IAC-HW-MP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/24960/2014

THE IMMIGRATION ACTS

Heard at Newport
On 28th July 2015

Decision & Reasons Promulgated
On 26th August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR FAITH OZER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Moksud, First Global Immigration
For the Respondent: Mr P Richards, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Turkey, born on 24th June 1986 and he appeals against a decision of the respondent on 30th May 2014 to refuse him admission to the United Kingdom as a family member of Miss Hilal Bekircan, a Dutch national. The decision was made under Regulation 11 of the Immigration (European Economic Area) Regulations 2006.

2. First-tier Tribunal Judge Emerton heard the appeal on 16th February 2015 and dismissed the appeal on 24th February 2015. The Home Office had refused the application because it was not accepted that the sponsor and Dutch national was exercising treaty rights in the UK.

3. An application for permission to appeal by the appellant was made as the judge had, it was claimed, not considered whether the appellant's sponsor was a qualified person under Regulation 6 as a jobseeker, a worker, a self-employed person, a self-sufficient person or a student. It was pointed out in the application for permission to appeal that working in the UK was only one method of exercising treaty rights in the UK.

4. A second point was that the judge had stated in paragraph 22 that the appellant's marriage was subsisting but he then erred in law by stating in paragraph 31 of that determination that "in the light of my finding of fact there can be no family life in the UK as at the date of decision between the appellant and his spouse".

5. Permission to appeal was granted by Judge P J M Hollingworth.

6. At the hearing before me Mr Moksud pointed out the oral evidence taken by the judge at paragraphs 16 and 17 in which the wife claimed she was working in the UK. Regulation 3 of the EEA Regulations should have been enjoined.

> "3.—(1) This regulation applies for the purpose of calculating periods of continuous residence in the United Kingdom under regulation 5(1) and regulation 15.
>
> (2) Continuity of residence is not affected by —
>
> (a) periods of absence from the United Kingdom which do not exceed six months in total in any year;
>
> (b) periods of absence from the United Kingdom on military service; or
>
> (c) any one absence from the United Kingdom not exceeding twelve months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.
>
> (3) But continuity of residence is broken if a person is removed from the United Kingdom under regulation 19(3)."

She had not been absent from the UK in accordance with these Regulations.

7. He also submitted there was a contradiction in relation to family life.

8. Mr Richards argued that the judge had come to an entirely proper conclusion on the facts.

9. In conclusion the judge set out the oral evidence at paragraphs 16 and 17. He noted in the oral evidence from the husband that he claimed that his wife was working in Bristol and "he could submit her payslips but he had not brought them to court" [16] and in relation to the wife's evidence the judge recorded

> "Ms Hilal Bekircan adopted her short witness statement. It may be summarised as follows: the marriage was still valid and she lived with him and worked, but frequently visited Holland. She had been in Holland on 30 May 2014. In cross-examination she asserted that she lived most of the time in Bristol and worked at the Sunshine Café. She had worked there Monday-Friday last week. Mr Das-Gupta confirmed the question and she repeated the same information. She had no evidence of working there other than the letter in the bundle, but her husband had provided all documents to his Solicitors. She was studying at the University of Groningen in Holland, for a Masters in Pharmacy. She had started in November 2013 and it was a three-year course, finishing in November 2016. [She handed up a copy of a letter from the University, which confirmed that she was currently enrolled on a full-time Masters course]. She confirmed that the course was full-time, and that it usually took three years (the period of time she was taking). She did not attend most of her classes, but they were recorded. She only attended examinations. She was not obliged by the University to attend classes, and they were aware of her domestic arrangements. She had to go there for obligatory classes such as lab work. She lived with her husband in the UK, but visited Holland for study or to see family. She described how she met her husband and their marriage. They were presently staying with the appellant's aunt in Peckham, having stayed in a hotel for St Valentine's day. Her husband was confused over her not working last week. He would have meant the previous week."

10. Also submitted in evidence, by the respondent, was that there had been a previous refusal for the appellant on the basis of a false document which had undermined the appellant's credibility. In essence the judge did not accept, having considered all of the evidence, that the appellant's sponsor was indeed exercising treaty rights as the judge stated at paragraph 22

> "... the fact that Ms Bekircan was prepared to give evidence in support of her husband tends to suggest that the marriage is a genuine one – it does not follow, however, that she would therefore be a credible witness in terms of where she lives and where she works".

