



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13026/2016

THE IMMIGRATION ACTS

Heard at Field House
On 2 August 2018

Decision & Reasons Promulgated
On 29 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MR HUSEYIN YENIER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant to the decision of First-tier Tribunal Judge Freer (the judge), promulgated on 23 February 2018, in which he dismissed the Appellant's appeal against the Respondent's decision, dated 6 May 2016, which had refused his human rights claim, which in turn he made on 13 October 2015.
2. In summary, that claim had been based upon the Appellant's significant (albeit unlawful) residence in the United Kingdom dating back to 1988 when he arrived here at the age of approximately twelve from the Turkish Republic of Northern Cyprus.

The judge's decision

3. Having set out the nature of the evidence and the legal issues before him, the judge goes on to assess what he considered to be the relevant factors in the appeal. He took account of the Appellant's very significant criminal record, his lack of integration into British life (with reference to the lack of his English speaking ability and other matters), and the long residence, amongst other factors. The judge concludes that the Appellant could not succeed under paragraph 276ADE(1)(iii) of the rules because of the suitability requirements, specifically S-LTR1.6 (see [34]). Outside the context of the rules, the judge found that the factors in the Respondent's favour outweighed those in the Appellant's. The appeal was duly dismissed on the grounds.

The grounds of appeal and grant of permission

4. The grounds assert that the judge failed to have regard to the fact that the Appellant's criminal history was not particularly serious in terms of the specific offences for which he had been convicted over the course of time. In addition, it is said that the judge failed to have regard to other relevant factors when considering paragraph 276ADE(1)(vi) of the rules: these factors included an apparent inability to secure meaningful employment in the Turkish Republic of Northern Cyprus.
5. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 23 March 2018. There is clearly a typographical error in [2] of the grant: the word "not" has been omitted in error. There is no doubt that Judge Parkes intended to say that the judge found that the Appellant did *not* meet the suitability requirements of the rules. Judge Parkes described the case as being "unusual" because of the length of residence and commented that it was arguable that the Appellant met paragraph 276ADE(1)(iii) of the rules.

The hearing before me

6. I had adjourned this matter on a previous occasion because the Appellant's solicitors were unable to attend due to a lack of funding. Unfortunately, a Turkish interpreter had not been booked on that occasion and therefore I was unable to proceed with the error of law hearing. At the adjourned hearing there was still no representation by the solicitors, although they appear to still be on record. A Turkish interpreter was present I was satisfied that he and the Appellant understood each other fully.
7. I provided a full explanation as to the nature of the proceedings and the issues before me. I was satisfied that the Appellant understood everything that was being said. I summarised his own case to the Appellant, and he agreed with this.

8. I then asked Mr Melvin for his submissions. He noted that despite the judge appearing to say that the Appellant had changed his ways in [32], he was fully entitled to have had regard to the criminal history as a whole. It was open to the judge to have found that S-LTR.1.6 applied. It was noted that there was no perversity challenge to the judge's conclusions and it was clear that the judge had taken all factors into account and had weighed them up in the balance as he was entitled to do. He had considered the case within and without the context of the rules.
9. I then asked the Appellant for his comments he told me that he had been in this country for a very long time and had no-one in north Cyprus. He regarded the United Kingdom as his country.

Decision on error of law

10. As I announced to the parties at the hearing, I conclude that there are no material errors of law in the judge's decision.
11. The suitability issue had been clearly raised by the Respondent in his reasons for refusal letter and there was no question that this came as a surprise to the Appellant and his representatives at the hearing (a legal representative was then present). It was open to the judge, in all the circumstances, to conclude that S-LTR.1.6 did apply. The Appellant's criminal history was significant and the judge was entitled to conclude that he had not learnt from his experiences to any great extent and, although it is somewhat oddly stated in [32] that the Appellant might have turned over a new leaf, in the context of the evidence and findings as a whole, it is clear that the judge was of the view that the Appellant's character and conduct was such that his presence in the United Kingdom was not conducive to the public good. In light of that conclusion the Appellant could not succeed under paragraph 276ADE(1)(iii).
12. Although the judge does not specifically refer to paragraph 276ADE(1)(vi), the suitability conclusion precluded success under that sub-provision in any event.
13. In relation to the article 8 claim outside the context of the rules, whilst there is an erroneous reference to deportation provisions under section 117C of the NIAA 2002, the factual circumstances and what is said in [46]-[48] is sufficient to show that an adequate assessment was carried out, balancing positive and adverse factors against each other. In my view it is sufficiently clear that the judge had the Appellant's significance residence in this country well in mind, noting that he described this point as being "very significant and heavily weighted in [the Appellant's] favour". All in all, whilst another judge may have reached a different conclusion, this particular judge was entitled to conclude as he did.
14. I would just add a further observation. The judge makes some references to the "benefits" of the Appellant being returned to north Cyprus, and that to do so may be a "kindness" to him. In my view such observations are unnecessary. They form no

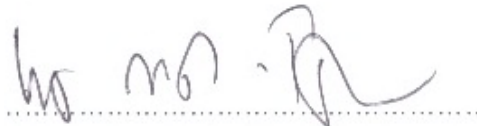
part of the relevant legal tests and may possibly be seen as inappropriate by the individual concerned.

Notice of Decision

The decision of the First-tier Tribunal does not contain any material errors of law. That decision shall stand.

The Appellant's appeal to the Upper Tribunal is therefore dismissed.

No anonymity direction is made.



Signed

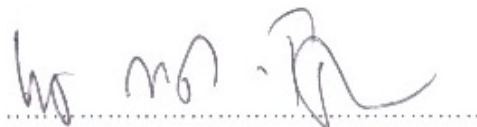
Date: 19 August 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

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



Signed

Date: 19 August 2018

Deputy Upper Tribunal Judge Norton-Taylor