



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

Appeal Number: IA/24888/2012

THE IMMIGRATION ACTS

Heard at Field House

On 25th June 2013

Determination

Promulgated

On 1st July 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

RIDVAN AYKAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Daykin of Counsel instructed by VC Legal (UK)

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Metzger made following a hearing at Taylor House on 22nd March 2013.

Background

2. The Appellant is a citizen of Turkey born on 15th March 1990. He came to the UK having been issued with a visitor/student visa valid until 6th June 2012. A week before his visa expired he made an application, on 31st May 2012 for leave to remain in the UK in order to establish himself in business under the Turkey-European Community Association Agreement. This contains a standstill clause which means that the UK may not impose conditions for business applicants less favourable than were enforced when the agreement came into being in 1973. The application was therefore considered under paragraph 21 of HC 510.
3. The Secretary of State refused the application on 23rd October 2012 because she was not satisfied that the Appellant had a genuine intention to establish in business as a Pedicab driver as claimed. The Respondent did not believe that the Appellant had carried out proper research, failing to provide details of other Pedicab drivers to obtain information as to individual pricing structures and the services offered and how the Appellant intended to compete for business, which cast doubt on the Appellant's preparations for the proposal. Furthermore he had not shown evidence of research in respect of potential advertising methods and could not explain figures in his business plan.
4. The Respondent was not satisfied that the doctor's letter written in support of the application was genuine because it was in identical terms with another unconnected applicant who lived in an entirely different area. Neither of the letters was on proper letter headed paper. The timing of the application indicated to the Secretary of State that the Appellant was attempting to secure further leave in the UK rather than through a genuine desire to establish in business under the EC Turkey Association Agreement.
5. Finally, the Respondent was not satisfied that the Appellant had adequately demonstrated the origin of the funds in his account or that he had complete control of them.

The Judge's Determination

6. The judge, in a brief determination referred to the reported decision of Akinci [2012] UKUT 00266. Whilst he accepted that the Appellant's father had provided him with sufficient funds to meet the cost of the purchase of a Pedicab safety helmet and satellite navigation he was also not satisfied that the business plan was properly researched or how the projected earnings figure was arrived at. He noted that the Appellant had little or no command of English despite attending a six month course and there was no evidence to suggest that he knew the streets of London well. He had no relevant previous experience and he did not accept that he would be able to meet the bills arising and his living expenses. He concluded that the Appellant had not demonstrated a genuine intention to establish in the business as proposed or that there was a genuine need for the Appellant's services and investment.

The Grounds of Application

7. The Appellant sought permission to appeal on the grounds that the judge had ignored relevant evidence in reaching his decision. The Appellant had produced a bundle of evidence in relation to pricing and advertising options and had spoken to friends who were Pedicab drivers and the prices were based on these conversations.
8. Moreover the judge had failed to ask himself the right questions as set out in the case of Akinji. He had provided the relevant evidence but in any event had only applied for an initial period of twelve months in order to set himself up in business and was not to be judged in the same light as a person who joined an existing business or, having had an initial period of time, wished to stay to pursue established business purposes.
9. Permission to appeal was granted by Upper Tribunal Judge Renton on 16th May 2013 for the reasons stated in the grounds.
10. On 11th June 2013 the Respondent served a reply defending the determination and stating that the judge was entitled to find the Appellant's research to be extremely limited. Alternatively his lack of English, given the nature of the business was itself sufficient to dismiss the appeal.

Submissions

11. Miss Daykin relied on her grounds. She submitted that there was an extensive bundle of evidence provided by the Appellant which showed evidence of his research into the business, not been properly considered by the judge, who had ignored the oral and documentary evidence. For example, at paragraph 8 of the determination the judge had said that the Appellant's plan was to charge £5.00 per hour, eventually upping it to £8.00 per hour but, according to the business plan the intention was to charge at £5.00-£8.00 per mile. The Appellant had provided evidence to show that he had knowledge of the business. In particular she directed me to details of sightseeing tours and their prices which the Appellant had provided in the bundle. The Appellant had spoken to a number of individuals in the industry and had given evidence before the judge which it was incumbent on him to take into account. There was no requirement of any particular form of evidence or for corroboration of what the Appellant said.
12. With respect to the Appellant's command of English, he had provided evidence to show that he had done a course but in any event his level of English was sufficient for the purpose of the business since he would be depending on a satellite navigation system. He was not holding himself out as a tour guide.

13. Mr Bramble acknowledged that the determination was short but submitted that the judge had considered all of the key components of the Rule and had reached a decision open to him on the evidence.
14. He had noted the evidence in the Appellant's bundle and in the witness statement. The evidence of the Appellant's research was thin. The judge was correct to state that the plan emanated from the Appellant alone and printout pages from the internet did not assist him. The documents relied upon by Miss Daykin simply showed that there were Pedicabs in London doing tourist routes but there was no actual research as to what they were charging. It was not being argued that there were glaring omissions within this determination. With respect to his English the judge was entitled to find that it was inadequate.

Findings and Conclusions

15. Under Rule 21 of HC 510

“People admitted as visitors may apply for the consent of the Secretary of State to their establishing themselves 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 merits. 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 accounts should be produced to establish its financial position together with a written statement of the terms on which he is to enter into it; 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 businessman in the first instance 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.”

16. In this case the Appellant is intending to set up a new business and therefore the requirements in relation to joining an existing business do not apply to him.
17. In Akinçi the Tribunal held, inter alia, that a business plan must be realistic having regard to the nature of the enterprise.

18. The judge was entitled to make criticisms of the Appellant's business plan. Miss Daykin submitted that the judge had misunderstood the evidence as to the charging mechanism. It is right to say that the business plan refers to the Appellant charging between £5.00 and £8.00 per mile. However, in his witness statement the Appellant clearly said that, as indicated on his business plan, he had calculated that he needed to be working every day for eight hours for £5.00 per hour. His plan was to charge £5.00 and then to increase it to £8.00. The judge cannot be criticised for relying on the Appellant's own evidence in his witness statement. Indeed the discrepancy between the Appellant's evidence and that in his business plan in itself undermines confidence in the Appellant's grasp of how it is intended that he should work.
19. Miss Daykin made reference to the Appellant's research but in reality he has simply provided copies of documents from the internet showing sightseeing tour prices and a code of conduct for Pedicab drivers. The judge was entitled to say that the Appellant's level of research was limited.
20. As the Respondent stated in her reply, the fact that the judge found that the Appellant did not speak English is in itself a real difficulty for the Appellant. The judge found that he had little or not command of English despite attending a six month course. He did not take a test at the end of the course and when asked a question in English to see if he could understand during the hearing, the Appellant was unable to respond. Miss Daykin said that the Appellant was not intending to set himself up as a tour guide. He would also have the benefit of a satellite navigation system. However without basic English he would not be able to take instructions from potential customers as to where they wanted to go and what they wanted to see.
21. The question of the Appellant's credibility was raised in the refusal letter, namely the question of the doctor's letter, but this was not addressed by the judge. The omission is immaterial however since this appeal fails on the issues of whether the business plan is realistic, having regard to the nature of the enterprise. The judge was entitled to find that the plan was ill-researched and in any event the Appellant has little or no command of English which would make his work in the tourist industry virtually impossible.
22. There does not appear to be an issue as to the monies in the account in that the judge accepted that the Appellant's father had provided him with funds. However the presence of those funds in the account is not sufficient to meet the requirement of the Rule.
23. The grounds amount to a disagreement with the decision.

Decision

24. The judge did not err in law and his decision stands. The Appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor