



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

Appeal Number: DA/00040/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> August 2014**

**Determination  
Promulgated  
On 08<sup>th</sup> Aug 2014**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR HAKAN KAVAKLI**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Rai (Instructed by Leonard & Co, Solicitors)  
For the Respondent: Mr G Saunders (Senior Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant with regard to a determination of the First-tier Tribunal (Judge Oliver and Mrs S Singer) promulgated on 28<sup>th</sup> May 2014.
2. The Appellant is a citizen of Turkey born on 15<sup>th</sup> December 1975. On 12th December 2013 the Secretary of State refused his second asylum

application and on 17th December 2013 made a decision to deport him to Turkey as a result of a conviction in 2006 of possession of a false passport which led to an 18 month prison sentence and a recommendation by the trial judge for deportation. It was the Appellant's appeal against those decisions which came before the First-tier Tribunal on 1<sup>st</sup> May 2014. The Tribunal dismissed the appeal on all grounds.

3. In the application for permission to appeal the Appellant raised four grounds; firstly that the Tribunal gave inadequate consideration to the best interests of the child, secondly that the Tribunal gave inadequate consideration to the question of whether the Appellant's British wife and British child could relocate to Turkey and erred in suggesting that they could, thirdly that the Tribunal made no findings under paragraph 399 of the Immigration Rules and fourthly and finally that the Tribunal erred in refusing an application to adjourn when an Intelligence report was produced at the hearing by the Home Office Presenting Officer.
4. Before me Mr Rai expanded upon the grounds. Dealing with the fourth ground first regarding the adjournment application following production by Presenting Officer of the Intelligence Report, I note that the determination is silent about an adjournment application. I have checked the Judge's Record of Proceedings and there is no record there of an adjournment request either. I am therefore unable to conclude that there was in fact an adjournment application that was refused by the Tribunal. In any event, even if there had been, the significance of that intelligence report to the overall findings of the Tribunal are peripheral and not determinative of the outcome.
5. Mr Rai took me to the intelligence report. It arises from an application by the Appellant for a driving licence with which he submitted, as proof of identity, a Turkish passport without any UK entry stamps or visas. That indicated that he was a failed asylum seeker. The intelligence report itself indicates that the address on the application for the applicant is an address in Southampton. The photograph, accompanying the application was certified by Ms Linda Cheung (the Appellant's wife) but she gave her address as Glasgow.
6. The report concludes with a paragraph stating that a check of the DVLA databases suggests that there was another application originating from the same Glasgow postcode for a different man but that the photograph appeared to be that of this Appellant. That latter part forms no part of the determination, quite rightly as the photo image is not produced. The remainder of the intelligence report simply recites that the Appellant made an application for a driving licence, which he accepts that he did. That application was accompanied by his photograph which was authenticated by Miss Cheung giving an address in Glasgow suggesting that was her home address. She admitted to the First-tier Tribunal that she has signed the photograph but was unable to explain why she put the Scottish address. As a result of that the Tribunal found at paragraph 49 that Miss Cheung was complicit in deceiving the authorities as to her husband's

current address because she had knowingly put down a false address on his driving licence application. That was a finding properly based on the evidence, confirmed by Miss Cheung.

