



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/09394/2013

THE IMMIGRATION ACTS

Heard at Field House
On 9 December 2013

Determination Promulgated
On 10 April 2014
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Before

UPPER TRIBUNAL JUDGE GLEESON

Between

HUSEYIN BOYACI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Berry, Counsel, instructed by Blokh Solicitors
For the Respondent: Mr J McGirr, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Graham promulgated on 30th September 2013, dismissing his appeal against the respondent's decision to curtail his leave to enter. The applicant had been granted leave to enter as a visitor, effective as a multi-entry visit visa between 2

December 2011 and 2 December 2013, subject inter alia to the provisions of paragraph 41(iii) of the Immigration Rules HC 395 (as amended), which state that a visitor must not intend to take employment or produce goods or provide services in the United Kingdom. On 22 March 2013, he was found working in breach, and removed to Turkey, his country of origin.

2. The appellant appealed, claiming to have lost his passport, which expired in 2012, and that the person found working illegally on 22nd March 2013 was somebody posing as him, not the appellant. The appeal was considered on the papers, the appellant having not elected for an oral hearing. The First-tier Tribunal Judge was not satisfied by the very limited material produced on the appellant's behalf.
3. The grounds of appeal asserted that the judge erred in considering evidence not seen by the appellant. Permission to appeal was granted on the basis that the respondent did not appear to have served on the appellant the documents she served on the Tribunal. At the hearing, it became clear that there was another, serious flaw in the reasoning in the First-tier Tribunal determination. The Judge misdirected himself in relation to the burden of proof, stating at paragraph 11 of his determination that:

"11. I am satisfied that the burden of proof rests on the appellant to show that he was not the person arrested for working illegally on 22nd March 2013 and returned to Turkey."
4. That cannot be right. He who asserts must prove, and at the hearing before me, Mr McGirr agreed that the burden of proof as to the identity of the person removed is on the respondent. Only when that burden has been discharged does the burden of proving other matters in relation to the appeal shift to the appellant. That is a material error of law, particularly as the papers which are in the Tribunal bundle at the moment do not appear to be sufficiently complete to discharge that burden.
5. Having discussed the matter with the parties, it has been agreed that the best course is for this appeal to be remitted to the First-tier Tribunal for an oral hearing on a date to be fixed.
6. The following agreed directions are made.

Directions

- (1) The respondent shall provide to the Tribunal and the appellant copies of relevant documents in her possession or control in relation to the appellant and/or the person found working on 22 March 2013 and removed on 26 March 2013. Where the original documents are in her possession, full colour copies must be provided.
- (2) In particular, the respondent shall provide copies of:
 - fingerprint records and analysis thereof;
 - copy passports, in particular the passport which expired in 2012 and which the appellant claimed to have lost;

- her removal decision and associated Home Office papers;
- Huseyin Boyaci's Nüfus and driving licence; and
- any other relevant identity documents.

- (3) The appellant must provide to the Tribunal and the respondent a full colour copy of all pages of his current passport, his current Nüfus, and his current driving licence.
- (4) The appeal will then be listed to be heard in the Birmingham First-tier Tribunal with a time estimate of half a day.
- (5) Any additional directions will be a matter for the First-tier Tribunal when it receives the file.

Signed

Date

Upper Tribunal Judge Gleeson