



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

Appeal Number: IA/33643/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 20th February 2015**

**Decision & Reasons Promulgated
On 6th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR CUMALI YURUK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N S Ahluwalia, Counsel

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Turkey born on 8th August 1985. On 11th March 2013 the Appellant's instructed solicitors applied on his behalf for leave to remain in order to establish himself in business under the Turkey-European Community Association Agreement. The Appellant's application was refused by Notice of Refusal dated 23rd July 2014. The Secretary of State noted that in order to succeed on the Appellant's application it was necessary for the Appellant to satisfy the requirements of paragraph 21 of HC 510 namely that he must demonstrate a genuine intention to establish

in business. The Secretary of State was not satisfied that that intention was shown.

2. The Appellant appealed and the appeal came before First-tier Tribunal Judge Khan sitting at Hatton Cross on 13th June 2014. In a determination promulgated on 1st July 2014 the Appellant's appeal was dismissed.
3. The Appellant lodged Grounds of Appeal to the Upper Tribunal on 10th July 2014. That application was refused by Judge of the First-tier Tribunal Davidge on 4th September 2004. Renewed Grounds of Appeal were lodged on 25th July 2014.
4. On 8th December 2014 Upper Tribunal Judge Eshun granted permission to appeal. Judge Eshun noticed that the grounds at paragraph 6 highlighted the Appellant's past experience in business and submitted that this was directly relevant to the question of whether his investment in the UK was a genuine attempt to take over an existing business. At paragraph 7 it was argued that the provenance of the investment was clear and that the judge's rejection of the credibility of the Appellant's investment and past experience was flawed.
5. On 24th December 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. Those grounds contended that the Respondent refused the application on the basis that the business plan was not genuine and that the judge had concluded on the evidence that the Appellant lacked the experience in the work of running a fish bar. The Rule 24 reply contends that that was a decision entirely open to the judge. Further it contends that the judge was not convinced of the provenance of the funds relied upon and that he had given valid reasons for this concern. In particular it was contended that there was no adequate evidence to support the assertion that the Appellant, with no past experience, could obtain better prices than his brother and that the Appellant had never run such a business in the past. In short it was contended that the judge had given sound reasons for rejecting the Appellant's claim.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Ahluwalia. Mr Ahluwalia is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State is represented by her Home Office Presenting Officer Mr Jarvis.

Submissions/Discussions

7. I am considerably assisted in this matter by Mr Jarvis intimating at the beginning of the hearing that he agrees with the criticisms made about the determination of the First-tier Tribunal Judge in the renewed Grounds of Appeal. He acknowledges that there has been a procedural irregularity and a failure to involve with later evidence that was produced and he considers that the correct approach is to set aside the decision and to

remit the matter to the First-tier Tribunal for re-hearing by any judge other than Immigration Judge Khan.

8. Mr Ahluwalia acknowledges he is grateful for the concession made by the Secretary of State and does no more than endorse that view and rely on the Grounds of Appeal.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

11. Obviously a judge's task is to a considerable extent made easier when there is agreement between the advocates as to the approach that I should take. However it is still for me to determine whether there is a material error of law. I am satisfied that having considered the Grounds of Appeal that there is. The Appellant explained in his witness statement that his past experience in business was relevant to the business he wished to enter into and I accept that just because the Appellant has never run a fish and chip shop in Turkey given his past work experience that cannot rationally be regarded as a basis for concluding that the Appellant could not run such a business in the UK or that this was not a genuine attempt to set up a business. His experience in running successful ventures is directly relevant to the question of whether his investment in the UK is a genuine attempt to take over an existing business.

12. Further the Judge of the First-tier Tribunal asserted that the Appellant had given no explanation as to why he was not part of the family business and why he had worked for other people. That is contradictory to the Appellant's evidence particularly his witness statement that he had worked in the family business between 2001 and 2004 and had then decided to leave the business to work in shops. He built up the relevant experience for the running of his proposed venture in the UK. There was a considerable amount of evidence produced by the Appellant which has not been scrutinised in depth seemingly by the First-tier Tribunal Judge including detailed documentation with regard to the provenance of funds held by the Appellant. The failure to provide proper and anxious scrutiny to these documents along with the failure to give due and proper consideration to the Appellant's previous work experience constitutes material errors of law which show that the decision of the First-tier Tribunal is unsafe. In such circumstances I set aside the decision of the First-tier Tribunal and remit the matter back to the First-tier Tribunal at Hatton Cross.
13. I would add that at the present time I am advised by the administration that listings for remits to Hatton Cross are not taking place and that such a date will be forwarded to the parties' legal representatives in due course. I conveyed this information to the legal representatives who were present.

Decision and Directions

The decision of the First-tier Tribunal contains a material error of law and is set aside. The matter is remitted back to the First-tier Tribunal sitting at Hatton Cross on a date to be fixed before any First-tier Tribunal Judge other than Immigration Judge M A Khan.

The following directions are given for the re-hearing of this matter.

1. None of the findings of fact are to stand.
2. The matter be heard before any First-tier Tribunal Judge other than Immigration Judge Khan sitting at Hatton Cross on a date to be fixed with an estimated length of hearing of three hours.
3. That there be leave to both parties to file and serve an updated bundle of documents and evidence upon which they seek to rely at the re-hearing of this matter at least seven days pre-hearing.
4. Turkish interpreter required.

No anonymity direction is made.

Signed

Date **20th February 2015**

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed

Date **20th February 2015**

Deputy Upper Tribunal Judge D N Harris