



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/10526/2014  
IA/10524/2014  
IA/10525/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 31 October 2014

Determination Promulgated  
On 15 January 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

ALI DEMIROK  
SELIN DEMIROK  
MELEK RUMSSEYSA DEMIROK  
(Anonymity directions not made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the appellant: Mr A Jafar, Counsel  
For the respondent: Mr T Melvin, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Turkey born on 7 November 1983, 6 July 1992 and 29 July 2013 respectively and are a family. References to “the appellant” are to Mr Demirok as the other appellants’ appeals falls or rests on that of the first appellant.

The appellant appeals to the Upper Tribunal against the determination of First-tier Judge Cresswell, dismissing his appeal against the decision of the respondent dated 13 February 2014 to refuse the appellant leave to remain in the United Kingdom under the European Community Accession Agreement (hereinafter "the Ankara Agreement") pursuant to paragraph 21 of HC 510.

2. Permission to appeal was granted by First-tier Tribunal Judge Shimmin who stated that the grounds disclose arguable errors in assessment of the evidence and hence the law.
3. The first-tier Tribunal Judge Cresswell found the following which I summarise.
  - “The appellant produced a battery of papers for the appeal hearing, in the form of two bundles and further tax papers submitted. As the case guidance makes clear, the test is qualitative not quantitative. It was the position of the Home Office that the documents were effectively a sham i.e. that the appellant had produced documentation which included invoices and bank statement and payment of self-employed National Insurance and self- Assessment taxation, to hide the fact that he was actually working in some other capacity. Having assessed all the evidence in the round, the position taken by the respondent was more than likely a correct one and that the appellant has failed to show that he meets the requirements of rule 21 with the consequence that the other two appellants cannot meet rule 21.” [15 (iii)]
  - “I found the evidence given by the appellant to be wholly lacking in credibility. In fact so poor was his grasp of what he was pretending that his business comprised of that at times it became quite awkward. Mr Howells pursued the point that, despite producing vast quantities of paper, there was not a single piece of paper demonstrating the appellant’s work. Indeed there was no flyers or other forms of advertising or CVs produced business plans et cetera.” [15 (iv)]
  - The appellant appeared incapable of detailing some aspects of his claimed business. For instance, Mr Howells asked him about his involvement in training and suggested to the appellant that he does a lot of training, to which he replied “not just training, business consultancy”. When he was then asked about the media he used in training, he eventually said that the training was not that difficult “I don’t teach them anything”. [15 (vi)]
  - The appellant told me that he advises people looking to travel to the UK for business study to find accommodation or courses and also offers a “meet and greet” service at the airport service. He said that the other side was developing business, Kebab or coffee shops, who want to expound their business and advice on how to expand. I asked him how I would find him from Turkey and he told me that he has an Internet site and that he advertises in newspapers but

generally relies on word-of-mouth. There being no evidence of newspaper advertising in the bundle, and the appellant not having called any of his clients to support his case orally, I suggested that we look at his website in the course of the hearing which brought the response “my website has been frozen for the last year. Things have been uncertain and I didn’t have a passport for the last year”. [15 (vii)]

