affair. The sponsor explained that they had hoped to marry under English law but as the appellant’s passport was retained by the UKBA they were unable to do so. Having heard from both parties I am satisfied that they believe they have been married under Islamic law.
- (d) The appellant’s family other than his two brothers, is in Turkey and he remains in contact with them.”

17. Pausing there for a moment, what the judge has done at paragraph 29 is to set out the facts as she found them. They are all findings that she was entitled to make on the evidence before her. Criticism is made in paragraph 7 of the grounds that reading paragraph 29 one might think that the appellant had absconded and gone to ground. With respect, all the judge was doing was pointing out that having had application for permission to appeal refused by the Upper Tribunal in November, 2012 the appellant had no right to remain in the United Kingdom and overstayed. He did nothing about bringing himself to the attention of the authorities, even after having undergone an Islamic wedding with Ms Parkinson on 2<sup>nd</sup> March, 2013.

18. At paragraph 30 the judge noted advice downloaded from a UK government website in respect of Turkey, advising against all but essential travel to parts of the country, mainly in respect of those areas close to the Syrian border. She points out that it was not blanket advice. At paragraph 32 the judge reminded herself that she had found that the relationship between the appellant and sponsor was genuine but noted that they had only started living together two days before the hearing although they spent several nights a week together either in the appellant’s home or at her home prior to that. The judge noted that the relationship between the appellant and Ms Parkinson became serious since March, 2012. Ms

Parkinson was aware that the appellant had arrived in the United Kingdom as a visitor and hoped to remain as a businessman. She discovered that she was pregnant in January, 2013 following which the parties underwent an Islamic wedding. She was aware of the appellant's status and upset when he was taken into custody and detention.

19. The judge noted at paragraph 33 of the determination that the appellant and Ms Parkinson had been in a relationship for some fifteen months and then, at paragraph 34 the judge said this:-

“Whilst I am aware it is not reasonable to expect someone to leave the country if they are only returning to their own country to apply to return in a lawful capacity, I have weighed this against the fact that a person should not gain from his illegal actions. The appellant failed to leave the United Kingdom when he ought to have done. Other than this, he has not come to the adverse attention of the authorities and there is an avenue through which he would be able to support himself and his partner (‘the pizza shop’). A couple do not have the right to choose where they make their life. The appellant entered this relationship at a time when he knew his sojourn in the United Kingdom was temporary. He had no guarantee or expectation that he would be given permission to remain in the United Kingdom to run a business. He failed to meet the requirements and his appeals were dismissed. Whilst his relationship with Keely Ann [Ms Parkinson] at this stage was ongoing, he did not claim it was at the stage it is now, however, he chose to continue to progress his relationship with her despite knowing he was now living in the United Kingdom illegally and that it was during his illegal stay that he has brought the relationship to the stage it is at now. I am satisfied that the interference in the appellant's family and private life is proportionate when weighed against the aim of proper immigration control.”

20. When that paragraph is read in the context of the whole determination, it is clear that the judge was not saying that the fact that the appellant should not gain from his illegal actions outweighs everything else but it was, with respect, necessary for the judge to take into account in assessing proportionality the fact that the appellant was an overstayer who failed to leave after having exhausted his appeal rights. I believe that the judge was entitled to find that the interference with the appellant's family life was proportionate as she did at paragraph 34.
21. I do not believe that paragraph 8 of the grounds identifies any error of law on the part of the judge, because what the judge said does not disclose any erroneous approach. The judge clearly was weighing positive aspects on behalf of the appellant against negative aspects which had to be considered to give effect to the interests of the wider public in the maintenance of effective immigration control.
22. Paragraph 9 makes no properly reasoned criticism of the determination at all. It simply suggests that the judge's analysis of the reasonableness of the appellant's leaving the United Kingdom and moving to Turkey was inadequate and flawed. And that the suggestion by the respondent's representative recorded by the judge in paragraph 13 that there were no insurmountable obstacles to the parties living together in Turkey it was the wrong approach. So far as paragraph 10 is concerned, what the judge said at paragraph 34 was after having already concluded that interference

with the appellant's family and private life would be proportionate. The judge simply pointed out that it was open to Ms Parkinson to move with the appellant to Turkey if she chose to do so. The judge recognised that Ms Parkinson may prefer not to do so but the evidence before her did not suggest that Ms Parkinson could not live in Turkey with the appellant. She noted that Ms Parkinson had been to Turkey on holiday but what the judge did not do at paragraph 35 is suggest that Ms Parkinson should go with the appellant to live in Turkey.

23. As I have pointed out, the judge had already concluded that the interference with the appellant's family and private life would be proportionate.
24. I believe that the making of the decision by the First-tier Tribunal Judge did not involve the making of an error on a point of law. I uphold the judge's decision. The appellant's human rights appeal is dismissed.

Upper Tribunal Judge Chalkley