



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/12332/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 18 February 2016

Decision & Reasons Promulgated  
On 17 March 2016

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

ENTRY CLEARANCE OFFICER - ISTANBUL

Appellant

And

MRS OZLEM EKINCI  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms N Willocks-Briscoe, Home Office Presenting Officer  
For the Respondent: Ms L Turnbull (Counsel)

DECISION AND REASONS

1. The Entry Clearance Officer, now the appellant, has been granted permission to appeal the decision of First-tier Tribunal Judge Buckwell allowing the appeal of the respondent refusing her application under the immigration provisions relating to the Ankara Agreement.
2. The respondent is a citizen of Turkey born on 26 February 1982. She applied to the appellant for entry clearance in order to establish or operate a business under the Turkey-European Community Association Agreement (“the Ankara Agreement”).

3. The respondent wishes to take over an existing business, known as [ ]. She proposes to purchase an established business for the sum of £8,000. She will be the sole owner and there is a projected annual turnover amounting to £77,800. She also proposed to rent accommodation for her private residence. As the company is a limited company she will take a monthly salary in the amount of £800.
4. The relevant provisions applicable are set out in HC509 and as stated by the ECO an application under the Ankara Agreement provisions presupposes a right to take the benefit of the standstill clause. The relevant Immigration Rules applied by the ECO are as follows:

*“If joining an established business, that he will be bringing money of his own to put into the business; that he will be able to bear his share of the liabilities; that his share of the profits will be sufficient to support him and his dependant; or the actively concerned in the running of the business; and that there is a genuine need for his services and investment. The audited accounts of the business for previous years will be required to be produced, in order to establish the precise financial position. An entry clearance will not be issued where it appears that the proposed partnership or directorship amounts to disguised employment or where it seems likely that, to obtain a livelihood, the applicant will have to supplement his business activities by employment for which a work permit is required.*

*If establishing a new business in the United Kingdom on his own account, that he will be bringing into the country sufficient funds to establish a business that can realistically be expected to support him and any dependants without recourse to employment for which a work permit is required.”*

5. The Entry Clearance Officer gave various reasons for refusing the respondent’s application. There was a review by the Entry Clearance Manager who conceded that there was funding which was properly available to the respondent and that the concerns of the appellant were adequately addressed in that respect within the grounds of appeal. However, the Entry Clearance Officer remained concerned overall at the proposed transaction and noted that the respondent did not herself have experience of running a business. The Entry Clearance Manager also stated that the decision did not constitute an infringement of the human rights of the respondent with reference to the European Convention.
6. The Judge heard from the respondent’s husband and the vendor of the premises. He found that they gave evidence in a truthful manner. This was significant as the evidence accepted lent strong credence to the respondent’s intentions. He found that the vendor of the business gave credible reasons for being willing to sell the business to the respondent. He was satisfied that on the evidence that the respondent’s intentions are genuine.
7. The Judge held that the respondent currently holds a responsible university administrative post. Her husband, whose evidence he found credible, emphasised the degree of interest which the respondent has in culinary matters. In the light of

the oral evidence and the documentary evidence the Judge accepted that the respondent is capable of managing [ ] and that the business is viable.

8. The Judge found that the respondent's husband is currently employed and found him to be financially self-sufficient. He did not require the respondent to come to this country for financial reasons. The respondent has demonstrated a good reason for wishing to acquire [ ] in her own right. She was able to access all information about the business from Turkey and the Judge did not find it unusual that the respondent has not sought to visit this country to inspect the premises. Her husband was able to do that quite adequately on her behalf. It was for these reasons that the Judge allowed the appeal.
9. The appellant's appeal challenges the Judge's finding at paragraph 45 that the business is viable. The grounds submit that the judge failed to take account of relevant evidence which, if he had, would have prevented him from reaching such a finding and would have precluded him from finding that the ECAA rules and requirements had been met. This is because at paragraph 5 of the determination where the Judge outlined the substance of the application where the respondent was projecting annual turnover amounting to £77,800. The grounds submitted that there was no detail on how that figure was to be achieved. The evidence given by the current owner of the business and recorded at paragraph 35 was that the current takings exceeded £20,000 per annum. The exact figure is not specified but more importantly this discrepancy (and it must be a discrepancy because takings clearly in a café business equate to gross turnover) is not addressed at all by the Judge.
10. I find that the grounds reflect the third ground given by the ECO for refusing the respondent's application. Therein the ECO states as follows:

***“(3) Your share of the profits will be sufficient to support you and any dependant***

*The business that you intend to purchase has shown a turnover of between £63 to £65K GBP for the financial years to 2013 and 2014 and made profits on these of 6.5K and £7,048 GBP respectively. You have no experience in this field but I have stated that you expect the turnover in the first year to be £77,800 but still with a profit of £7,048 as per 2014's figures. You will have other charges such as accommodation and bills outside of the business and whilst you say that your husband works, this has not been evidenced. I am therefore not satisfied that your profits will be sufficient to support you and any dependants.”*

11. It is recorded at paragraph 35 of the determination that the Judge asked the witness, some questions of clarification. He confirmed that the current takings exceeded £20,000 a year with the business run, as now, as a café. The café had operated for five years. Ms Turnbull submitted that she had sought instructions and been told by the current owner that he did not give that confirmation in court and had not used the word “takings”. Ms Willocks-Briscoe argued that the current owner's profit of £20,000 a year was not reflected in the evidence. She relied on the Profit and Loss

Accounts for the year ending 31 May 2014 prepared by [ ] at pages 53 and 54 of the appellant's bundle. At page 56, the profit at 1 June 2013 was £15,315; at 31 May 2014 it was £22,393. She submitted that the ECO did not raise the viability of the business as an issue. She submitted that the judge did not engage with the reasons set out in paragraph 3 of the ECO's refusal.

12. I find that even if the current owner's profit of £20,000 a year was not reflected in the evidence, the profits at 1 June 2013 were not far off; and the profits at 31 May 2014 exceeded it. I find that the reasons given by the ECO as set out at paragraph 9 above concern the viability of the business the respondent wished to take over and whether the projected profit figures given by the respondent would be sufficient to support her and any dependants, in this case, her husband.
13. I bear in mind the positive credibility findings made by the Judge. The respondent's lack of experience was one of the reasons given by the ECO for questioning the respondent's projected profit figures. The judge considered it and accepted that the respondent was capable of managing the business. The ECO questioned the projected profit figures because the respondent would have other charges such as accommodation and bills outside the business. I note in the evidence recorded at paragraph 6, that the respondent said that private residential accommodation would be at a likely rent of between £300 and £500 each month. This evidence was accepted by the judge in his overall findings and has not been challenged.
14. Ms Turnbull submitted that the respondent's projected turnover was in respect of her evidence of the percentage increase of 2.36% projected by her. I note from the evidence that the respondent proposes to pay herself a salary of £800 per month. This equates to £9,600 a year. Her husband's income was said to be £13,655 a year. This gives the couple an annual income of £23,255 which is over and above the income level for a couple set out in the Immigration Rules. I find that the respondent and her husband can realistically support themselves on this income without recourse to employment for which a work permit is required.
15. Accordingly I find that the judge did not err in law in his conclusions. His decision to allow the respondent's appeal shall stand.

Signed

Date

Upper Tribunal Judge Eshun