



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15912/2017

THE IMMIGRATION ACTS

Heard in Manchester
On 12th July 2018

Decision & Reasons Promulgated
On 25th July 2018

Before

Upper Tribunal Judge Chalkley

Between

DILBER BAYCU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr Trussler of Counsel instructed by Kinas Solicitors

For the Respondent:

Mr Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Turkey who was born on 10th August, 1995.
2. The appellant entered the United Kingdom having been granted leave to enter the United Kingdom as a spouse until 2nd September 2015. Instead of making a further application for leave before the end of her current leave, she did not make application until 22nd September 2017, so that for some twenty days she was without leave in the United Kingdom. On 22nd September 2017, she made a human rights claim and this was refused by the respondent on 11th September 2017. The appellant then appealed

to the First-tier Tribunal and her appeal was heard in Manchester on 23rd February 2018 by First-tier Tribunal Judge A J Parker.

3. The respondent refused the appellant's application first because the appellant was in the United Kingdom without leave for some 30 days and
 - failed to meet E-LTRP.2.2 of Appendix FM of the Immigration Rules;
 - failed to meet E-LTRP.3.1 to 3.4 because the evidence of joint income showed a total income of £13,665 rather than £18,600 and the declaration of property income was not considered by the respondent because of lack of evidence in the form of receipts and title deeds;
 - failed under E-LTRP.4.2, because the appellant had not passed the A2 test D and demonstrated that she met the eligibility English language requirement;

and lastly, it was refused because there was no compelling evidence which would justify the grant of leave outside the Immigration Rules on the basis of Article 8.

4. The judge considered the evidence and found that the appellant could not succeed under the Immigration Rules. In respect of income, whilst a rental agreement was produced, there was no bank statement for the twelve month period as required by the Rules, nor disclosure of the title deeds. In relation to the English language test, the appellant had only been aware of the A1 test and had failed to demonstrate that she had been successful at the A2 test. The judge considered and applied *Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test)* [2017] UKUT 00013 (IAC) and concluded that the Immigration Rules could not be met. He went on to consider Article 8 and in terms of Section 117B(1) noted that the maintenance of effective immigration control is in the public interest. He found that this consideration weighed against the appellant as she had not met the Immigration Rules. In terms of Section 117B(2) there appears to be a typing error in paragraph 42 because the judge found that the appellant is not competent in speaking English and therefore this consideration does not weigh against the appellant. Clearly what he meant to say is that the appellant is competent in English and therefore this consideration does not weigh against the appellant. In terms of Section 117B(3) the judge said,

“The evidence is that the appellant has not claimed benefits and has been supporting herself with the help of her family since she came to this country in 2014. However, I find this consideration weighs against the appellant as the Rules relating to income have not been met”.

In respect of Section 117B(4)(a), he noted that little weight should be given because the appellant had only had lawful leave from 2014 to 2017. He dismissed the appeal finding that the decision was proportionate.

5. The appellant challenged the decision, pointing out that while the appellant had not taken the A2 test she had originally passed the A1 test and clearly was competent at speaking in English. Ground 2 pointed out that she had never been a benefits claimant

and had been supporting herself with the help of her family since she entered the United Kingdom. In assessing Article 8 the judge erred in not weighing this in favour of the appellant instead of weighing it against her. So far as private life was concerned the fertility treatment which the appellant was undergoing in the United Kingdom and which could not be undertaken in Turkey was flawed because both couples would need to be in Turkey for a prolonged period of time in order for the treatment to be undertaken there. The appellant's husband is a British citizen employed in the United Kingdom and it would be unreasonable and unduly harsh to expect him to move to Turkey for the duration of the treatment.

6. At the hearing before me Mr Trussler, reminded me that the appellant had passed the relevant English language test when she originally entered the United Kingdom so it was wrong of the judge to say that the appellant was not competent in speaking English. She clearly was. Mr Trussler accepted that the income of the parties did not meet the requirements of the Rules strictly in that bank account statements had not been submitted. It is quite clear that the parties had not been dependent on social security and did have sufficient income.
7. For the respondent Mr Bates acknowledged that there was a typing error in paragraph 42 of the determination, but pointed out that the appellant had not in any event weighed her English language competence against the appellant. As to the couple's self-sufficiency, the fact of the matter is that the parties do not meet the requirements of the Rules. They had failed to provide adequate evidence. There were no insurmountable obstacles to the parties living together in the future. It would likely be a matter of months before the appellant could return to the United Kingdom were she to return home to Turkey and then be in a position to satisfy the requirements of the Immigration Rules but, he submitted, there would be no undue delay in considering her application. As to her private life, the judge was correct. The appellant had only limited leave to remain in the United Kingdom and her leave in the United Kingdom was always precarious. Her interests could not possibly outweigh the public interest. He invited me to dismiss the appeal.
8. Mr Trussler addressed me briefly in response. He confirmed that his client was 23 years of age. I pointed out that this was not a case where if the appellant were to return to Turkey she would be so old on her return that she would not be able to continue with fertility treatment if she was in need of it. I explained that I was not unsympathetic to the appellant, but in the absence of any circumstances which would permit the grant of the appellant's Article 8 claim outwith the Immigration Rules, I could not see how I could disturb the determination because it appeared on the face of it that there was no material error of law. He appeared to accept that there were no such circumstances which would entitle me to allow the appeal on Article 8 grounds outside the Immigration Rules. I do not believe that counsel could have said anything further on behalf of the appellant.
9. Having listened very carefully to Mr Trussler's submissions and having read the determination in the light of the grounds of appeal, I believe the judge was correct to

find that while the appellant and her husband had not claimed benefits and had been supporting themselves with the help of family, her failure to provide evidence as to satisfy the requirements of the Immigration Rules, in respect of maintenance is a consideration which weighs against the appellant. I also believe that the judge was entitled to give little weight to the appellant's private life since she had only ever been admitted to the United Kingdom on a temporary basis and had actually overstayed her leave. Her leave in the United Kingdom had always been precarious.

10. Parliament has decided what is in the public interest and I find on the facts that the judge had no alternative but to find as he did. The making of the decision by First-tier Tribunal Judge A J Parker did not involve the making of an error on a point of law. I uphold his decision.
11. No anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

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

Richard Chalkley

Upper Tribunal Judge Chalkley

dated 19 July 2018