



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

Appeal Number: PA/11774/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 31st August 2017**

**Decision & Reasons Promulgated
On 4th September 2017**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

[U T]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma of Counsel

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Callow promulgated on 26 May 2017, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 11 October 2016 was dismissed.
2. The Appellant is a national of Turkey, born on [] 1977, who first entered the United Kingdom in 2013 as a visitor and who subsequently submitted

various applications for leave to remain to establish himself in business under the European Community Association Agreement, all of which were refused. The Appellant remained in the United Kingdom and claimed asylum on 12 April 2016. The basis of his claim for asylum was that he feared persecution on return to Turkey because of his connections with the BDP and his ex-wife's involvement with the TKP. The Appellant also relied on family and private life established in the United Kingdom, including with a new partner and her child.

3. The Respondent refused the application on 11 October 2016 on the basis that the Appellant's asylum claim was lacking in detail and was vague, with risk on return being purely speculative. The Appellant's credibility was also damaged by the delay in making his asylum claim. In terms of private and family life, the Appellant did not meet the requirements of Appendix FM for a grant of leave to remain under the Immigration Rules on this basis that it was not accepted that he was in a genuine and subsisting relationship with his partner, nor did he satisfy the requirements of paragraph 276ADE in relation to private life.
4. Judge Callow dismissed the appeal in a decision promulgated on 26 May 2017 on all grounds. Judge Callow found the Appellant's evidence in relation to his protection claim to be vague and inconsistent, the claim was made many years after the Appellant's arrival in the United Kingdom and only after other applications had failed. Taking everything into account, his claim was not credible and he was found not to be at risk on return to Turkey. As to his Article 8 claim, the Appellant's wife had no leave to remain in the United Kingdom such that he could not meet the requirements of Appendix FM for a grant of leave to remain under the Immigration Rules and in terms of private life, the Appellant would not face very significant obstacles to his reintegration into Turkey. Overall Judge Callow found that it would not be unduly harsh for the Appellant to return to Turkey, nor were there any exceptional circumstances or good grounds for granting leave to remain outside of the Immigration Rules.

The appeal

5. The Appellant appeals on two grounds. First, that the First-tier Tribunal erred in law in relation to the protection claim by failing to consider the chronology and all relevant material; reaching irrational conclusions; giving insufficient reasons for the findings and by treating the delay in claiming asylum as determinative of the claim. Secondly, in relation to the human rights claim, that the First-tier Tribunal erred in law in failing to make any findings as to the Appellant's family life outside of the Immigration Rules, specifically there was no consideration of the impact of removal on the Appellant, his wife and her child nor on the evidence as to the reasons why the Appellant claimed that family life could not continue in Turkey.
6. Permission to appeal was granted by Judge Robertson on 20 June 2017 on the second ground only in relation to human rights. On the first ground,

Judge Robertson decided that the Judge's findings on the protection claim were open to him on the evidence before him and were not unreasonable or irrational.

7. At the hearing, on behalf of the Appellant, Mr Sharma submitted that although the First-tier Tribunal was correct to find that the Appellant was unable to meet the requirements of Appendix FM for a grant of leave to remain because his wife has no current status in the United Kingdom; the Judge erred in failing to consider that relationship outside of the Immigration Rules, particularly when he was invited to do so and there was evidence before him of the adverse effect on family life if the Appellant were removed to Turkey. The First-tier Tribunal only considered private life and made no findings at all on family life outside of the Immigration Rules.
8. On behalf of the Respondent, it was submitted that although the decision was brief, the potential difficulties on return to Turkey for the Appellant were considered and reading the decision as a whole, sufficient consideration was given to family life and sufficient reasons given for a lawful decision.

Findings and reasons

9. Judge Callow deals with the Appellant's private and family life in three paragraphs incorrectly numbered 20, 34 and 21 in the decision. The first paragraph accurately records that the Appellant can not meet the requirements of Appendix FM for a grant of leave to remain under the Immigration Rules and that if his wife's application for leave to remain were to be successful, he could make an application for entry clearance to join her. The second paragraph makes reference to whether return to Turkey would be unduly harsh, whether there were any exceptional circumstances, good grounds for granting leave outside of the Immigration Rules or whether removal would cause very substantial difficulties. However, the substance of the findings in this paragraph are clearly relevant only to private life and under paragraph 276ADE(1)(vi) of the Immigration Rules as to whether there would be very significant obstacles to reintegration considering linguistic, cultural and familial ties there. The third paragraph concludes that the Appellant would prefer to live in the United Kingdom by choice but the European Convention on Human Rights is not to confer individual advantages or benefits such as this.
10. The First-tier Tribunal decision contains no findings at all as to the existence or otherwise of family life between the Appellant, his wife and/or her daughter; nor does it go on to make any findings on or assess interference with any such family life or proportionately of the decision. Although there are references to there being no good grounds for granting leave outside of the Immigration Rules, no reasons for this conclusion are given. In the context of a human rights appeal and in all the circumstances of this case (in particular where the reason why the Appellant could not meet the requirements of Appendix FM were due to his

wife's lack of status rather than lack of any genuine relationship at all and where evidence was before the First-tier Tribunal of both family life and interference), these are material errors of law and I allow the Appellant's appeal on this basis. It is therefore necessary for the decision of Judge Callow to be set aside and the appeal to be remitted to the First-tier Tribunal for a de novo hearing before a different Judge.

11. Finally, I note that as at the date of the hearing before me, the Appellant's wife's application for leave to remain in the United Kingdom had been outstanding for some six months. It is of course a matter for the Respondent, but the outcome of that application is clearly relevant to the Appellant's circumstances and it is likely to be beneficial to both parties if the outcome is known by the time the First-tier Tribunal considers the Appellant's appeal afresh.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal to be determined afresh by any Judge except Judge Callow.

No anonymity direction is made.

Signed
2017



Date 1st September

Upper Tribunal Judge Jackson