Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/47846/2013
IA/47849/2013

THE IMMIGRATION ACTS

Heard at Taylor House
On 9 October 2015
Prepared 9 October 2015

Decision & Reasons Promulgated
On 5 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MS ARZU COLAK (FIRST APPELLANT)
MISS DIREN COLAK (SECOND APPELLANT)
(ANONYMITY ORDER NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms L Hirst, Counsel instructed by Birnberg Peirce & Partners
For the Respondent: Ms Brocklesby-Weller, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants, nationals of Turkey, dates of birth 20 September 1969 and 29 August 1998 appealed against the Respondent's decisions to refuse to vary leave to remain and to make removal directions.

2. An appeal against that decision came before First-tier Tribunal Judge Walters who on 9 November 2014 dismissed their appeals.

3. Permission to appeal the judge's decision was given by First-tier Tribunal Judge Lambert on 11 February 2015 and the Respondent provided a Rule 24 response on 24 February 2015.

4. On 7 August 2015 in a decision promulgated by myself and Deputy Upper Tribunal Judge Professor N M Hill QC we found for the reasons given in the decision that the Original Tribunal's decision could not stand in connection with the fairness of the proceedings before the judge and the judge's assessment of the evidence. Ultimately the errors had particularly related to whether or not the first Appellant could effectively support herself and the second Appellant, her dependent daughter, through income generated from her business as a hairdresser, also although it was not a significant basis of refusal whether there was accommodation of which the Appellants were paying their share of the rent.

5. Directions were given for the submission of further evidence which the Appellants did provide in time. The first Appellant adopted her evidence and there was no cross-examination of the Appellant on the statements which she had made in 2013, 2014 and 2015. The evidence was clearly provided relating to the premises they occupied, their payment of the rent and the business income was established to show that in 2013, 2014 and 2015 there was a significant net profit. The current position shows the current net profit to be £17,000 odd. In the circumstances there was no remaining issue concerning her financial circumstances. Under the EC Turkish Association Agreement such applications were required to meet n the UK the Immigration Rules HC 510. Ms Little cited the relevant case law at Savas [2000] ECR 1-2927 (ECJ) as well as EK (Ankara Agreement – 1972 Rules – construction) Turkey [2010] UKUT 425, Akinci (paragraph 21 HC 510 – correct approach) [2012] UKUT 00266 (IAC). The issue of disguised employment, the case of Quashie v Stringfellow Restaurants [2012] EWCA Civ 1735 were addressed.

6. In the case of the refusal of the further leave to remain for the first Appellant and her dependent daughter the Secretary of State was not satisfied the first Appellant was genuinely established in business or that the profits were sufficient to support herself and dependent daughter or that the Appellant's work did not amount to disguised employment.

7. I was satisfied on the evidence as was indeed it seemed to me, the judge that the Appellant was operating her own business that was evidenced by letters from clients as well as the Appellant's own evidence and documents.

8. Bearing in mind there was no specified financial threshold for maintenance nor was there a requirement for the business itself to reach a certain level of profitability the issue was whether or not the profits generated by the Appellant's business were sufficient to support her and her dependent daughter, without undertaking employment.

9. Ms Brocklesby-Weller did not cross-examine the first Appellant as to her business activities nor challenge the documentary evidence provided pursuant to directions when demonstrating the continued running of the business. The evidence showed the significant increase in net profit over the period of 2012, 2013, 2014 and 2015. I find looking at the figures there plainly was sufficient funds to meet the living expenses of the first Appellant and her daughter.

10. It was unclear if the Respondent was intending to pursue the issue of whether the first Appellant was really employed rather than self-employed: The evidence provided within the bundle showed the first Appellant was self-employed in the operation of the business, the charging for the costs of supplies, the arrangement of her own public liability insurance, the absence of third party control over the Appellant's working hours and the absence of obligation upon the Appellant to serve any client of the salon where from time to time she also worked.

11. In the circumstances the evidence indeed had moved on and it is clear that she was not an employee.

12. In the circumstances I was satisfied the Appellant has discharged the burden of proof upon a balance of probabilities that she met the relevant requirements of HC 510 and failed to take a holistic approach to the assessment of the evidence.

ANONYMITY ORDER

13. No anonymity order is necessary or appropriate

NOTICE OF DECISION

14. The appeals under the Immigration Rules are allowed.

Signed Date 17 October 2015

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeals have succeeded substantially on the basis of the evidence originally submitted but more particularly on the basis of the further evidence provided which meets every point raised. In the circumstances I do not find this is an appropriate case to make fee awards bearing in mind the original decisions by the Respondent.

Signed Date 17 October 2015

Deputy Upper Tribunal Judge Davey