



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/03768/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 February 2015**

**Determination
Promulgated
On 6 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

**MR YUNUS KORKMAZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam, Counsel instructed by Kuddus Kamal Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Turkey and his date of birth is 6 June 1988. He made an application on 13 June 2013 for leave to remain to establish himself in business pursuant to Rule 21 of HC 510 (in accordance with the Turkey-European Community Association Agreement Standstill Clause).
2. The appellant's case is that he intends to become a business partner with Mr Kelleci in an existing business, MK Barbers. He has funds to invest in

the business from the sale of motor vehicles and he has the necessary skills in order to work as a barber namely a kalfalik belgesi which is a pre-master certificate.

3. The application was made under paragraph 21 of HC 510. These were the Immigration Rules that were in force in 1973. Under the Turkey-European Community Association Agreement the UK may not impose conditions for business applicants less favourable than those in force in 1973. Paragraph 21 of HC 510 reads as follows:

“People admitted as visitors may apply for the consent of the Secretary of State to their establishing themselves here for the purpose of setting up in business, whether on their own account or as partners in a new or existing business. Any such application is to be considered on merit. Permission will depend on a number of factors, including evidence that the applicant will be devoting assets of his own to the business, proportional to his interest in it, that he will be able to bear his share of any liabilities the business may incur, and that his share of its profits will be sufficient to support him and any dependants. The applicant’s part in the business must not amount to disguised employment, and it must be clear that he will not have to supplement his business activities by employment for which a work permit is required. Where the applicant intends to join an existing business, account should be produced to establish its financial position, together with a written statement of the terms on which he is to enter into; evidence should be sought that he will be actively concerned with its running and that there is a genuine need for his services and investment. Where the application is granted the applicant’s stay may be extended for a period of up to twelve months, on a condition restricting his freedom to take employment. A person admitted as a business man in the first instant may be granted an appropriate extension of stay if the conditions set out above are still satisfied at the end of the period for which he was admitted initially.”

4. The application was refused by the Secretary of State in a decision of 8 January 2011. The appellant appealed and his appeal was dismissed by Judge of the First-tier Tribunal Oxlade in a decision that was promulgated on 17 July 2014. Permission to appeal was granted by Upper Tribunal Judge Kopieczek on 18 November 2014. The matter came before me on 7 January 2015 when I found that the judge had made a material error of law and I set aside the decision to allow the appeal. A copy of my decision is annexed to this decision. It can be briefly summarised. At the hearing the judge raised an issue that was not raised by the respondent. This was that there was no evidence that MK Barbers is an established business. The judge did not take into account material evidence which established that the business was established. The judge raised the issue but refused to admit evidence produced by the appellant on the point.
5. I adjourned the matter and made directions. The matter was relisted before me on 25 February 2015. The Secretary of State had failed to comply with the directions and I proceeded on the basis that there was no other issue taken by the Secretary of State other than those explicitly

raised in the Reasons for Refusal Letter. Those issues are whether or not the appellant has the necessary skills and whether or not there has been a transfer of funds into the appellant's account from a third party, Huseyin Gundogdu. There is also an issue in relation to the timing of the application. Both parties agreed that the hearing could proceed by way of submissions only.

The Appellant's Evidence

6. The appellant's evidence is contained in his witness statement of 27 March 2014 and can be summarised.
7. The appellant came to the UK as a visitor however when he was here he met Mehmet Kelleci and realised that there was an opportunity to start a hairdressing business. Mr Kelleci is the owner of MK Barbers. It took the appellant some time to prepare an application. Many barbers in Turkey work having been issued with a kalfalik belgesi (a certificate of pre-master) issued by the Ministry of Education. Mehmet Kelleci, had a barber's business in Turkey having been issued with one. In any event, the appellant has obtained further hairdressing qualifications from the Barber Academy in the UK.

The Evidence of Mehmet Kelleci

8. Mehmet Kelleci's evidence is contained in his witness statement of 3 April 2014 and can be summarised.
9. Many barbers operate in Turkey having been issued with a kalfalik belgesi. Mr Kelleci ran a barber's shop with the same in Turkey. Mr Kelleci wrote a letter which was submitted in support of the application in which he asserts he owns his own barber's shop which is trading in the name of MK Barbers in Dalston, London and he wished to take the appellant as a business partner. The appellant is an experienced barber and will be investing funds in his business.

Other Evidence

10. There is a letter from Barber Academy National which is undated. The author is D Reynolds and asserts that the appellant has great barbering skills and shaving skills and that they have observed his skills.
11. There is a letter from Huseyin Gundogdu of 2 April 2014. The original letter is in Turkish and it has been translated. Mr Gundogdu asserts that he bought vehicles from the appellant for 32,245 Turkish lira and that he paid the sum into the appellant's bank account.
12. There is a letter from the appellant's father Mr Bekir Korkmaz. The original was in Turkish and it has been translated. Mr Korkmaz asserts that he sold the appellant's cars for him to Mr Huseyin Gundogdu.

13. There is a short statement from Mr Yildiz. The original of this dated 1 April 2014 is in Turkish and it has been translated. Mr Yildiz asserts that he is the owner of a hairdressing business in Turkey and that he has a pre-master certificate. He asserts that in Turkey you can open such a shop and run such a business with a pre-master certificate.
14. There are a number of documents relating to the purchase of the vehicles, including a registration certificate relating to both a Ford and a KIA vehicle. There are tax documents relating to the vehicles and documents from the appellant's bank in Istanbul indicating that the funds were put into his account and subsequently transferred to his account in London.

Submissions

15. Mr Walker indicated that he relied on the Reasons for Refusal Letter and the issues raised therein. It was then decided that it would be appropriate to hear Mr Aslam's submissions first of all in light of the fact that Mr Walker did not have a full set of papers and had not seen my decision dated 12 January 2015 until just before the hearing.
16. Mr Aslam made submissions during which he referred me to the relevant evidence and the issues in the case. Mr Walker then went on to concede that there was evidence relating to the ownership of vehicles and in relation to the funds. He then went on to submit that the issues raised in the Reasons for Refusal Letter fall away when considering the evidence as a whole. It was clear that the Secretary of State did not consider all the documentation submitted by the appellant in support of his application.

Findings and Reasons

17. The appellant made the application on 13 June 2013. He indicated in his application that he wished to work with Mehmet Kelleci. He submitted a draft partnership agreement and a business plan and other documents. He submitted a second letter of 9 July 2013 including further documentation relating to MK Barbers. There is a letter from the appellant's solicitors of 11 July 2013 enclosing further documentation relating to the appellant's application.
18. There were no credibility issues raised by Mr Walker and I accept the evidence of the appellant and his witnesses. It is very clear that the documents were not before the decision maker and had they been it is likely that the application would have been granted. The secretary of state was not assisted by the piecemeal nature of the application. However, the appellant's evidence including the documentary evidence establishes on the balance of probabilities that the appellant has the necessary skills to trade as a barber. The appellant provided sufficient documentary evidence that he owned vehicles which he had sold to Mr Gundogdu and that 32,000 Turkish lira was transferred from his account in

Istanbul to the account in London. I take into consideration the fact that the appellant did not make his application until three days before the expiry of his leave. Considering the evidence as a whole I do not find that this undermines his credibility. No further issues were raised by the Secretary of State.

19. Having set aside the decision to dismiss the appeal, I remake it allowing it under the Rules.

No anonymity direction is made.

Signed Joanna McWilliam

Date 5 March 2015

Deputy Upper Tribunal Judge McWilliam