



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/32897/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 7 July 2017

Decision & Reasons Promulgated  
On 23 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR IBRAHIM UZUN  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer  
For the Respondent: Miss E Daykin of Counsel

**DECISION AND REASONS**

**Introduction**

1. The appellant is Turkish by background but he is an Australian national. The appellant appealed to the First-tier Tribunal against the refusal of leave to remain

indefinitely, based on his five years employment on a work permit. That decision was on 25 September 2015.

2. The appellant's appeal was heard by Judge of the First-tier Tribunal Andonian (the Immigration Judge) on 14 November 2016. The Immigration Judge was satisfied that the appellant met the requirements of the Immigration Rules. In particular, the Immigration Judge was satisfied that the appellant's net income, and indeed his gross income, was above the level that was required to satisfy paragraphs 134 to 135 of the Immigration Rules. Paragraph 134 of the Immigration Rules allows a person to be given leave to remain on an application where he has spent a continuous period of five years lawfully in the UK and for the whole of that period he has been a work permit holder or a highly skilled migrant or falls within certain other categories of person. My attention was specifically drawn to sub-paragraph (iv) of that Rule which requires the applicant to provide certification from an employer in an applicable case, that the appellant has paid above the appropriate rate for the job as is stated in the Codes of Practice in Appendix J. In this case the Immigration Judge was satisfied that the appellant was indeed paid at the appropriate rate to qualify under that provision.
3. The respondent appealed the original decision, principally, because there was an arguable procedural unfairness in the way the Immigration Judge had approached the case. In particular, the respondent had been faced with an 800-page bundle on the morning of the hearing with, depending on which version of the facts you read, either only 30 minutes or only 45 minutes to prepare. However, there was an additional arguable error that was raised by the Immigration Judge granted permission to appeal (Judge of the First-tier Tribunal Caroline Andrew) which related to the extent to which the appellant's income, mortgage and car finance repayments were a relevant factor in determining the outcome of the criteria being satisfied.

### **The hearing**

4. At the hearing before the Upper Tribunal, Mr Bramble carried out a review of the file and as a result of that was able to go through the key documents in the case. He identified that there was a document dated 11 August 2014 from the appellant's employer (Albe Tekstil - a Turkish registered company) which indicated that as a package the appellant's salary, which was paid to the appellant was on a monthly basis, amounted to £2,200. The mortgage was paid by the company in the sum of £8,900 per annum and a car payment made of £4,000, but in addition the appellant received a weekly sum of £125. Mr Bramble explained that although these figures were not very well explained or set out by the appellant's employer, when he actually carried out a proper analysis of the figures, this translated to an actual annual salary on his calculations of £45,800, as had been set out in the letter of 11 August 2014. He was also of the view that there was nothing by way of the definition of "certification" in paragraph 134(iv) of the Immigration Rules which indicated that a letter would not suffice as certification, and on that basis, he was

prepared to accept that, although there was a procedural unfairness in the way the Immigration Judge had approached the hearing before the First-tier Tribunal, that procedural fairness was not causative of any material error of law. As a result of Mr Bramble's realistic acceptance that any procedural unfairness did not affect the outcome, the ultimate decision was the correct decision for the Immigration Judge to have reached.

5. I briefly called on Miss Daykin to respond. She was content to accept the representations made by Mr Bramble and to adopt his concession that the decision of the First-tier Tribunal was correct. Ultimately, whatever procedural irregularities there may have been, the decision was correct.

### **Conclusion**

6. I should say that I do not in any way intend to endorse the practice of serving large bundles of documents on the day of contested First-tier Tribunal hearings. Judges of the First-tier Tribunal are under significant pressure as to time and I am well aware how frustrating it is for the parties and their representatives to be faced with large quantities of material before the First-tier Tribunal without any proper opportunity parties or the judge to assimilate that material. In addition, it places the tribunal under significant pressure to conclude the hearing within the day allowed. However, I accept that in this case the information supplied before the First-tier Tribunal was sufficient to discharge the civil standard of proving that the appellant satisfied the criteria of paragraph 134 of the Immigration Rules.
7. I accept Mr Bramble's section on behalf of the respondent that there was no material error of law in the decision of the First-tier Tribunal.

### **Notice of Decision**

8. The decision of the First-tier Tribunal Judge to allow the appellant's appeal stands. The appeal to the Upper Tribunal by the respondent is hereby dismissed.
5. No anonymity direction is made.

Signed

Dated 21<sup>st</sup> of October 2017

Deputy Upper Tribunal Judge Hanbury

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 21 October 2017

Deputy Upper Tribunal Judge Hanbury