



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/00564/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 16 February 2018

Decision & Reasons Promulgated
On 6 March 2018

Before

Mr C M G OCKELTON, VICE PRESIDENT & UT JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HALIL KILIC

Respondent

Representation:

For the appellant: Mr M Diwyncz, Senior Home Office Presenting Officer

For the respondent: Mr D Byrne, Advocate, instructed by Drummond Miller, Solicitors

DECISION AND REASONS

1. The parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The appellant applied on 3 March 2015 for leave to remain to establish a business under the Turkey - European Community Association Agreement.

3. On 14 January 2016 the SSHD refused that application, referring to ¶4 of HC510, "... whether in light of [the applicant's] character, conduct or associations it is undesirable to permit him to remain".
4. The appellant's passport was found on examination:
 - to have had pages 9 and 10 removed;
 - to have a Netherlands visa application stamp hidden under a Taiwan visa on page 21; and
 - to have an Azerbaijan visa on page 22 which was not original to that page, and originally adhered to page 13.
5. The SSHD was also not satisfied that the appellant would be bringing into the country money of his own to establish in business, due to apparent discrepancies in documentation.
6. Designated FtT Judge J G Macdonald allowed the appellant's appeal by a decision promulgated on 8 February 2017.
7. The SSHD appeals to the UT on these grounds:

Ground one

The first issue was whether the appellant submitted a forged passport ... The importance of this is set out in the reasons for refusal letter, namely that reliance on such a passport "makes it undesirable for him to remain". The judge has not approached the question in this way, instead asking himself "the burden is on the Secretary of State to show the appellant did interfere with passport". This is not what the SSHD has to show in this case.

Instead the judge considers immaterial matters, such as querying why the appellant would alter his own passport, ignoring the point that it was agreed there had been such alteration. The judge did not consider the appropriate question of whether submitting a document which has been proven to be tampered with amounts to circumstances meaning was not desirable for him to be granted leave to remain.

Furthermore, the judge gives reasons why he finds that the appellant did not have anything to do with the tampering of the passport. That is irrelevant, given that the SSHD has not asserted that the appellant altered his passport. His passport has been altered ... the question is whether the appellant knew it had been. The judge failed to consider this point. The SSHD does not need to show the appellant altered his own passport, but that he knew it had been altered. This is the only reason given by the judge to find that the first ground is not made out at paragraph 25. Failure to address the proper questions render this finding wrong in law.

Ground two

Further, the judge materially erred in his assessment of the question whether the money the appellant used to purchase the business was indeed his money.

The judge has failed to give adequate reasons why the critical discrepancy in the evidence ... does not go against the appellant.

The appellant claimed that £10,800 was paid for property in Turkey. The amount received in the UK was £10,788. No explanation was offered as to why this was different, in fact the appellant did not know. The judge appears to have carried out his own calculation factoring in a commission cost of £25 and total costs of £165, but that does not answer the point and is not an explanation from the appellant ...

Therefore the judge materially erred by failing to adequately give reasons why the money was the appellant's, and perversely factored other amounts into the equation which did not emanate from the appellant's evidence.

Given this, and given the unsatisfactory explanation for why the appellant's passport was a forgery, the judge failed to conduct a holistic assessment of the appellant's credibility ... such that the SSHD cannot understand why the appeal was allowed.

8. The SSHD's decision and her grounds of appeal to the UT say that the passport was a forgery. However, Mr Diwyncz clarified that it is common ground that the passport has been tampered with, but it is not a forgery. He accepted that it had been for the SSHD to show that the appellant's conduct was such that it was undesirable to permit him to remain.
9. Mr Diwyncz sensibly conceded that the "discrepancy" identified in the second reason for refusing the application and at ground two was minor. The difference of £12 might easily be accounted for by a small variation in the exchange rate or by transaction costs. He accepted that this point added little to the SSHD's case.
10. The SSHD's grounds of appeal are somewhat garbled, and although Mr Diwyncz made rather more sense of them, nothing was left which rises above disagreement with factual findings which the judge was entitled to make, and for which he gave legally adequate reasons.
11. Ground two aims at the very high target of showing that the judge reached a perverse conclusion, but the evidence was eminently capable of being interpreted as the judge did. The amount of the financial difference is very small. The possibility of transaction costs is not outrageous speculation, but obvious comment, with some basis in the evidence (the judge refers to the documents before him).
12. Reading his decision fairly and as a whole, the judge plainly found not only that the appellant did not himself tamper with the passport but that he did not know it had been tampered with. The judge gave sensible reasons: it was not suggested to him that the appellant had anything to gain from the tampering; having travelled widely, the appellant's passport had not always been in his hands, so others had the opportunity to tamper; the changes made required expertise and dexterity which were beyond the appellant; and the appellant and his brother both impressed as

truthful witnesses. That last finding is expressed in relation to the second matter, but it plainly bears on both.

13. There was evidence by which the case might have been decided either way, but no error is shown in the judge coming down on the side he did.
14. The decision of the FtT, allowing the appeal brought by Mr Kilic, shall stand.
15. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

Upper Tribunal Judge Macleman

16 February 2018