



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

Appeal Number: DA/01713/2013

THE IMMIGRATION ACTS

Heard at : Field House

On : 7 May 2014

**Determination
Promulgated**

On : 15 May 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**CEVAT ISIK
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr G Saunders, Senior Home Office Presenting Officer

For the Respondent: Mr J Collins, instructed by Sentinel Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Isik's appeal against the decision to deport him from the United Kingdom.

2. For the purposes of this decision, I shall refer to the Secretary of State as the respondent and Mr Isik as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Turkey, born on 8 June 1968. He entered the United Kingdom on 25 June 2001 and claimed asylum on 3 July 2001. His claim was refused on 8 October 2001 and his appeal against that decision dismissed on 20 May 2002. He became appeals rights exhausted on 1 April 2003.

4. On 21 June 2004 the appellant was convicted at Snaresbrook Crown Court for possessing prohibited ammunition and was sentenced to 12 months imprisonment.

5. On 31 October 2005 the appellant's wife and his two sons entered the United Kingdom and subsequently claimed asylum. Following various appeals against the refusal of their claims, they were eventually granted leave to remain as refugees on 30 November 2008. On 5 June 2009 the appellant applied for leave in line with his wife but his application was rejected as no fee was paid. On 3 July 2009 he submitted a further application for leave to remain on the basis of family reunion but no decision was made.

6. On 4 September 2009 the appellant was issued with a notice of liability to deportation to which he responded. On 3 November 2009 his wife gave birth to their daughter. Further representations were made on his behalf on 4 February 2012, in which he made a fresh asylum claim.

7. On 6 August 2013 the appellant's asylum claim was refused. On 7 August 2013 the respondent made a decision to deport the appellant by virtue of section 3(5)(a) of the Immigration Act 1971, in which it was concluded that his deportation would not breach his Article 8 human rights. The respondent accepted that the appellant had an established family life with his wife and two minor children, but considered that he nevertheless did not meet the requirements of paragraphs 399(a) and (b) of the immigration rules, nor those of paragraph 399A. It was considered that there were no exceptional circumstances outweighing the public interest in his deportation.

8. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal on 19 February 2014. He did not pursue his asylum claim but appealed only on Article 8 grounds. The First-tier Tribunal allowed his appeal on the grounds that exceptional circumstances existed such that his deportation would be disproportionate for the purposes of Article 8.

9. The respondent sought permission to appeal to the Upper Tribunal on three grounds: that the Tribunal had materially misdirected themselves by finding that the provisions relating to automatic deportation under the UK Borders Act 2007 did not apply; that the Tribunal had failed to give adequate reasons for finding that the appellant's circumstances were exceptional; and that the Tribunal had erred in its proportionality assessment.

10. Permission to appeal was granted on 8 April 2014 by First-tier Tribunal Judge Chohan. Whilst the grant of permission stated that all grounds may be argued, Judge Chohan found no error of law in the panel's findings on Article 8

but found it arguable only that the panel had erred by proceeding with the matter having found that the provisions of the UK Borders Act 2007 did not apply.

11. At the hearing before me, Mr Saunders accepted that the grant of permission had concluded that there was no error of law in the Tribunal's decision on the Article 8 grounds and that that finding had not been challenged. He confirmed that he did not resile from that position. In such circumstances the matter of the Tribunal's findings as to the UK Borders Act 2007 was irrelevant.

12. Notwithstanding Mr Saunders' acknowledgment, I sought clarification as to whether or not the UK Borders Act 2007 applied in the appellant's case and it was agreed by both parties that the Tribunal's finding that it did not was correct. Mr Collins referred me to the UK Borders Act 2007 (Commencement No.3 and Transitional Provisions) Order 2008 which clarified the position.

13. Accordingly there was no need for further submissions and I dismissed the Secretary of State's appeal and upheld the decision of the First-tier Tribunal allowing Mr Isik's appeal.

Consideration and findings.

14. In granting permission to the Secretary of State to appeal the First-tier Tribunal's decision, Judge Chohan found there to be no arguable errors of law in the Tribunal's findings in respect of the appellant's Article 8 claim. The Secretary of State has not challenged that decision and Mr Saunders confirmed that there was no further challenge to the Article 8 findings. I would agree with Judge Chohan in that respect and consider that the Tribunal undertook a thorough assessment of the appellant's circumstances, including his strong and longstanding family life ties, and gave clear and cogent reasons for reaching the conclusion that it did. On the evidence before it, the Tribunal was entitled to find that the appellant's circumstances were exceptional such that they outweighed the public interest in his deportation.

15. As regards the Tribunal's finding at paragraph 29 of its determination, that the provisions relating to automatic deportation under the UK Borders Act 2007 did not apply to the appellant's appeal, I find that that was the correct position. The relevant provisions of the UK Borders Act 2007 relating to automatic deportation came into force on 1 August 2008. The UK Borders Act 2007 (Commencement No.3 and Transitional Provisions) Order 2008 sets out transitional provisions for the commencement of the Act as follows:

"Transitional provisions

3.—(1) Subject to paragraph (2), section 32 applies, to the extent to which it is commenced in article 2(a), to persons convicted before the passing of that Act who are in custody at the time of commencement or whose sentences are suspended at the time of commencement.

(2) Paragraph (1) does not apply to a person who has been served with a notice of a decision to make a deportation order under section 5 of the Immigration Act 1971(b) before 1st August 2008.”

16. The appellant’s circumstances are that he was convicted on 21 June 2004 and sentenced to 12 months’ imprisonment. Plainly, the 2007 Act did not apply to him. However, as Mr Saunders submitted, even if it did, that would not have had any material effect on the outcome of the appeal, given the Tribunal’s findings on Article 8.

17. Accordingly I find that the Tribunal did not make any errors of law in its decision. It was entitled to reach the decision that it did.

DECISION

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The Secretary of State’s appeal is dismissed and the decision of the First-tier Tribunal to allow the appellant’s appeal stands.

Signed
Upper Tribunal Judge Kebede