



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/21399/2012

THE IMMIGRATION ACTS

Heard at Laganside Court Complex, Belfast
On 10th January 2014

Determination Promulgated
On 21st January 2014

Before

The Hon. Mr Justice McCloskey, President

Between

KEVSER BOZ

and

Appellant

ENTRY CLEARANCE OFFICER, ISTANBUL

Respondent

Representation:

For the Appellant: Huseyin Yilmaz (Sponsor)

For the Respondent: Mrs O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Kevser Boz, the Appellant herein, is the spouse of Huseyin Yilmaz (hereinafter "*the sponsor*"). This appeal arises out of a refusal by the Entry Clearance Officer, Istanbul ("*the ECO*") to grant the Appellant an entry clearance visa.

2. The application for the visa was made on 17th August 2012. The ECO refusal decision was made on 16th October 2012. Following a request for review, the decision was affirmed by the Entry Clearance Manager, on 10th May 2013. The ensuing appeal was dismissed by the First-tier Tribunal.
3. Given the course of the appeal, in which the parties' respective representatives adopted certain positions and made appropriate representations to the Tribunal, which served to illuminate the relevant factual matrix, it is unnecessary to delve into the minutiae of the application or its dual determination.
4. In order to succeed, the Appellant's application had to satisfy the requirements of Appendix FM of the Immigration Rules and, specifically, Paragraph EC-P.1.1. In summary, the rules stipulate that an applicant for entry clearance must provide a series of items of information, mostly financial in nature. These relate to matters concerning income, savings, tax returns and national insurance contributions. The requirements are both specific and exacting. The rules, *inter alia*, specify precisely what information is required and the form in which this information must be provided. With specific reference to the application culminating in this appeal, there are two significant requirements. The first is that the Applicant provide "*evidence of the amount of tax payable, paid and unpaid, for the last financial year*". The second is, in the case of a self employed sponsor, that "*the organisation's latest annual audit accounts*" be provided. In the context of this appeal, it is unnecessary to consider any of the other requirements.
5. In his representations to the Tribunal, the sponsor did not dispute that the entry clearance application had not included either of the aforementioned types of information. Thus it was, in effect, conceded that the application was not compliant with the Rules. While the sponsor advanced an articulate, credible and reasonable explanation for these failures, this, sadly, is of no avail, as it is well settled that the requirements of the Rules in such cases are mandatory, admitting of no exceptions. There is no "near miss" principle.
6. The Tribunal debated with Mrs O'Brien the so-called "flexibility policy". This is the subject of a judgment of the Upper Tribunal in Rodriguez (Flexibility Policy) [2013] UKUT 00042 (IAC), in respect whereof an application for permission to appeal to the Court of Appeal is pending. Mrs O'Brien did not dispute that, in principle, this policy applied to the Appellant's entry clearance application. Furthermore it was accepted that neither the Appellant nor the sponsor was alerted by the ECO to any deficiencies in the application prior to its determination. Thus no opportunity to address or remedy shortcomings was afforded. However, exchanges with both representatives quickly established that this was of no moment since, on the two relevant dates, viz (a) the date of the initial ECO decision and (b) the date of the Entry Clearance Manager's Review Decision, the sponsor was not in a position to provide the information required by the Rules. Furthermore, the material failures in the application were not matters of mere clarification or expansion.

7. The Tribunal, naturally, has some sympathy for the Appellant and the sponsor. The Appellant has been an active businessman in Northern Ireland for some seven years. He clearly pays his taxes and national insurance contributions and is contributing to the local economy. He has also saved wisely. He is evidently an upright, law abiding citizen. The sponsor and the Appellant married in Turkey some 2 ½ years ago and, since then, have had a fragmented married life, restricted to his visits to Turkey. One is also mindful of the substantial fee, £900, which he paid for the application. The present appeal illustrates two considerations of central importance in relation to entry clearance visa applications. The first is that they must be compiled with meticulous care. The second is that the applicant and sponsor must carefully and wisely select the date when the application is made. In the present case, the anxiety to submit the application for determination is understandable. However, this, in retrospect, is plainly the main reason for its rejection: the application should have been deferred until a little later.
8. The Tribunal is also bound to comment on two matters pertaining to the ECO's decision. The first is that neither of the written decisions is expressed with the necessary clarity or in the appropriate detail. The second, based on Mrs O'Brien's candid acknowledgement, is that the paper file compiled and maintained by the ECO was in a most unsatisfactory state. The Tribunal trusts that these significant shortcomings will be addressed and rectified in future cases.
9. Permission to appeal was granted on the basis that an arguable error of law existed relating to the Judge's comprehension of the financial evidence. No such error of law has been demonstrated.

DECISION

10. The appeal is dismissed and the decision of the First-tier Tribunal is hereby affirmed.

Seamus McCloskey.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Dated: 20 January 2014