



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

Appeal Number: IA/10693/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 30 March 2016**

**Decision & Reasons Promulgated
On 20 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**NURAY OZGIRAY
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms. N. Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge of the First-tier Tribunal Andrew promulgated on 16 July 2015.
2. The Appellant is a female citizen of Turkey born 26 October 1976. She made an application for leave to remain in the UK which was refused by the Respondent on 27 February 2015. The Appellant's appeal against that

refusal came before Judge Andrew on 9 July 2015 for oral hearing. Before Judge Andrew the Respondent was represented but the Appellant and her representatives failed to attend. Judge Andrew observed that proper notice of the time, date and place of hearing had been given to both the Appellant and her representatives and there was no explanation for their absence. The Judge took account of the overriding objective and proceeded in the circumstances to hear the appeal. The Judge took into account the Appellant's claim that she should be allowed to remain in the UK as a victim of domestic violence. The Judge concluded that the Appellant could not meet the requirements for leave on that basis because she had not been admitted to the UK as a spouse, and found that the Appellant was not entitled to remain here on any other basis under the Rules - the Appellant was separated from her partner and her child was not a qualifying child. Further, the Judge did not accept that the Appellant was at real risk of Article 3 ill-treatment on account of being ostracised by her family or society in Turkey. The Judge found that there were no significant obstacles to the Appellant's integration in Turkey and proceeded to consider the claim contrary to Article 8 of the ECHR. The Judge considered all competing factors and concluded that removal was proportionate. Accordingly, the appeal was dismissed on all grounds.

3. The Appellant applied for permission to appeal on the basis that she had not received a fair hearing as her representatives had not been notified of the hearing date. Judge of the First-tier Tribunal Shimmin granted permission on this ground.
4. Following the grant of permission, the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008, opposing the appeal on the basis that no unfairness arose and that the grounds amounted to a disagreement with the Judge's findings that were otherwise open to her on the evidence.
5. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

6. Before the Tribunal the Appellant is unrepresented. On the morning of the hearing she failed to attend. She was properly served with the notice of the date, time and place of hearing. During the course of the morning a telephone communication was received from the Appellant stating that she would not be attending the hearing and would in due course be embarking upon a voluntary return to Turkey. The Appellant had indicated that a written communication to this effect would be forwarded to the Tribunal. Such communication has not been received. As the Appellant had been notified of the hearing and had not expressly made a request to withdraw her appeal, I exercised my discretion and proceeded to hear the appeal in the Appellant's absence because it was in the interests of justice to do so contrary to rule 38 of The Tribunal Procedure (Upper Tribunal)

Rules 2008. I heard submissions from Ms Willocks-Briscoe and reserved my decision.

Decision on Error of Law

7. I am satisfied that the Judge did not materially err in law.
8. It is argued by the Appellant that she did not receive a fair hearing because her representatives were not notified of the hearing. A perusal of the Tribunal's file shows that the Appellant's representatives were not effectively notified of the hearing as the notice of hearing was sent to the wrong address. Whilst the Judge failed to notice this error and was thus incorrect in stating that the Appellant's representatives had been duly notified, I am not satisfied that the error is material and caused any unfairness to the Appellant. This is because the Appellant was effectively served with the Notice of Hearing. She appears to have not acted on that notice or communicated with her representatives prior to the date of hearing. She failed to attend to the hearing notwithstanding that she had every opportunity to do so. As Ms Willocks-Briscoe pointed out there was no explanation before the Judge for her absence and it was open to the Appellant to have attended if only to have requested an adjournment given the circumstances. I thus cannot see that there was any unfairness. In light of the above, even if the Judge been aware of the error, I am not satisfied that she would have reached a different conclusion. I am thus satisfied that it remained open to the Judge to proceed with the hearing in view of the overriding objective which she took into account.
9. It is apparent that in reaching her conclusions the Judge considered all the evidence that was available to her; reached conclusions that were open to her based on the evidence and her approach does not disclose any error on her part.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision of the First-tier Tribunal shall stand.

Anonymity

No anonymity direction was made by the First-tier Tribunal. There has been no request for anonymity to the Upper Tribunal, and I see no need to make an anonymity order.

Signed

Date

Deputy Upper Tribunal Judge Bagral