



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

Appeal Number: IA/09882/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14<sup>th</sup> August 2015**

**Determination Promulgated  
On 24<sup>th</sup> August 2015**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR UMIT YILDIRIM  
(Anonymity Direction not made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms R Francis (instructed by Rahman & Company Solicitors)

For the Respondents: Mr L Tarlow (Senior Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant with regard to a decision of the First-tier Tribunal (Judge Zahed) promulgated on 26<sup>th</sup> March 2015 by which it dismissed the Appellant's appeal against the Secretary of State's decision to grant him Indefinite Leave to Remain under the "standstill provisions of the Ankara agreement.
2. The application, and appeal were thus to be decided under the provisions of HC510.

3. The application was for Indefinite Leave to Remain and thus should have been considered under paragraph 28 of HC510. In fact the Secretary of State considered it under paragraph 21, which is entirely different.
4. Paragraph 21 is applicable where an applicant has entered the UK as a visitor and seeks permission to remain for the purpose of setting up a business.
5. Under paragraph 28 :-

‘A person who is admitted in the first instance for a limited period, and who has remained here for four years in approved employment or as a businessman or a self-employed person or a person of independent means, may have the time limit on his stay removed unless there are grounds for maintaining it. Applications for removal of the time limit are to be considered in the light of all the relevant circumstances, including those set out in paragraph 4.’
6. Paragraph 4 provides:-

‘The succeeding paragraphs set out the main categories of people who may be given limited leave to enter and who may seek variation of their leave, and the principles to be followed in dealing with their applications, or in initiating any variation of their leave. In deciding these matters account is to be taken of all the relevant facts; the fact that the applicant satisfies the formal requirements of these rules for stay, or further stay, in the proposed capacity is not conclusive in his favour. It will, for example be relevant whether the person has observed the time limit and conditions subject to which he was admitted; whether in the light of his character, conduct or associations it is undesirable to permit him to remain; whether he represents a danger to national security; or whether, if allowed to remain for the period for which he wishes to stay, he might not be returnable to another country.’
7. It is clear that if a person fits the primary criteria of paragraph 28, the Secretary of State has a discretion based on the criteria set out in paragraph 4 to grant or refuse Indefinite Leave to Remain.
8. In this case the Appellant applied for Indefinite Leave to Remain. So much is clear from his application form.
9. The Secretary of State, in her decision, noted in the first paragraph that he had applied for Indefinite Leave to Remain but then considered the application under paragraph 21 and refused it.
10. In the appeal to the First-tier Tribunal the Judge also considered paragraph 21 of the Rules.
11. That was clearly an error. The correct paragraph was 28 and the Judge ought to have found the Secretary of State’s decision not in accordance

with the law, it having been considered under the incorrect Rule. So much was accepted by Mr Tarlow.

12. On that basis I set aside the decision of the First-tier Tribunal and I redecide it.
13. It is clear from the copy of the Appellant's passport that he has been in the UK, initially as a student until July 2008. He was then provided with three successive residence permits allowing him to work in the UK valid from 10th September 2008 until September 2013. On that basis Mr Tarlow accepted he met the primary criteria to be considered for Indefinite Leave to Remain under paragraphs 28 with reference to paragraph 4.
14. As the decision requires an exercise of discretion by the Secretary of State it is appropriate that I allow the appeal to the limited extent that it is remitted to the Secretary of State for a decision under paragraph 28 of HC510.

Signed

Date 20<sup>th</sup> August 2015

Upper Tribunal Judge Martin

**Direction regarding anonymity**

**I make no anonymity direction.**

Signed

Date 20<sup>th</sup> August 2015

Upper Tribunal Judge Martin