



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

Appeal Number: IA/33359/13

THE IMMIGRATION ACTS

Heard at: Field House

On: 12th May 2014

**Determination
Promulgated**

On 24th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**OMER YAVUZ YILDIRIM
(NO ANONYMITY DIRECTION)**

Respondent

For the Appellant: Mr Tarlow, Senior Home Office Presenting Officer

For the Respondent: -

DETERMINATION AND REASONS

1. The Respondent is a national of Turkey date of birth 31st December 1945. On the 22nd January 2014 the First-tier Tribunal (Judge Powell) allowed his appeal against a decision to remove him from the United Kingdom pursuant to section 10 of the Immigration and Asylum Act 1999. The Secretary of State now has permission to appeal against that decision.
2. The Respondent had come to the UK as a visitor. On the 13th October 2011, long after his visit visa had expired, he made an application for

leave to remain on human rights grounds. It was submitted that he met all of the substantive requirements of the then paragraph 317 of the Immigration Rules and that it would be unreasonable and disproportionate to return him to Turkey in all of the circumstances.

3. The Secretary of State considered the medical evidence presented relating to the Respondent's ill health but did not find the facts disclosed a risk of violation of Article 3 ECHR. Turning to Article 8 the Secretary of State referred to the new rules, to MF (Nigeria)¹, Izuazu² and Nagre³ and rejected the claim under that head as well.
4. The First-tier Tribunal notes, at paragraph 18 of the determination that it "was common ground" that this application was concerned with Article 8 outside of the Rules. Between paragraphs 21 and 41 the First-tier Tribunal conducts a careful assessment of Article 8, including a well-reasoned proportionality balancing exercise which takes into account material factors weighing against the then Appellant. Having done so Judge Powell allowed the appeal.
5. The Secretary of State now seeks to appeal against that decision with reference to Gulshan⁴. It is submitted that the new rules provide a complete code for the assessment of Article 8 and since the application failed under these Rules the First-tier Tribunal could only go on to look at Article 8 outwith the Rules if there were good grounds to find that there were compelling circumstances not sufficiently recognised under the Rules.
6. These grounds of appeal are misconceived. This application was made long before the new rules came into effect. The point made on application was that the Respondent met all of the requirements of paragraph 317 of the then Immigration Rules bar the requirement that he had leave to enter in that capacity. This was then a matter analogous with that considered in Chikwamba and related cases⁵. The First-tier Tribunal was in these circumstances under no obligation to consider the matter under the two-stage process advocated in MF and other cases, nor to address itself to whether there were particular compelling features that warranted conducting a Razgar assessment: Edgehill & Anor v Secretary of State for the Home Department [2014] EWCA Civ 402. I find that the First-tier Tribunal did exactly what was required of it and the decision discloses no error of law.

Decision

7. The determination of the First-tier Tribunal does not contain an error of law and the decision is upheld.

¹ MF (Nigeria) [2012] UKUT 00393

² Izuazu (Article 8 - new rules) Nigeria [2013] UKUT 45

³ Nagre [2013] EWHC 720

⁴ Gulshan (Article 8- new rules- correct approach) [2013] UKUT 640 (IAC)

⁵ Chikwamba [2008] UKHL 40, Hayat (nature of Chikwamba principle) Pakistan [2011] UKUT 00444 (IAC)

Deputy Upper Tribunal Judge Bruce