



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: PA/04971/2018

THE IMMIGRATION ACTS

Heard at: Field House
On 4 September 2018

Decision and Reasons Promulgated
On 24 September 2018

Before
Deputy Upper Tribunal Judge Mailer

Between
SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR Y A
ANONYMITY DIRECTION MADE

Respondent

Representation

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer
For the Respondent: Mr J Trussler, counsel, instructed by Kinas Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the secretary of state and to the respondent as the claimant.
2. Unless and until a tribunal or court directs otherwise, the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the secretary of state and to the claimant. Failure to comply with this direction could lead to contempt of court proceedings.
3. The secretary of state appeals with permission against the decision of the First-tier Tribunal Judge, promulgated on 1 June 2018, dismissing the claimant's asylum and humanitarian protection appeal but went on to allow his appeal under Article 8 of the Human Rights Convention.

4. The First-tier Tribunal Judge found that the claimant and his family still have connections with Turkey. His father visits Turkey and his partner comes from Turkey, has close family members there and is in contact with them. Although the claimant lives in the UK he is still immersed in Turkish culture and there are no significant obstacles to his integration into Turkey [28].
5. He found on the basis of the evidence, that his relationship with his partner is genuine and subsisting but has only persisted since late 2017 and there are no insurmountable obstacles to it continuing in Turkey. Indeed, his partner confirmed that she would return to Turkey with him. The position is that they simply want to remain in the UK – [29].
6. The Judge stated that the central issue in the appeal is the relationship of the claimant with his family, and of his family with him. He found that there was no disability so that he needs their help. He could not meet the requirements of being an adult dependent relative under the rules – [30].
7. However, he found that since he was an adult he has lived with his family in the UK and is financially dependent on them. The evidence disclosed that this was an impressively united family. They had expressed their unity. This was not a contrivance for the sake of the appeal. He found 'without hesitation' that there is evidence of dependency involving more than normal emotional ties of the claimant on his family and vice versa [31].
8. With regard to the Article 8 claim, he stated that the secretary of state failed to consider sufficiently all or at all the mutual interdependency and their mutual Article 8 rights. If the appellant were sent back to Turkey there would be others in the family who would be able to take up the slack to assist the claimant's parents. However, family units are not like that - one is not replaced by another like a cog in a machine. Each person has an emotional position within the family. Each family member, save the claimant, has some current leave and each family member wants to remain in the UK [32].
9. He had regard to s.117B of the 2002 Act, noting the importance of effective immigration controls. The claimant gave evidence through an interpreter but gave instructions to his counsel in English. He has not been a burden on taxpayers. His immigration status has been precarious at best and there is no suggestion of criminality.
10. He concluded at [32] that on the particular facts of the case, bearing in mind all the evidence, it would be disproportionate considering the Article 8 rights of the whole family to remove him.
11. On 22 June 2018 First-tier Tribunal Judge Parkes granted the secretary of state permission to appeal. He found that the grounds disclosed arguable errors of law. The grounds asserted that the Judge did not identify any exceptional or compelling circumstances justifying a grant of leave under Article 8 outside the rules. There was no dependency beyond normal

emotional ties between adults. The marriage was Islamic and not legally recognised and the claimant's spouse is also a Turkish national and not a qualifying partner.

12. On behalf of the secretary of state, Mr Whitwell submitted that the Judge failed to give reasons, or any adequate reasons, for concluding that the decision to remove the claimant was disproportionate in the circumstances.
13. He submitted that there are no exceptional or compelling circumstances disclosed in this appeal. There was no reference to exceptional or compelling circumstances. That was not addressed. The claimant's parents are in the UK. The finding that he had not been a burden on the taxpayer and that there has been no criminality constitute at best neutral factors.
14. The Judge has not spelled out any reasoning as to why Kugathas applies in this case. The claimant's parents have limited leave to remain in the UK. He is not financially independent. Nothing more than the normal emotional ties between the claimant, his father and sister in law were shown to exist.
15. It is accordingly proportionate for the appellant to leave the UK and return to Turkey. Although he is married, this is by Islamic custom in late 2017. His wife only applied for leave for business purposes in January 2018 and is not a qualifying partner. His wife stated that if he is to return to Turkey, she will follow.
16. She has family in Turkey. The claimant himself has aunts and uncles to whom he could turn for support. His family here can continue to financially support him as well.
17. On behalf of the claimant, Mr Trussler submitted that the Judge was best placed to make findings. There were ten family members who have some form of leave. The claimant has spent nearly half his life in the UK and has been here since 2003.
18. He submitted that the Judge has considered the claim outside the rules. He has had regard to Kugathas at [31]: There were more than ordinary emotional ties which existed between family members. The reasoning is adequate in the circumstances.
19. The Judge has properly considered s.117B of the 2002 Act. There is no need to recite each particular sub-section. There was an absence of criminal behaviour, the appellant had not been a burden on the taxpayer and he can speak some English.
20. In the circumstances he submitted that there has been sufficient reasoning to justify the conclusion reached by the Judge on Article 8.

