



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

Appeal Number: IA/17428/2014

THE IMMIGRATION ACTS

Heard at Field House

On 29 July 2014

Determination

Promulgated

On 6 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

MISS EVIN ATABAY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Joshi, Legal Representative from Kinass Solicitors

For the Respondent: Mr J Parkinson, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision of First-tier Tribunal Judge Law promulgated on 30 May 2014 in which he dismissed the appellant's appeal against a decision made on 14 March 2014 refusing to vary leave to enter or remain by reference to the Turkey-European Community Association Agreement and, secondly, issuing removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.
2. This matter comes before me for consideration as to whether or not there was a material error of law in the decision made by First-tier Tribunal Judge Law.
3. At the hearing before me Mr Parkinson and Ms Joshi confirmed that they had had a preliminary discussion and reached agreement that there was a

material error of law and that the matter should be remitted to the First-tier Tribunal for a hearing de novo.

4. The grounds of appeal allege that the First-tier Tribunal Judge was wrong to dismiss the appeal on the grounds of non-compliance with the Procedure Rules, specifically finding that the appellant failed to supply a notice of immigration decision together with her form of notice of appeal, under Rule 15(2)(c) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. The appellant argued that she experienced difficulties in lodging the form of notice of appeal together with a copy of the relevant immigration decision by fax with the Tribunal and she made reference to several attempts to lodge her proceedings and produced emails in support. Within the file of papers I retrieved a form of notice of appeal together with the respondent's immigration decision which were faxed to the Tribunal on 1 April 2014 at 15.19 hours and officially stamped as received by the Tribunal on 1 April 2014 (which was the deadline for the appeal).
5. Permission was granted by First-tier Tribunal Judge Molloy on 17 June 2014 and he concluded that it was arguable that the judge erred by disposing of the appeal under Rule 15 rather than Rule 9(2) of the said Procedure Rules. I am satisfied that Rule 9(2) does not apply to the particular circumstances.

Discussion

6. I find that there is evidence to show that the Tribunal administration accepted the notice of appeal together with the immigration decision forwarded by the appellant on 1 April 2014 within the time limit. I find that First Tier Tribunal's decision was procedurally wrong and unfair as it effectively denied the appellant her the right to an appeal hearing. There was evidence that she met the time limit for lodging the appeal and that she had in fact submitted the relevant paperwork. I find that there was a material error of law in the Tribunal decision.

Decision

7. There is a material error of law in the decision. I set aside the determination. I remit the matter to the First-tier Tribunal at Taylor House to be heard on **16 December 2014** (not before Immigration Judge J S Law).

Signed

Date 4.8.2014

Deputy Upper Tribunal Judge G A Black

No anonymity order
No fee award.

Signed

Date 4.8.2014

Deputy Upper Tribunal Judge G A Black