- “Mr Howells asked the appellant what are the main parts of a business plan, to which he replied “market research, business development, business adviser”. Mr Howells put it to the appellant that he did not know anything about business plans but he said that he did. When he was asked what business plan would look like he said: “I don’t do business plans”. I find this very strange because a lot of the invoices referred previously to that form of work. The appellant then gave a sketchy and limited description of the main sections of a CV might be. Eventually the appellant said during re-examination that the description he placed on invoices of his work was simply words he had used when he made the first these application and “nobody said anything”. This was shortly after he had told Mr Jaffar in relation to a specific invoice, when asked what he did to earn the money, “business plan reparation”. If there was a legitimate business, surely a client must have wondered why he was being charged for a business plan when there was no business plan at all, to take just one example of the work descriptions on the invoices.” [15 (ix)]
- “during re-examination Mr Jafar asked the appellant about business planning. The appellant set out an account of his assistance to a person interested in setting up a textile business in the UK and the business planning and marketing analysis he had conducted on his behalf, which consisted of finding clothes shops in Bournemouth town centre and shopping centre and asking store holders of what sold better, baby clothes or toddler clothes, all for the princely charge of £55 because the client was a friend. The appellant told me that he had not worked much longer than an hour on this project. I found the whole explanation of how this invoice had come about completely incredible.” [15 (ix)]
- “the appellant then moved on to another equally incredible tale of the assistance he had given to London kebab who had asked him how they could earn more money. He had advised them to relocate or to change decoration or use updated technology and to seek cheaper products to buy. The appellant had significant difficulty telling the tribunal the best place to locate a kebab shop and other factors that would need to be considered such as planning. He was asked about the IT aspect and it was clear that he had no idea at all about relevant technology because when he was asked for the name of the system which would bring up the name of a previous telephone caller, he said that the system did not have a specific name. He told me that there is only one system and it is called “telephone technology system” then “technological delivery system”, and that it is produced by a friend of his “you get in touch with him

and he set it up for you” the proliferation of such systems in everyday life, a simple adaptation of caller identity makes it unlikely indeed that the appellant’s friend is the only one able to install it. When asked why the owner of Lounge Kebab could not make his own assessment of where a shop should be better located, the appellant said that he was working very long hours and would be unable to do so because he was so busy, which rather put the lie to his need to do so in the first place”. [15 (x)]

- Although there was a lot of documentation the judge said there does not seem to payment by claimed businesses other than in cash which appears somewhat unusual. “The invoices provided by the appellant appeared to be often contemporaneous with the raising of the invoice which conflicts with what I have read in newspapers of providers of services having to chase clients for payment”. The Judge noted that there was no form of schedule correlating invoices and payments. He said that only one payment other than by cash was proffered to a name on the invoice and was identified during the course of the hearing. The Judge gave Mr Jaffar and opportunity of 15 to 20 minutes to have further look at invoices and bank statement and whether he and the appellant could find any further payments by means other than cash which could be attributable to an invoices in the bundle. The judge noted that after the exercise, the manuscript sheet set out 10 bank entries which correlate with invoices. Having looked at the identified payments the judge said they do not provide support suggested by their inclusion in the manuscript list. The Judge said that the appellant has not told him the truth about the payments of 3 July 2012 that he paid into his account at Lloyds Bank Eastleigh. The Judge considered the other evidence provided by the appellant such as letters and noted that there was a lack of specificity in these letters and that there was a certain similarity about the styles and content of them, for which coincidence could be an explanation. He noted that no clients attended the hearing to support the appellant.
  - The Judge concluded that having looked at the evidence in the round he is driven to the conclusion that the appellant has produced a paper trail which does not coincide with what actually occurred. He stated “it looked very much to me as though someone had simply looked at payments made into the appellant’s bank account and then produce invoices to match them so as to pretend that the payments into the bank were payments of those invoices. I have concluded that the appellant does not have a genuine business generating income to support him and his family. I have concluded that he must be earning money from some form of employment so as to support himself and his family.
4. The appellant’s grounds of appeal state the following which I summarise. The respondent’s case was essentially developed in cross examination. The First-tier Tribunal’s findings are at paragraph 15 and his conclusion that the payments into a

bank account over the two years is really one from employment as opposed to self-employment. However the deposits show that in no one-week or month are the same as the account shows extremely erratic deposits of different amounts at wildly different frequencies. This is perverse, the whole point about employment is that there is a contract for consistent provision of services at a fixed rate of pay-that is spotted simply do not evidence that. Rather the judge failed to consider that the very details of the deposits were commensurate with self-employment. The Judge rejected the appellant's explanation that the three amounts paid in one day were arbitrarily deposited from dividing one lump sum in favour of the fact that the deposits were in fact like this because they represented three different invoice amounts and each deposit was for the payment of a different invoice. Thus the judge's reasoning and finding at (xvi) is in complete contradiction to (xx). The appellant provided invoices for one year which totalled almost 100 pages. The appellant explained that he did this to show as a sample because it should be remembered that the respondent did not in their refusal originally make any allegation that suspicion arose from the invoices or bank statements before her. The judge failed to consider the appellant second bundle which contained up to date back statements which were corroborated by the pattern of deposits commensurate with self-employment business.

