Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/03683/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court	**Determination Promulgated**
On 15th August 2014	**On 9th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR HANIFI BOZDAG
(NO ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, ISTANBUL

Respondent

Representation:

For the Appellant: Miss M Chargar (Counsel)
For the Respondent: Mr N Smart (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Camp promulgated on 23rd April 2014, following a hearing at Birmingham on 16th April 2014 in which the judge dismissed the appeal of Hanifi Bozdag. The Appellant subsequently applied for, and was granted,

permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Turkey, who was born on 5th February 1972. He applied for entry clearance from Turkey in order to establish a business under the Turkey – European Community Association Agreement. His application was refused on 19th December 2012.

The Appellant's Claim

3. The Appellant's claim is that he has applied to establish a business in the UK under the Turkey – European Community Association Agreement, which contains a "standstill clause" which means that the UK may not impose conditions on entry for business applicants which are less favourable than those which were in force when the agreement came into effect in the UK in 1973. Instead, what had to be looked at were the provisions in HC 509.

The Judge's Findings

4. The judge was struck by the fact that the decision in relation to the Appellant had been "prepared from a template giving various options. Some options, in particular relating to audited accounts, do not appear to have been adequately selected or adjusted to the Appellant's situation" (para 3). This is clearly an unsatisfactory feature of the decision against the Appellant in this case. The judge also had regard to the Entry Clearance Manager's review dated 12th August 2013, which referred to the fact that the Appellant had been living in the UK illegally as an absconder for a number of years, and there was no evidence as to when he returned to Turkey.

5. Moreover, an education report provided in his application was forged as the document verification report made clear. In any event, there was a lack of evidence regarding the Appellant's experience in the line of business that he had chosen.

6. It was against this background that the judge made his findings of fact. Two matters in particular were relevant. First, that the Appellant had knowingly spent time illegally in the United Kingdom. Second, there was the production of a document which was known to be false. The judge concluded that the Turkey – European Community Association Agreement did not mean that business applicants who are Turkish nationals can disregard all the UK legislation, whether primary or secondary, passed since 1973 (see para 25). The Appellant did not meet the criteria laid down by Appendix FM or paragraph 276ADE of the Immigration Rules. His appeal was dismissed at all levels.

Grounds of Application

7. The Grounds of Appeal raise a number of issues. It is said that the judge admitted evidence of submission of alleged fraudulent document when the Respondent had failed to comply with the court's directions regarding service of a bundle of documents on the Appellant and his legal representatives. Second, the judge failed to have regard to the fact that the Entry Clearance Officer was bound to refer to provisions in HC 509 which were the 1973 Immigration Rules. Third, the judge made material errors in relation to dicta in the recent case of **Kop (Dishonesty Alleged – HC 510) [2012] UKUT 00264**. Fourth, the standstill clause did not exactly mean what the judge stipulated.

8. On 12th June 2014 permission to appeal was granted on the basis that the judge had admitted the document verification report but it was not clear whether the Appellant's representative had objected to the late service of the Respondent's documents.

9. On 26th June 2014 a Rule 24 response was entered to the effect that it was difficult to see where there was a procedural unfairness grounds error of law. Also the judge did not err in relation to the Ankara Agreement.

10. At the hearing before me on 15th August 2014 Miss Chargar, appearing as Counsel on behalf of the Appellant, submitted that she had taken some time to discuss a preliminary issue with Mr Smart, who appeared as a Senior Presenting Office on behalf of the Respondent. This issue was the service of the Respondent's bundle, which contained the document verification report and the allegation of false material. Mr Chargar submitted that the ECO's bundle was not sent to the Appellant. It was not sent to the Appellant's representatives either. It was not sent to Mr E Umer, who was Counsel appearing at the hearing on behalf of the Appellant. It was not sent to his solicitor, SH and Co Solicitors.

11. For this reason, the Appellant's representatives were unable to deal with the issues as effectively as they otherwise would have done. It was this that amounted to a procedural irregularity and a procedural error of law.

12. The skeleton argument by Mr E Umer did make it clear that they were not in receipt of the Respondent's bundle. Indeed, even at the hearing itself there was no Respondent's bundle available for them. If this was right, then the only course of action was to have this matter remitted to a First-tier Tribunal Judge again so that there is equality of arms and any allegation against the Appellant can be properly dealt with.

13. For his part, Mr Smart submitted that it was not clear that Mr Umer raised the question of non-service of the Respondent's bundle upon the Appellant's representatives. Whereas the application form was signed off by SH and Co Solicitors of Dudley Road in Birmingham, in Section 5, which contains the heading "representative details" (see page 7 of the form), there was no entry made of either Mr Umer or of SH and Co Solicitors. Therefore, the Respondent would have been at loss to know who to send the bundle to. If the Appellant was the architect of his own misfortune, or

if his legal representatives were responsible in this way, then there would not be a procedural error of law.

Error of Law

14. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of **TCEA [2007]**) such that I should set aside this decision. I am so satisfied for this reason. I have taken the opportunity of looking at Judge Camp's handwritten Record of Proceedings. This contains an entry, "A has not received documents." This is consistent with what Mr Umer, the representative on the day, stated in his skeleton argument, namely, they were not in receipt of the Respondent's bundle.

15. On the other hand, this Tribunal does have a bundle, and did have one at the time of the hearing. The question arises as to why this bundle was not served by the Respondent on the Appellant and his representatives. I am far from satisfied that the Appellant's representatives bear no blame for this.

16. At the very least, the Section with the heading "Representative Details" (see Section 5 at page 7 of the application form) should have been filled by a solicitor's firm making the application. Had that Section been filled the bundle would doubtless have been sent by the Respondent to SH and Co Solicitors.

17. Be that as it may, the net effect of this is that it is the Appellant who has found himself unable to deal with allegations of fraud, serious as they are, and given that this is the case, it must be right to set this matter aside, for it to be remitted back to a First-tier Tribunal to be heard by a judge other than Judge Camp, so that the Appellant is not deprived of the full effects of a proper hearing pursuant to Practice Statement 7.2. This I therefore now do.

Decision

18. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. I remit this matter back to the First-tier Tribunal to be heard by a judge other than Judge Camp. I should emphasise that the Appellant should not raise his hopes as there is much in the background to the case, not least the "legacy" application made at a time when the Appellant appears not to have been in the UK, that militates against him. This, however, must be a matter for the judge at first instance when this matter is heard again de novo.

19. This appeal is allowed.

20. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 8th September 2014