IAC-AH-VP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/38854/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 2 June 2015	**On 12 June 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SAVDA BALIKCIOGLU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss A Hashmi, instructed by Kingswell Watts, Solicitors
For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant Savda Balikcioglu was born on 23 August 1977 and is a female citizen of Turkey. The appellant had been granted leave to remain in the United Kingdom for the purposes of self-employment (under the "Ankara" Agreement) for a period of twelve months. Her application to extend her leave on that basis had been refused by a decision of the respondent dated 15 September 2014. She appealed to the First-tier Tribunal (Judge Mensah) which, in a determination promulgated on 19 February 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant does not take issue with the judge's findings regarding her application to remain on the basis of self-employment. Rather, the appeal proceeds entirely on Article 8 ECHR grounds. Those grounds are brief:

> 'The FTT Judge failed to make a proper Article 8 ECHR assessment in light of the case law relating to the appellants who have a child who is a British citizen residing in the United Kingdom (see for example *Omotunde (Best interests – Zambrano applied – Razgar*) *Nigeria* [2011].
>
> The appellant's daughter from a relationship with a British citizen (whom she married under Islamic law) is a British citizen.
>
> The FFT Judge has failed to make a proper assessment under Article 8 ECHR.'

3. Miss Hashmi, for the appellant, submitted that the refusal letter had made no mention of Article 8 ECHR. However, this is hardly surprising since it did not form any part of the appellant's application to remain on the basis of her self-employment. Article 8 ECHR had been raised for the first time in the grounds of appeal to the First-tier Tribunal.

4. Judge Mensah dealt with Article 8 ECHR at [12]. She incorrectly stated that the Court of Appeal judgment in *MF (Nigeria) [2013] EWCA Civ 1192* "confirmed that the Immigration Rules are a complete code …" As Judge Gibb noted when granting permission to appeal, the Court of Appeal in *MF* held that that part of the Immigration Rules (relating to deportation) does constitute a complete code; the entire Rules do not do so. However, the judge's error is not necessarily material to the outcome of the appeal. The judge went on to find that the appellant's partner is originally from Turkey and had spent the last twenty years living in the United Kingdom. He was previously married and has two children age 12 and 16 years old. The judge noted that, "[the appellant's partner] also told me that if this appeal failed he would go back to Turkey with the appellant, her son and their daughter." The judge went on to consider Section 55 of the Borders Act 2007 and also Section 117B of the Immigration Act 2014. The judge had not referred specifically to Section 117B(6) which provides:

> 'In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom.'

5. The judge went on to find that:

> "I am wholly satisfied that it would be reasonable in this case for the family to leave the United Kingdom and the best interests of the appellant's son and their daughter are served with the family all returning together to Turkey."

She attached very little weight indeed to the partner's relationship with his children by a previous marriage in finding that

> "… the appellant has failed to demonstrate the existence of the relationship [between the partner and his children] as claimed, the regulatory and

quality of the contact and therefore that exceptional circumstances exist to make removal disproportionate under Article 8." [12]

6. Miss Hashmi submitted that the determination was flawed and that the judge erred by finding that the family could pursue their life together in Turkey. She submitted that it would not be reasonable for a British child to be expected to leave the United Kingdom.

7. As I have noted above (Section 117B(6)) the public interest does not require a person's removal in circumstances where they have a genuine and subsisting parental relationship with a qualifying child and it would not "be reasonable to expect the child to leave the United Kingdom." That provision is not, however, an absolute prohibition on British children leaving the jurisdiction. I accept Mrs Pettersen's submission that the judge was entitled to rely, in this instance, upon the evidence of the appellant's partner that he would accompany the appellant and their child to Turkey. I acknowledge that the analysis of the judge [12] has the appearance of being somewhat slapdash and hurried; it is her assessment that "little weight should be given to the appellant's relationship with [the partner] or her private life (*sic*)" sitting somewhat uneasily with her finding in the next sentence that it would be "reasonable for this family to leave the United Kingdom … with the family all returning together to Turkey." I am, however, satisfied having read the entire determination that the judge accepted that there was a subsisting relationship between the appellant, her partner and their child (I understand that, at the date of the Upper Tribunal hearing, the appellant is pregnant again) and also that the partner's claimed relationship with his children by a previous marriage did not constitute any major hindrance to family life being continued abroad in Turkey. I am also satisfied that the judge has made clear that the public interest concerned with the appellant's removal is a strong one in the light of her finding that the appellant was an individual who had "sought to circumvent the Immigration Rules." Ultimately, however, I am satisfied that the judge was entitled to rely upon the evidence that the family would leave the United Kingdom together to live in Turkey in reaching her finding that it would be reasonable to expect the child, notwithstanding her British nationality, to live abroad. I agree Mrs Pettersen that this is a case where the First-tier Tribunal Judge has, in effect, been required to act as a primary decision maker, there having been no previous engagement of Article 8 ECHR. I find that she reached a decision which was available to her on the evidence and which is in accordance with the law.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed Date 10 June 2015

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 10 June 2015

Upper Tribunal Judge Clive Lane