5. The Judge did not explain why he found the appellant's evidence incredible without explaining why it is incredible. In **Charuruka (13729)** the Tribunal stated that if an adjudicator is to express complete disbelief in the appellant's story it is for the adjudicator to state why this is so and not to rely on a generalised description of the evidence particularly when it is certainly arguable that the description was for example vague and inconsistent would not stand up to scrutiny. It is submitted that each error identified in itself a sufficient to be a material error of law, even if other reasons given are sustainable, this is because the Judge makes clear that the overall conclusion of adverse credibility is gleaned through the consideration of all the points in the round.
6. I heard submissions from both parties at the hearing the full notes of which are in my record of proceedings.

### **Findings and Discussion**

7. I have considered the determination, the grounds of appeal and the parties' submissions in my assessment whether there is a material error of law in the determination of Judge Creswell. The permission Judge merely stated that "the grounds disclose arguable errors in assessment of the evidence and hence the law".
8. On my own evaluation of the determination I find that the points raised by the appellant in his grounds of appeal are a mere quarrel with the findings of the Judge which he made based on the evidence before him which included the appellant's oral evidence. The grounds of appeal do not mention oral evidence which was before the Judge but simply relied on the documentary evidence provided and which was of great quantity as noted by the Judge in his determination.

9. The judge has given detailed consideration to all the evidence including the documentary evidence at paragraph 15 of his determination as set out above and which I will not repeat as it is self-explanatory.
10. The Judge found that the appellant's oral evidence lacked all credibility and gave full and cogent reasons for his findings. The Judge said that the appellant had very little knowledge of his business from which he claims to make a profit. It was open to the judge to find that the appellant's lack of knowledge about his business and businesses generally was not consistent with the appellant's evidence that he is in business in this country. These are sustainable findings by the Judge on the evidence before him.
11. The Judge also considered the documentary evidence in detail as set out at paragraph 15 and came up with many examples for why the documentary evidence was not credible. He found that the invoices and bank statements looked very much to him as though someone had simply looked at payments made into the appellant's bank account and then produced invoices to match them so as to pretend that the payments into the bank were payments of those invoices. The appellant is simply relying on copious documentation that he produced which the judge found not to be qualitative but only quantitative and stated that the appellant provided vast quantities of paper, but there was not a single piece of paper demonstrating the appellant's work. The judge also found that not one client attended the hearing to support the appellant's claim that he is in business. These are all sustainable findings on the evidence.
12. The Judge also found that the appellant provided no flyers or other forms of advertising or CVs produced, business plans et cetera. At the hearing the Judge asked the appellant to show him his business website, the appellant said that it has not been operational for a year and admitted there was no website. The Judge in the circumstances was entitled to make the finding that the appellant is not telling the truth about whether he is in business. The Judge was entitled to find on the evidence that the appellant is working in this country and does not have a business from which he earns a profit.
13. On the grounds of appeal it is stated that the appellant has deposited different amounts of money at different times into his bank account and that is indicative of self-employment. The Judge found otherwise and gave good reasons for his findings.
14. The Judge found that the appellant has created this fiction that he is in business to circumvent the Immigration Rules and pretend that has established business in the United Kingdom but is obviously working. The Judge was entitled to come to the conclusions that he did on the evidence before him both oral and documentary and there is no perversity in his findings.

15. The appellant has not demonstrated that the Judge fell into material error in his evaluation of all the evidence.
16. It necessarily follows from that the appellants appeal are dismissed.

**DECISION**

Appeals dismissed for all the appellants

Dated this 7<sup>th</sup> day of January 2015

Signed by,

Mrs S Chana  
A Deputy Judge of the Upper Tribunal