7. Any errors in relation to the contents of the intelligence report are, as I have indicated peripheral only and therefore even if there was an error it was not material to the outcome. There are numerous other reasons for the Tribunal finding against the Appellant; the Intel report did not contain determinative evidence.
8. With regard to the third ground as to paragraph 399 and the lack of findings; that cannot possibly avail this Appellant. Paragraph 399 could have applied to the Appellant only if he had a genuine and subsisting relationship with a British child and there was no other family member able to care for the child in the UK. That is not the case here. Miss Cheung is the child's mother and capable of caring for it and therefore paragraph 399 could not possibly assist the Appellant. Therefore while it might have been preferable for the Tribunal to say that it had considered paragraphs 397-399 of the Immigration Rules but given that they do not apply, failing to refer to them is not an error of law. In fact what the Tribunal does do, at paragraph 49, is indicate that the Respondent clearly had in mind the contents of those paragraphs but that the only realistic Article 8 claim that this Appellant had was his relationship with his current wife and their child. That is in fact the case.
9. The first and second grounds merit closest consideration, alleging that the Tribunal erred in considering that the Appellant's partner and child could relocate to Turkey and in failing to give adequate consideration to the best interests of the child. However, what the Tribunal did at paragraph 49 was to conclude that whilst Miss Cheung may have a genuine relationship with the Appellant it was more hesitant about confirming the genuineness of the Appellant's relationship with her. It was mindful of the sentencing judge's remarks about his use of his first wife as a ticket to remain in the UK. The Tribunal also took into account Miss Cheung's putting an incorrect address when certifying her husband's photograph. Bearing in mind the background and history of this case the Tribunal went on to find that it was not satisfied that the child's best interests would be served by the continuing presence in his life of this Appellant. However, it nevertheless went on to say that if it was wrong about that, in the interests of immigration control it was appropriate for the child's mother to resolve the dilemma which the Appellant's conduct had created for her and it was a matter for her whether she and her child could or should relocate to Turkey.
10. It is not the case therefore that the Tribunal found that the child and his mother could relocate to Turkey, rather it suggested as Sedley LJ did in AD Lee v SSHD [2011] EWCA Civ 348 that "the tragic consequence is that this family... Would be broken up forever, because of the appellant's bad behaviour. That is what deportation does." As in AD Lee deportation will have harsh consequences for family members and the wife will be faced

with a difficult choice, remaining in the UK with her child but without the Appellant or for her and her British child to relocate to Turkey to be with him.

11. It is not the case therefore that the Tribunal gave inadequate consideration to the best interests of the child or of the effect on them of having to leave the UK; they do not have to leave the UK; whether they do is a matter for them. I have no hesitation in finding that the Tribunal was entitled to find that the interests of immigration control outweigh the child's best interests in this case even if they were that his father should remain in the UK. This is a deportation appeal as well as an appeal against refusal of asylum. As a deportation appeal the public interest in this Appellant's removal from the United Kingdom is considerable. The Tribunal clearly took into account the Appellant's appalling history in the UK which I shall summarise.
12. The Appellant arrived in the UK, using a false passport in March 2001 and claimed asylum. That was refused in April 2001. His appeal was dismissed by a Tribunal Judge who noted numerous inconsistencies in his account.
13. In 2003 the Appellant had acquired for himself a Polish partner and they had a daughter together.
14. In October 2004 the Appellant made an application under the Ankara agreement which was refused in March 2007.
15. In June 2005 the Appellant married his Polish partner, and on that basis made an application for leave to remain as the spouse of an EEA national. That application was refused and his wife then started divorce proceedings in June 2006 with the decree absolute granted in January 2007.
16. The Appellant apparently only ever had indirect contact with that child.
17. The Appellant was convicted in 2006 of using a false passport and sentenced to 18 months imprisonment in 2007. In his sentencing remarks the Judge suggested that the Appellant had used his Polish wife in an attempt to remain in the UK.
18. After his conviction the Appellant was sent the usual letter by the Secretary of State asking for any reasons why he should not be deported. Removal directions were set but then cancelled due to the Appellant lodging a judicial review application. That was then dismissed as being without merit. However, the Appellant then went missing and this was reported by his surety in July 2007. The Appellant failed to attend either the Family Proceedings Court or his judicial review hearing.
19. The Appellant then made an application under the legacy programme in September 2007 which was rejected. He was next located in October 2009 having been missing over two years. Shortly after this his new British partner Linda Cheung gives birth to their son in November 2009.

20. The Appellant then made a fresh asylum claim in May 2013. In the same month a domestic violence incident was reported to the police by his partner who told police that he did not live with her.
21. The fresh asylum claim was refused on 12th December 2013 and the decision to deport made on 17th December 2013. Those are the decisions that were appealed against in these proceedings.
22. Undeterred by those decisions, the Appellant and Miss Cheung married in February 2014. It is against that background that the Tribunal found that the Appellant was nowhere near as committed to his family as his family was to him. It is unsurprising that the First-tier Tribunal found deportation a proportionate response and that even if it was in the child's best interests, which it did not believe it was, that he should remain, those best interests are outweighed by the public interest in removing this man.
23. I cannot determine any error of law in the Tribunal's logic or reasoning, nor can I countenance any other possible outcome for this Appellant.
24. Accordingly, I find that the First-tier Tribunal did not make an error of law material to the outcome and accordingly the Appellant's appeal to the Upper Tribunal is dismissed.

Signed

Date 7<sup>th</sup> August 2014

Upper Tribunal Judge Martin