



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

Appeal Number: IA/44357/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 10 July 2014
Extempore judgment**

**Determination
Promulgated
On 16 July 2014**

Before

UPPER TRIBUNAL JUDGE COKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

YASIN TENGIOGLU

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer
For the Respondent: Mrs T Starr, Counsel, instructed by Virgo Solicitors

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against a decision by Judge of the First-tier Tribunal Roopnarine-Davies who allowed the appeal of Mr Yasin Tengioğlu on Article 8 grounds on 5 April 2014. Permission to appeal was sought on the grounds that the judge had failed to consider the guidance

in the case of Gulshan [2013] UKUT 640 and had made no findings as to whether there were compelling circumstances not sufficiently recognised under the Rules and that she had proceeded to undertake a freestanding Article 8 assessment. There was no challenge in the grounds seeking permission to appeal to the assessment under a freestanding Article 8 assessment in as much as the Secretary of State did not assert that had the decision been taken under what could be described as pure Article 8 then there was fault in that assessment.

2. The claimant arrived in the UK on 21 April 2002 and claimed asylum. It seems that that asylum claim was refused. It seems that there was no appeal against that rejection of his asylum claim.
3. In December 2004 he sought leave to remain in the UK on compassionate grounds. Nothing appears to have happened until the Secretary of State took a decision on 3 May 2013 to refuse him leave to remain the UK. He was an illegal entrant. In a determination promulgated on 1 July 2013 Immigration Judge Pedro allowed the appeal as not in accordance with the law because the human rights element of that appeal had been considered under HC194 which had been introduced with effect from 9 July 2012. The appellant's application had been made in either December 2004 or possibly November 2009 when an application for indefinite leave to remain was submitted on Article 8 ECHR grounds.
4. The transitional provisions of HC 194 were considered in the case of Halimudeen and it was held that where an application on human rights grounds was made prior to the introduction of HC 194 and prior to 9 July 2012 then it was to be considered under the old regime. Although this decision contradicts a similar consideration in the case of Edgehill, Halimudeen is the more recent case and I am thus bound to follow that reasoning.
5. The Secretary of State then went on to consider that application for indefinite leave which had been remitted to her by Judge Pedro.
6. On 10 October 2013 she again refused him leave to remain in the UK or leave to enter because he is an illegal entrant on the basis of looking at his claim on the basis of Appendix FM. It was on that basis that that Judge Pedro had sent it back to the Secretary of State, namely to consider it under the old regime and not the new regime. She had failed to consider it on the basis of the very reason it had been sent back to her.
7. Mr Tarlow before me recognised that he had some difficulties given the Court of Appeal decision in Halimudeen and although he relies on the grounds seeking permission to appeal upon which permission was granted, he could add nothing further. The difficulties that Mr Tarlow is in are explicitly because of Halimudeen. Clearly the Secretary of State should have considered the application under the "old regime." In paragraph 10 of the determination by Judge Roopnarine-Davies it is agreed by the

parties that the issue in this case is whether the decision is proportionate to the legitimate aims. Clearly the parties before Judge Roopnarine-Davies recognised that the assessment was under the “old regime” and not the “new regime” and that is how she proceeded to reach her decision. She allowed the appeal. I can see no error of law in that decision sufficient to set aside the decision.

8. I therefore dismiss the appeal of the Secretary of State. The decision of the First-tier Tribunal stands and the appeal against the decision of the Secretary of State of 10 October 2013 is allowed on human rights grounds.

Signed

Date 15th July 2014



Upper Tribunal Judge Coker