



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA159062014

THE IMMIGRATION ACTS

Heard at: Manchester
On: 13th April 2016

Determination Promulgated
On: 25th May 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Nagihan Iseri
(no anonymity direction made)

Appellant

and

Entry Clearance Officer, Istanbul

Respondent

For the Appellant:
For the Respondent:

Ms Kullor, Counsel instructed by SH & Co Solicitors
Ms Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Turkey born on the 2nd January 1993. She appeals with permission the decision of the First-tier Tribunal (Judge Dhaliwal) to dismiss her appeal against a decision to refuse to grant her entry clearance as a spouse.

2. When the Appellant applied for entry clearance the Respondent considered the application with reference to Appendix FM of the Immigration Rules. So too did the First-tier Tribunal. The Tribunal accepted that the Appellant's was a genuine and subsisting marriage, but the appeal fell to be dismissed because she had not produced the mandatory documents as to maintenance set out in Appendix FM-SE.
3. The matter in issue in this appeal is whether the Appellant needs to show that she can meet the requirements of Appendix FM at all. It is her case that she can benefit from the provisions of various agreements reached between the UK and Turkish governments, including the 1963 EEA-Turkey Association Agreement (the Ankara Agreement) and its relevant protocols. She argues that the composite effect of these agreements are that as a family member of a Turkish national exercising treaty rights she is entitled to join her husband. Once she is in the UK she would be eligible to apply for public funds. Although she has no intention of so doing, so submits that this legal fact means that she cannot logically be refused entry clearance on maintenance grounds. In her application form she expressly relied on published Home Office policy:

"Home Office Entry Clearance Guidance on maintenance and accommodation confirms that in entry clearance applications Turkish nationals are exempt from maintenance requirements due to Agreements signed by Turkey and Europe and the UK".

4. In this appeal the Appellant maintains that the Respondent, and First-tier Tribunal, erred in confining considering of her application within the paradigm of the Rules. It is submitted that properly understood, her case fell to be considered with reference to international agreements and to the Home Office policy. Permission was granted on this ground by Designated First-tier Tribunal Judge Zucker.

The Facts

5. The accepted facts are that the Appellant has, since 2013, been married to a Mr Gokay Iseri. He is a citizen of both Turkey and the United Kingdom. He is self employed, running a take-away restaurant in Chorley. He earns approximately £20,000 per year. The Appellant is a Turkish national.

Legal Framework and Discussion

6. The Appellant relies on two documents extracted from the Respondent's published policies (*Immigration Directorates' Instructions- modernised guidance*). The first is a document headed 'maintenance and accommodation - entry clearance guidance'. This reminds case-owners of the basic premise that applicants for entry clearance need to be able to demonstrate that they will be

maintained in accordance with the requirements in the Immigration Rules. Having done so it cautions:

“Bear in mind that in some exceptional cases an applicant may be able to claim in their own right the public funds listed. This is either as a result of reciprocal arrangements between the UK and their home country, or as a result of the fact that they will be married to/living with a British citizen/EEA national. Where these exceptional circumstances apply, the applicant should not be treated as having recourse to public funds”.

7. The second extract from the IDI is headed ‘Public Funds’. This confirms that applications by Turkish nationals must be considered as ‘exceptions’ since Turkish nationals are entitled to claim a wide range of benefits in the UK, including child benefit, housing benefit, job-seekers allowance and working tax credit.
8. In addition to the Ankara Agreement and its protocols these rights for a Turkish national to claim public funds in the UK derive from Turkey’s ratification of the European Social Charter on the 24th November 1989 and the European Convention on Social and Medical Assistance on the 2nd December 1976. Both of these Conventions are acts of the Council of Europe and they therefore supercede UK domestic law.
9. The Respondent submits that the policy set out above has no application in this case because the Appellant is not applying in-country, and because her husband is now British.
10. The first submission is difficult to understand given that the policy in question is sub-headed ‘entry clearance guidance’. In response to the latter the Appellant relies upon the Opinion of Advocate General Sharpston in *Tayfun Kahveci (C-7/10)*, handed down in the Court of Justice on the 20th October 2011. In that decision the CJEU was asked to deliver a preliminary ruling on whether the naturalisation of a worker in a host member state should deprive his family members of rights that would otherwise have flowed from Article 7 of the Ankara Agreement. In that case the AG considered the position of two Turkish men, both of whom were facing removal from the Netherlands because of their criminal convictions. One resisted such action on the grounds that he was married to a Turkish woman who was exercising treaty rights; the other on the grounds that he was the family member of his father, who was doing the same. In both cases the Sponsor had gained Dutch nationality whilst at the same time retaining his or her Turkish citizenship. The AG’s opinion was as follows:
 - i) Article 7 of the Ankara Agreement must be construed so as to give effect to the aim of the progressive achievement of the free movement of workers [43]

- ii) That objective is achieved *inter alia* by providing for Turkish family members to join the worker in the host state to enable the family to be together [50];
 - iii) The integration of the family into the host state is facilitated by giving family members a right to work within a specified time frame [52];
 - iv) The worker does not surrender his rights under Article 7 by acquiring the nationality of his host country if he has also retained his Turkish nationality [54-55];
 - v) Nor, it must follow, do members of his family [82]
 - vi) To hold otherwise would run wholly contrary to the aims of free movement and integration [56]
11. I am satisfied that the clear terms of the Respondent's policy are that Turkish nationals applying for entry clearance in these circumstances should not have to meet the maintenance requirements of the Immigration Rules. That policy is based on the reciprocal international commitments arising not only from the Ankara Agreement but from the Council of Europe Conventions mentioned above. It is clear from the persuasive opinion of AG Sharpston that these benefits accrue to families even where the sponsor had acquired the nationality of the host nation.
12. I find that the First-tier Tribunal has therefore erred in law and the decision is set aside. I allow the appeal on the grounds that the decision is not in accordance with the law.

Decisions

13. The decision of the First-tier Tribunal is set aside.
14. The appeal is allowed
15. I was not asked to make a direction for anonymity and in the circumstances I see no reason to do so.

Upper Tribunal Judge Bruce
22nd May 2016