



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA 08413 2015

THE IMMIGRATION ACTS

Heard at FIELD HOUSE
On 26th April 2017

Determination Promulgated
On 8th May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE
Ms G A BLACK

Between

MR BULENT KAYRAN
NO ANONYMITY ORDER MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: MR I MAKA (Counsel)

For the Respondent: MR P ARMSTRONG (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant in this matter is Mr Kayran. I shall refer to the parties as “the appellant” and to “the Respondent” who is the Secretary of State. This is an error of law hearing. It comes before me for consideration as to whether or not there is a material error of law in the decision the First-tier Tribunal (Judge Flynn)(“FTT”) promulgated by on 18th August 2016 .

Background

2. The Appellant is a citizen of Turkey. He applied for leave to enter to establish a business under paragraph 31 of HC 509, in accordance with the Ankara Agreement. He wishes to start up a business selling ethnic products in Skegness.
3. The Respondent refused the application on the grounds that the appellant failed to show that he genuinely wished to establish a business, that he had insufficient funds to do so and that he would be actively concerned in the running of the business. Specifically the respondent found that the appellant was unable to explain how his forecast sales of £220,000 could be achieved in the first year. There was no evidence that he had been a businessman for 20 years as claimed, his annual profit for 2011 was 573 TL (£198.00), there was no evidence of savings of £41,000 and he had made no attempt to improve his English language skills since deciding to set up a business.

FTT decision

4. In a decision the FTT clearly and fully set out the evidence, submissions and her conclusions citing the relevant guidance in case law **Akinci(paragraph 21 HC 510-correct approach)[2012] UKUT 00266(IAC) [37]** and **EK(Ankara Agreement- 1971 rules- construction)Turkey[2010] UKUT 425(IAC) [36]**.
5. The FTT found that the appellant had not shown satisfactorily that he would be able to communicate in English to be able to run his business [40]. The FTT found that the appellant's business plan was inadequate in that it failed to show that he had conducted research into how he intended to achieve his proposed turnover of £220,000. He failed to name anything apart from Turkish beer and pastries that he intended to sell and had not carried out adequate research into potential competitors or customers [43-44]. The FTT found evidence lacking as to the source of the funds of £40,000 that the appellant proposed to invest in his business as shown in his bank statement [46]. The FTT considered the expert's evidence as to the appellant's businesses in Istanbul. It was asserted that he ran 6 market stalls and owned a number of properties whose leases and tenancy agreements were verified by the expert, who was a member of the Istanbul Bar [47]. As to the payment for a lease the FTT expressed difficulty in understanding why the lease had not been signed some 9 days after the deposit was paid. The FTT found inconsistency in the evidence of the lease for 48 market stalls run by the appellant, when it was claimed that he ran 6 stalls [49]. The FTT found the evidence of a cash payment for a lease signed in September 2015 purporting to lease out 42 market stalls to be lacking [50-52]. The FTT found that the appellant had not shown that he either had the funds available or the source of the funds for investment [52-54]. The FTT found that the appellant's brothers in general terms gave credible evidence but that it was of limited relevance since they had last lived in Turkey in 2003 and 2004. [54]. The FTT found that the appellant could not demonstrate that he had sufficient resources (by way of an estimated net profit of £12,000) to meet his costs and outgoings during the first year of trading [55-57].

Application for permission to appeal

6. In lengthy grounds the appellant argued that the FTT's delay in reaching a decision caused her to overlook matters of relevance. It was argued that the FTT erred by placing weight on an incomplete interview record which was quoted heavily by the FTT (para 5ii). There was no requirement for an applicant to speak English and the FTT was in error to find this a relevant factor. The FTT's findings as to the existence of a grocer were inconsistent. The FTT erred because she misunderstood the evidence of finances and was wrong to find inconsistencies as to the number of market stalls (para 6i & ii). The FTT failed to take into account the evidence of the expert (para 5i). The FTT was in error by expressing a negative view as to the delay of 9 days in the signing of a lease (para 5iii). The FTT expectations of evidence of the research conducted and shown in the business plan went beyond that envisaged in the Rules.

Grant of permission to appeal

7. Permission was granted by UTJ Allen who found arguable grounds in paragraphs 5 and 6 of the further grounds (as identified above). There was no merit in the argument as to the English language ability as the FTT was entitled to reach and make such a finding in the context of the ability to run a business.

Rule 24 response

8. The respondent opposed the application on the grounds that the FTT had directed herself appropriately and prepared a detailed, carefully considered and adequately reasoned determination. The issues raised amounted to disagreement with her findings and conclusions.

