Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/19455/2013
OA/19460/2013

THE IMMIGRATION ACTS

Heard at Field House
On 9 July 2015
and on 20 November 2015

Decision & Reasons Promulgated
On 28 January 2016

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MRS SEKKURE CETIN
MISS MELIKE CETIN
(ANONYMITY DIRECTIONS NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ISTANBUL

Respondent

Representation:
For the Appellant: Ms G Peterson of Counsel
For the Respondent: Mr D Clarke, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellants who are citizens of Turkey and whose date of births are 2 February 1969 and 15 March 1996 appealed against the decision of the Entry Clearance Officer in Istanbul made on 26 September 2013 to refuse to grant them entry clearances pursuant to paragraph E- ECP. 2. 6 and 2. 10 of the Immigration Rules and Article 8 of the European Convention on Human Rights to leave to enter the United Kingdom,

as a wife and child of the sponsor under Appendix FM. Their appeals against the respondent's decisions were dismissed by First-tier Tribunal Judge S Taylor following a hearing at Hatton Cross on 1 October 2014. First -tier Tribunal Judge Grimmett refused permission to appeal and Deputy Upper Tribunal Judge Archer gave permission to appeal to the Upper Tribunal, stating that it was arguable that the Judge by finding that the decision does not engage Article 8 is a material error of law.

2. The Judge in his determination stated the following. It was accepted by the Judge at paragraph 10 that the appellants are related to their sponsor as claimed. The sponsor entered the United Kingdom in 1999 and there was no dispute that he was granted indefinite leave to remain in the United Kingdom in 2010 under the Legacy Scheme. After he was granted indefinite leave to remain in the United Kingdom, the sponsor has demonstrated by evidence his five visits to Turkey since 2010 and has also submitted a number of photographs of himself with his family in Turkey. He has also submitted evidence of telephonic contact. The Judge stated "I am satisfied that the appellants are related to the sponsor as claimed and on the balance of probabilities I am satisfied that the sponsor has an ongoing relationship to the first appellant".

3. The Judge stated that with regard to the financial requirements the respondent accepted that the sponsor had submitted six months of wage slips and an appropriate employment letter. It was accepted that the appellant submitted a P60 for the relevant employment and an employment contract. The only remaining issue was only three months of the appropriate bank statements were submitted. The application was dated 5 July 2013 so it is accepted there to would be six months of matching payslips bank statements for the six months prior to the application. The last payslip that appeared to have been sent with the application and therefore matching documents from December 2012 would be expected., the Judge found On close examination of the submitted bank statements that a bank statement for March 2013 indicated a cash deposit of £800 which does not match the submitted payslip, and that bank statements of December 2012 and January 2013 which indicate cash deposits but no matching deposit with the submitted payslip.

4. The Judge found that on the evidence before him that the sponsor has failed to meet the requirements of the Immigration Rules by his failure to provide six months of payslips and matching bank statement showing the receipt of earnings. The assertion in the respondent's refusal notice that the appellant has only submitted the sponsor's bank statements to matching his payslips for only three out of the six months prior to the application is therefore correct. While the appellants may have submitted the post decision P60 for the year ended April 2014 and later bank statements which match submitted payslips, as the date of the application and decision, they have not complied with the requirements of the Immigration Rules.

5. In respect of Article 8 of the European Convention on Human Rights, the Judge found that the respondent's refusal does not act to interfere with an established family life in the United Kingdom and that the sponsor may continue to visit the appellant in Turkey and the refusal does not interfere with the level of family life that the parties currently enjoy. He added that in any event the sponsor has demonstrated

that he is working in the United Kingdom and there is no apparent obstacle to the appellant's lodging a fresh application without delay if they wish.

The grounds of appeal

6. The respondent refused the appellant's application and stated that the appellant's relationship to the sponsor was not genuine and subsisting and that the sponsor had not met the financial requirements under paragraph ECP. 1. 1 of appendix FM/E-ECP. 3. 3 of the Immigration Rules.

7. The first-tier Tribunal found that the relationship between the sponsor and the appellant's was genuine and subsisting and therefore the requirements of the Immigration Rules had been met. However he dismissed the appeals because he found that specified evidence in relation to the financial requirements had not been provided and therefore the appellants did not meet the requirements of the Immigration Rules.

8. The Judge further found at paragraph 12 that although further documentation had been submitted with evidence that the sponsor had earned the required amount of £22,400 to maintain the appellant's, the required documentation at the date of application and decision had not been provided. He then advised that because the sponsor continued to be employed and remunerated in the United Kingdom, the appellants could make fresh applications without delay and thus the interference with their family life was not disproportionate.

9. The respondent neither provided evidence nor appeared at the hearing to support her decision. The sponsor instructed that he had provided the necessary documentation to the respondent in relation to the financial requirements of the Immigration Rules and provided copies he himself had within the appellant's bundle produce for the hearing. The respondent thus failed to provide evidence that the specified documents were not in fact presented to the Entry Clearance Officer, but, in the absence of any copies of the documentation in the sponsor's position, the appellant's make the following submissions.

10. The applications by their nature involved considerations of the family lives of the appellants and the sponsor. The Judge having found that the relationship between the sponsor and the appellants were genuine and subsisting, materially erred in law by failing to properly consider the appeals under Article 8 of the European Convention on Human Rights.

11. The sponsor has leave to remain in the United Kingdom as he is a British citizen, is employed and supports the family through his employment, and consequently the family would suffer real hardship if he now had to relocate to live with them in Turkey. The Judge failed to consider the right to a family life of the second appellant, who is now 18, and whether her exclusion is in their best interests in circumstances where she is dependent on her parents but not permitted to reapply to reside with her parents under the Immigration Rules. It was insufficient as a matter of law for the Judge to have concluded that the decision would not interfere with the relationships

as they currently exist and he should have considered whether the decision showed a lack of respect for the private and family life which existed. If the Judges approach is correct, Article 8 could never be successfully raised in an entry clearance case which conclusion runs contrary to both domestic and Strasbourg authority.

12. Finally the Judge indicated in his remarks at paragraph 13 that the appellants could make fresh applications "without delay" which would meet the financial requirements and he was satisfied that, but for the absence of certain specified documents at the date of application and decision, the sponsor met the substantive income requirements of the immigration rules at the relevant date as he receives an annual income of £22,400. There was thus no economic public policy reason which countermanded the family's right to family life together in the United Kingdom. The Judge's determination of his consideration of Article 8 was a material error of law.

13. The respondent in their Rule 24 response stated the following.

14. The respondent opposes the appellant's appeal and submit that the Judge directed himself appropriately. Although the Judge erred in the correct testing paragraph 13 of the determination, it is hard to see how this would be material in the light of the recently promulgated **SSHD v SS (Congo) & others [2015] EWCA Civ 387**.

Discussion and decision as to whether there is an error of law

15. I have considered the first-tier Tribunal Judge's determination with care. The Judge's consideration of the Immigration Rules is flawless. He found that the appellants did not provide the documents as specified in the Immigration Rules because only three months statements were provided and six months were required by law. I therefore find that there was no error of law in the determination in respect of the Immigration Rules.

16. In respect of his consideration of his article 8 of the European Convention on Human Rights, his reasoning was flawed. The Judge at paragraph 13 stated that the refusal does not act interfere with an established family life in the United Kingdom and that the sponsor can continue to visit the appellant in Turkey and the refusal does not interfere with the level of family life that the parties currently enjoy.

17. I agree with the permission Judge that the Judge in finding that the decision would not interfere with the appellant's relationship with their United Kingdom citizen sponsor as they currently exist, fell into material error. The Judge should have considered the appellant's Article 8 rights pursuant to the Strasbourg jurisprudence. The Judges approach to Article 8 in the determination means that Article 8 could never successfully be raised in any entry clearance case and that cannot be right.

18. The Judge stated that the appellants could make another application without delay. The Judge thereby failed to consider the best interests of the second appellant who is now 18 but was 17 at the date of application and who remains dependent on her parents and would be unable to reapply under the Immigration Rules.

19. There is a material error of law in the determination of First-tier Judge in respect of Article 8.

20. I therefore direct that the appeal be listed in the upper Tribunal on the first available date for submissions to be made in respect of Article 8. If possible, the appeal be reserved to myself.

Hearing listed for 20 November 2015

21. On 20 November 2015, the appeal was set down for hearing submissions on Article 8 of the European Convention on Human Rights after the error of law hearing. I find it was an error of law in respect of Article 8 and the matter to be relisted for submissions only.

22. Before that date, the appellants' representatives wrote to the Tribunal on 18 November 2015 in which they asked for a withdrawal of the appeal hearing listed for today. An Upper Tribunal Judge decided to leave the case in the list and stated that the Presiding Judge on the day will deal with the withdrawal or any other outstanding matters.

23. There was no appearance by the appellants or their representatives at the hearing. I satisfied myself that they had been properly served. I therefore consider their application for the appeal and accept that it has been withdrawn.

Decision

24. The appeal is withdrawn and therefore dismissed

Signed by Date 20th day of November 2015

A Deputy Judge of the Upper Tribunal
Mrs S Chana