Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen on the application of Erdem Lacin

Applicant

v

Secretary of State for the Home Department

Respondent

Before Upper Tribunal Judge Perkins

Application for judicial review: substantive decision

Having considered all documents lodged and having heard the parties' respective representatives, Mr H Kannangara of counsel, instructed by Direct Public Access Solicitors, on behalf of the Applicant and Mr J Anderson, of Counsel, instructed by the Government Legal Department, on behalf of the Respondent, at a hearing at Field House, London on 21 November 2019.

Decision: the application for judicial review is refused

My reasons are given in the transcript of the extempore judgement that is appended to this order.

Order

(1) I order, therefore, that the judicial review application be dismissed.

Permission to appeal to the Court of Appeal

(2) I refuse permission to appeal to the Court of Appeal because I see no arguable error in my decision.

Costs

(3) The applicant must pay the respondent's costs in the sum of £6,527.

Signed: **Upper Tribunal Judge Perkins**
Dated: **4 February 2020**

Applicant's solicitors:
Respondent's solicitors:
Home Office Ref:
Decision(s) sent to above parties on:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3.

IN THE UPPER TRIBUNAL

EXTEMPORE JUDGMENT GIVEN FOLLOWING HEARING

JR/3706/2019

Field House,
Breams Buildings
London
EC4A 1WR

21 November 2019

THE QUEEN
(ON THE APPLICATION OF ERDEM LACIN)

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

BEFORE

UPPER TRIBUNAL JUDGE PERKINS

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Mr H Kannangara, Counsel, instructed via Direct Access, appeared on behalf of the Applicant.

Mr J Anderson, Counsel, instructed by the Government Legal Department appeared on behalf of the Respondent.

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ON AN APPLICATION FOR JUDICIAL REVIEW

APPROVED JUDGMENT

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JUDGE PERKINS: This is an application for judicial review against the decision of the Secretary of State by an Entry Clearance Officer on 3 January 2019 upheld on administrative review on 10 April 2019 refusing the applicant entry clearance to the United Kingdom. Permission was granted on the papers by an Upper Tribunal Judge.

2. There are certain preliminary observations I need to make. Firstly, and this is trite but it is fundamental, I do remind myself that this is an application for judicial review. I am not concerned with what I would have done on the application for leave but whether the Secretary of State has acted irrationally in the sense of being "**Wednesbury** unreasonable" and that is a high threshold. This much, I think, is not in dispute.

3. There is a dispute about what documents actually were before the Entry Clearance Officer at the relevant time. Whether that is best formulated as a dispute about "what documents were there" or "what is the relevant" time is not entirely clear but I am reminded of the decision of the Court of Appeal in **The Queen on the application of Safeer v Secretary of State for the Home Department [2018] EWCA Civ 2518** and particularly the observations of Lady Justice Nicola Davies at paragraph 19 where Her Ladyship said the basic rule is clear, namely that where there is a dispute on the evidence in a judicial review application, then in the absence of cross-examination the facts in the defendants' evidence must be assumed to be correct. That is a tight rule and a hard one to dislodge. There are exceptions but they do not apply here and that is the approach I brought to this evidence.

4. There have been previous decisions about this application. There have been judicial review proceedings under JR 4982 of 2018 and they were withdrawn upon the Secretary of State agreeing "to reconsider his decision of 12 February 2018 within three months". I am satisfied that this must mean

reconsideration of the decision on 12 February 2018 on the information *then* available, not on the information that might have been produced since. I do not see how any construction other than that would permit it to be a reconsideration of the decision of 12 February 2018 rather than a reconsideration of another decision on different material. This is important and was a matter of dispute between the parties but I hope my position is clear and the reasons for it are sound.

5. In very, very broad outlined terms, the applicant says that he is an entrepreneur, that he has expertise in the manufacture, supply and fitting of products made from uPVC and that he spotted a gap in the market that he wants to exploit in the United Kingdom. The relevant Rule is at paragraph 32 of HC 509 and it is a requirement that the applicant shows that "the business can realistically be expected to support him and any dependant without the need to take employment". This Rule is very much less prescriptive than Rules that are now made in matters relating to entry clearance but that is the test that the respondent had to apply. It is not a requirement of the Rules that the application is supported with any particular business plan or indeed anything else in the sense of a prescribed document but the applicant chose to produce a business plan, it was considered by the Entry Clearance Officer and it was found wanting.

6. There are seven points of contention raised in the grounds. It is the applicant's case that his case was rejected irrationally. I do not agree. The first point is that the business plan and supporting documentation did not distinguish between a large order and a small order and the Entry Clearance Officer found this significant because the profitability of the operation depended on this distinction. Small orders would be sourced in the United Kingdom, large orders sourced in Turkey. Without an explanation of these terms the Entry Clearance Officer, in my judgment, cannot be

criticised for finding the application deficient. The grounds say that the words should be given simply their literal meaning but, with respect, that just will not do. These words do not have a literal meaning. They have a contextual meaning and that meaning was not given.