Preliminary issues

9. Mr Maka sought to make an application under Rule 22(4) Procedure Rules. I declined to hear this application on the grounds that the provisions in the Rules were not met as the FTT(IAC) was not included in the list of Tribunals and the application was not made within the correct time limits. Mr Maka did not pursue the matter further. He confirmed that he did not propose to make his application under Rule 15 at this stage given that this was an error of law hearing only and new evidence was not admissible.

Submissions

10. Mr Maka relied on the detailed grounds in support of the application and his skeleton argument. It was a matter of unfairness that the FTT proceeded to hear the appeal without having the full record of interview with the appellant. This had been drawn to the attention of the FTT. The respondent did not have a complete record. No application for an adjournment was made. The hearing proceeded on the basis that the record was incomplete. As a matter of fairness the FTT ought not to have placed weight on an incomplete document and the matter ought to have been the subject of a preliminary issue.

11. The FTT failed to consider the expert report who had confirmed that the lease payment was genuine. The FTT overlooked the content of the report and/or failed to give reasons for rejecting it. Her comments about the late signing were irrelevant and ought not to have been made. The FTT relied on a document that had been translated incorrectly in that it referred to 48 wooden boards which the FTT found to be inconsistent with the appellant's evidence that he had 6 market stalls. The FTT misunderstood the financial evidence and she did not raise this at the hearing. Mr Maka explained how there was a clear paper trail to support that the funds were available and which had been converted to US dollars.
12. Mr Armstrong relied on the Rule 24 response. The FTT had considered the expert report at [47] and quoted from the same. The question of weight was a matter for the FTT. No blame could be placed on the FTT for relying on a translation produced by the appellant which contained a mistake. That evidence was adduced by the appellant. As to the incomplete interview, Mr Armstrong submitted that no application for an adjournment was made by the appellant or for contact to be made with the ECO. The appellant had not raised concerns as to the content of the interview and the onus was on him to make an adjournment application. It was clear that the appellant agreed to proceed with hearing and no request for determination of a preliminary issue was made. The comment made about 9 days was not material to the appeal. The apparent misunderstanding of the finances was not material in the light of the fact that the FTT considered oral and other evidence of the appellant's business in Istanbul [15][23][33][28][40] and which she found to be inconsistent. There was sufficient evidence for the FTT to make her findings aside from the bank statements. In short the determination showed that the FTT had considered all of the evidence in the round and none of the issues raised were material but amounted to a disagreement.
13. Mr Maka clarified that the appellant's brothers had travelled to Turkey on several occasions in more recent years and their evidence was reliable. The FTT had imposed exacting standards to the evidence which was not consistent with the guidance in **EK** or **Acinki**. Mr Maka emphasised that there was no evidence that the appellant could not speak English, the FTT was wrong to find that he could not run a business, which was unrealistic given that he was buying an existing business and he could speak some English.
14. At the end of the hearing I reserved my decision which I now give with my reasons. It was accepted by both representatives that a hearing *de novo* would be the best disposal in the event that I found material errors in law.

Discussion and conclusion

15. I heard the detailed submissions from Mr Maka and have considered the grounds and skeleton argument. I have decided that there is no material error of law in the determination by the FTT. Even considering the points raised cumulatively I am satisfied that the FTT looked at all of the evidence in the round and reached a sustainable decision which is fully reasoned and clearly set out.

16. The appellant had every opportunity to make an application for an adjournment or for a determination of a preliminary issue on the subject of the incomplete record of interview and did not do so. There was no application made in advance of the hearing either. Clearly it would have been preferable for the whole record to have been adduced, but given that no concerns were raised as to the content or absence of content, I am satisfied that this is not a material matter.
17. The FTT did not err by relying on the translation of a document adduced by the appellant albeit that it was apparent after the hearing that the translation was incorrect. It was accepted in any event by the FTT that the appellant had 6 market stalls.
18. The FTT referred to the evidence from a member of the Turkish Bar Association at [47] and it is clear that she considered that evidence, that the appellant was the holder of 6 market stalls, the leases and tenancy agreements were genuine and that he owned a property from which he received income. Whilst accepting that the FTT did not specifically accept or reject the evidence of Mr Baglan, I am satisfied that she considered it and the question of what weight she attached was a matter for the FTT. I am satisfied that the FTT considered all of the evidence in the round in reaching her decision that she was not satisfied that the appellant had shown he had the experience, ability or resources to run a business.

Decision

19. **There is no material error of law disclosed in the decision which shall stand.**

Signed

Date 4.5.2017

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 4.5.2017

GA Black

Deputy Judge of the Upper Tribunal