Assessment

21. The Judge found that there were no insurmountable obstacles to the relationship with the claimant's partner continuing in Turkey. Their relationship had only persisted since late

2017. The claimant's partner has confirmed that she would return to Turkey with him. Their position is that they simply wish to remain in the UK [29].

22. I have had regard to the well known decision of the Court of Appeal in Kugathas v SSHD [2003] EWCA Civ 31. The Court found that a single man of 38 years old who had lived in the UK since 1999 did not enjoy "family life" with his mother, brother and sister, who were living in Germany as refugees.
23. In that case the appellant was resisting removal to Sri Lanka on the basis of his continuing family life with his mother, his brother and his married sister, who all lived in Germany. He had lived with them for many years in Germany before coming to this country about three years prior to the decision under appeal. The leading judgment was given by Sedley LJ. At para. 14 of his judgment he quoted the statement of the European Commission for Human Rights in S v United Kingdom (1984) 40 DR 196 at 198:

"Generally, the protection of family life under Article 8 involves cohabiting dependants, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults, a mother and her 33 year old son in the present case, would not necessarily require the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties."

24. Sedley LJ described that as setting out "a proper approach". As regards the meaning of "dependency" in that passage, at para. 17 of his judgment he said:

"Mr Gill QC says that none of this amounts to an absolute requirement of dependency. That is clearly right in the economic sense. But if dependency is read down as meaning 'support', in the personal sense, and if one adds, echoing the Strasbourg jurisprudence, 'real' or 'committed' or 'effective' to the word 'support', then it represents in my view the irreducible minimum of what family life implies."

He held that the appellant's relationship with his family did not at the time of the decision constitute family life for the purpose of article 8, whatever might have been the position while they were still in Germany. He said, at para. 19:

"Returning to the present case, neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together, in my judgment enough to constitute family life. Most of us have close relations of whom we are extremely fond and whom we visit, or who visit us from time to time; but none of us would say on those grounds alone that we share a family life with them in any sense capable of coming within the meaning and purpose of Article 8."

25. The Court of Appeal noted in the recent decision of ECO, Sierra Leone v Kopoi [2017] EWCA Civ 1511 at [18] that the judgments of Arden LJ and Simon Brown LJ were to similar effect. Arden LJ also relied on S v UK as good authority and held that there is no presumption that a person has a family life, even with members of his immediate family and that family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties such as dependency.
26. Lord Justice Sales held at [19] in Kopoi that Kugathas remains good law. He referred by way of example to R (Britcits) v SSHD [2017] EWCA Civ 361 [61] and [74] (Sir Terence Etherton), [82] (Davis LJ) and [86] (Sales LJ). As Sir Terence Etherton MR pithily summarised the position at [74], in order for family life within the meaning of Article 8 (1) to be found to exist “There must be something more than normal emotional ties.”
27. It was asserted in the claimant’s appeal that they are a close knit family. The claimant’s father said that as a family they sit and talk to each other almost every day and at weekends, all his children and grandchildren come to the house for meals. The claimant has provided him with much needed support after he had a heart attack.
28. No reasons were given by the First-tier Tribunal Judge that there is evidence of dependency involving more than normal emotional ties. The evidence was that the claimant’s father can get help from other family members should the claimant return to Turkey.
29. The claimant was unable to meet the requirements under the Rules. The Judge had to therefore consider whether there were any exceptional or compelling circumstances warranting a grant of leave to remain in the UK outside the Rules.
30. The Judge did not give appropriate weight to the public interest considerations under s.117B of the 2002 Act. He found that the claimant was not able to speak English properly but gave his evidence through an interpreter. He was able to give instructions to his counsel in English. He has not been a burden on the taxpayer. However, as submitted, those are neutral factors in the assessment. His status in the UK has at all times been precarious.
31. I do not find that the claimant has established that there are any compelling or exceptional circumstances warranting a grant of leave outside the Immigration Rules under Article 8 of the Human Rights Convention.
32. I accordingly find that the decision of the First-tier Tribunal involved the making of an error on a point of law. I accordingly set it aside and re-make it.
33. From the foregoing, I find that the decision of the secretary of state does not constitute a disproportionate interference with the Article 8 rights of the claimant and his partner.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law.

Having set it aside, I re-make the decision and dismiss the claimant's appeal.

Anonymity direction continued.

Signed: Deputy Upper Tribunal Judge C R Mailer

21 September 2018