11. The judge enlisted support for this finding at paragraph 23 from the transcripts of the interview which were found to be accurately summarised. The judge did not accept the explanation of the appellant that the interpreter was at fault when he was interviewed by the immigration authorities and volunteered various information such as

> "... if my wife returns to the UK what will happen. She has not been here for eight months" and "I will ask her to come and live in the UK".

12. The judge's view of and conclusions on the evidence however did not rest with these observations alone. The judge found the set of answers to the Immigration Officers were inconsistent and despite the fact that the appellant knew the grounds of refusal, the evidence that was provided was "extremely limited". In essence the judge found and clearly set out that there was insufficient evidence to prove the appellant's case.

13. In particular at paragraph 25 the judge found that

> "The fact of his wife living and working in the UK is largely contained in bald and generalised assertions short on detail. The basic underlying fact, that I am asked to accept, is that although the appellant's wife is studying full-time at the University of Groningen in Holland, on a Pharmacy course which includes lab-work, she actually does not attend classes, and does nearly all her work whilst living and working with her husband in the UK. That is a rather unexpected assertion, and one which needs clear evidence. There is, in fact, nothing from the friend said to provide course work, and nothing from the University confirming that this is the arrangement – the only document is a letter confirming that the course is full-time. She has not, for example, provided copies of travel tickets showing only short visits to the Netherlands. She has failed to provide anything to support her account. Although it is theoretically possible, I do not find it very likely that the appellant's wife would be studying full-time in Holland, whilst living in the UK."

14. In conjunction with that finding the judge also found that the appellant and his sponsor were inconsistent in their evidence about her working in Bristol. The judge found

> "I consider that it is of considerable relevance that the appellant was absolutely clear in his oral evidence that his wife had not worked during the last week. She was equally clear that she had worked last Monday-Friday. This significant discrepancy strongly suggests that no reliance should be placed upon the assertions as to her employment in Bristol, and indeed her residence in the UK. I have looked for any independent corroboration. If the appellant's wife was genuinely living and working in Bristol, this should not be difficult to prove: documents such as (for example) bank statements or utility bills (or mobile phone bills) in her name should be easy to procure. If she has been working then I would expect to see payslips and tax documentation, and perhaps a contract of employment. However, very little indeed has been provided."

15. At paragraph 27 the judge placed no reliability on the letter from the Director of Tepe London Ltd as it contained no statement of truth and the rent documents dated 1st May 2011, 1st May 2012 and 1st May 2013 only showed that the appellant wished to have his wife's name down as a tenant. Further there was no rent book which post-dated 2013.

16. In particular the judge drew

> "... adverse inferences from the failure to provide anything more cogent especially as the appellant has asserted that there are in fact payslips for his wife but he has just neglected to bring them (although he in fact provided some of his own payslips in the bundle)".

17. Indeed the judge made a finding at paragraph 28 of his decision, which undermines any reliance placed by the appellant on Regulation 3 of the EEA Regulations, that his wife has "since at least November 2013 been living in the Netherlands". As the hearing took place on 16th February 2015 this is well over a year prior to the hearing and even pre-dates the application of June 2014 and decision of 13th June 2014.

18. Bearing in mind the findings of the judge which are thorough and complete, I am not persuaded that there is an error of law in relation to the appellant's wife exercising treaty rights.

19. I turn to the second submission in relation to Article 8. It may be the case that the judge found there was a subsisting marriage, but as stated at paragraph 31 the judge found that the appellant "has not shown how his case is even remotely arguable as he does not qualify under the EEA Regulations". The point is that the judge found that the wife had not been living and working in the UK and therefore the appellant cannot claim Convention protection of family life in the UK. The judge addressed the issue of private life but found there was no effective argument by the appellant as to proportionality. The judge found nothing that had not already been considered under the Immigration Rules. Indeed it would be the responsibility of the appellant to make a formal application under the Immigration Rules.

20. I therefore find there is no error of law and the decision shall stand.

No anonymity direction is made.

Signed Date 24th August 2015

Deputy Upper Tribunal Judge Rimington