7. The second point concerns the applicant's relationship with a concern in Turkey called Sabir Plastics. It is the applicant's case that he was a shareholder and, I think, director or similar higher managerial servant of that company, that he parted with his former colleagues on good terms and intended to use Sabir Plastics as a major supplier of materials that he intended to use in the United Kingdom. Really, the applicant's case depends on Sabir Plastics being a viable concern. The Entry Clearance Officer was not persuaded about that it was.

8. The Entry Clearance Officer found two problems. The Entry Clearance Officer had made enquiries in open source documents. There was no website for Sabir Plastics and although the company was known to exist because it had been filing accounts for the last three years it had not had to pay any tax. The Entry Clearance Officer was surprised at the absence of any website and deduced from the absence of a website together with the failure to pay any tax that the company was just not doing very much, if anything at all. Clearly it exists, there is no doubt about that but the Entry Clearance Officer was not persuaded that it was a viable concern and that influenced the rest of the approach to the case.

9. I do not see any objection that can be made against that. Websites are now part and parcel of ordinary business at all sorts of levels and a company that has traded for three years without having to pay any tax is unlikely to be a major concern. This is a point taken by the Entry Clearance Officer and although the applicant very much disagreed I see no fault in the reasons given for finding that it was not a

reliable source of supply which was necessary to give credibility to the application as a whole.

10. The third point taken was that there was no formal agreement with Sabir Plastics. There was simply an indication of intent. The Entry Clearance Officer took the view that this was of such fundamental importance to the whole project that the absence of a more formalised agreement was a factor that tended to undermine the application as a whole. This is rational. It may not be the only view of the evidence but it is a permissible view of the evidence.

11. The fourth issue concerned the supply of materials from Turkey. The applicant had said that he could supply goods cheaply in Turkey and that getting them into the United Kingdom would only add between 1 and 3% to the total cost. That was something the Entry Clearance Officer felt able to check and the Entry Clearance Officer found that that was not right. The Entry Clearance Officer's enquiries revealed that necessary duties from importing from outside the EU would add more than the 1 to 3% stated to the overall price. This is something which cannot now be checked because the website cannot be found but this is an example of an assertion made by the respondent that in the absence of a compelling reason to reject it I have to and do accept. It is a further example of the plan not being satisfactory.

12. The fifth point concerned the absence of firm suppliers in the United Kingdom. Some enquiries had been made to suggest the kind of firms that could provide business and provide materials but there was no indication that there was any willingness to create a business relationship and there are obvious questions to be asked there. It may be that the kind of firms in the United Kingdom would be very happy to deal with another supplier. They may regard such a supplier as a competitor and a source that should not to be encouraged. I do not know, neither did the Entry Clearance Officer because the point was not addressed. This is something which, again, was a concern that was permissible.

13. The sixth point is criticism about the overall marketing strategy. These are findings made by the Entry Clearance Officer which are clearly within his discretion. There is nothing irrational about it. There was no clear definition between short-term and long-term goals. It was a feature of the case which did not impress the Entry Clearance Officer.

14. A similar point can be made about the analysis of competitors, which is the seventh issue. The Entry Clearance Officer was not satisfied proper regard had been had to the competition. That is a subjective judgment. Again, it may not be the only permissible view but I am wholly unpersuaded that it was one that was not open to the Secretary of State.

15. There are two points here where the additional material that has been found and may or may not have been before the Secretary of State to be considered could be important, in my judgment, not as important as it might first seem, but the difficulties are a list from Sabir of prices and a letter from Sabir about its intent to support the applicant. It is only relevant if Sabir is a concern to be reckoned with and I have already indicated that the Entry Clearance Officer was entitled to find that it was not and that is not in any way changed by a purported price list and a purported notice of intent but I am not satisfied, or rather I *am* satisfied that this was *not* before the Entry Clearance Officer when the decision was made and in any event, it is simply not a relevant consideration.

16. It follows therefore, individually and cumulatively, the applicant has failed to make out the criticisms and overall, I am entirely satisfied that the decision was permissible on the material available and I dismiss the application for judicial review.

17. The point was not developed in oral argument but it was suggested in the papers that the Secretary of State by the Entry Clearance Officer ought to have interviewed the

applicant. This is unsustainable. The obligation to interview, to the extent that it exists, is set out in the terms of a policy where the Secretary of State says that an interview will be provided when a matter cannot be decided on the papers. Here the Secretary of State decided that it could be decided on the papers and has reached a rational conclusion. So, the interview argument, which was not addressed orally, in my judgment adds nothing to the case.

18. That is the decision I have to make and that is my decision.

COSTS

19. I award costs which the applicant will have to pay in the sum of £6,527

Permission to appeal to the Court of Appeal

20. I refuse permission to appeal to the Court of Appeal because I see no error in my decision.

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