



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/19282/2015

THE IMMIGRATION ACTS

Heard at Field House
On 2nd August 2017

Decision sent to parties on
On 11th August 2017

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

HAKAN KUSSAN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Peterson, Counsel, instructed via Direct Access

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

DECISION AND REASONS

1. This is the appeal of Mr Hakan Kussan, who appeals with permission against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for indefinite leave to remain as the spouse of a British citizen of Turkish origin, pursuant to paragraph 287 of the Immigration Rules HC395 (as amended).
2. This decision falls to be considered under the old Rules: the respondent refused leave to remain under paragraph 287 because the income details provided in the

applicant's application fell short of the appropriate benefit level by £50.67 a week. The sponsor's mother, with whom the young couple had been living, provided a letter stating that she was very happy to support them for as long as necessary:

"At the moment in the current economic climate and the rental market being what it is I feel they may be struggling to make ends meet. Therefore, I have on several occasions since July 2014 offered and provided financial support in the form of either cash lump sums, cheques and physically taken shopping/groceries every time I visit them, which is usually every two to three weeks.

I am and always have been a working parent and have a mortgage that is due to come to fruition in October 2016. I have been employed by the London Borough of Haringey Council in various posts within human resources since 1997 and currently hold a position of employee relations adviser. My annual income is in the region of 33,000 and I am more than capable and happy to support my children whether it is to set up home or to attend university."

3. Neither the respondent nor the First-tier Tribunal took into account the appellant's savings, which at £5,707.75, divided over the period of 27 months for which the balance of the leave to remain would have been granted, add £48.78 a week to his income, leaving a shortfall of just £1.99 a week. However, in addition to those savings, the various current accounts held by the parties disclosed credit balances of a further £453.91. The credit balances in those accounts appeared to be increasing rather than decreasing. £453.91 divided over 27 months is more than sufficient to make up the £1.99 per week shortfall on the benefit levels, and in addition, it is clear that the sponsor's mother also would be prepared to spend at least £1.99 a week to assist her daughter and son-in-law.
4. It is unfortunate that the First-tier Tribunal hearing proceeded on the erroneous basis that this couple could not meet the requirements of the Rules. It is plain that on the Rules as they then stood they did meet the Rules and that the appeal should have been allowed within the Rules.
5. I now allow this appeal pursuant to paragraph 287 of the Immigration Rules as they stood at the date of decision. It is not therefore necessary for me to consider the alternative submissions that were made under Article 8 outside the Rules but I do so for completeness.
6. As regards Article 8 outside the Rules the circumstances at the date of hearing were that the appellant's wife was pregnant for the third time, having previously miscarried two pregnancies, and that the child was due to be born just a few weeks after the date of hearing. It would certainly have been open to the First-tier Judge to consider that this gave weight to the Article 8 case outside the Rules but having regard to Section 117B(4) and (5) of the 2002 Act it is unlikely that the pregnancy alone would have been determinative of this appeal. However, as I have already stated, the Article 8 outside the Rules calculation is not reached.
7. Because I find that this appeal succeeds under the Rules the appeal is allowed. I substitute a decision allowing the appeal.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision.

I re-make the decision in the appeal by allowing it.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Date: 10 August 2017