



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/02156/2013

THE IMMIGRATION ACTS

Heard at Field House
on 8 April 2016

Determination Promulgated
on 11 July 2016

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MUSLUM UGURLU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R Akther instructed by Duncan Lewis & Co Solicitors.

For the Respondent: Mr Duffy Senior Home Office Presenting Officer.

DECISION AND REASONS

1. On the 12 February 2016 the Upper Tribunal published its decision in relation to the making of an error of law by the First-tier Tribunal, a full copy of which appears at Annex A to this decision.
2. For the purposes of this heading the relevant part of the error of law finding is as follows:

The validity of the Deportation Order

11. This is not a matter upon which submissions were invited at the hearing before the Upper Tribunal or upon which a grounds of appeal seeks to rely but has arisen as a result of a 'Robinson' obvious point.
12. It is not disputed that the appellant's correct name is Muslum Ugurlu which has been used by the respondent in correspondence relating to his situation. It is not disputed that Muslum Ugurlu was convicted on his guilty plea of drug related offences for which he was sentenced to seven years imprisonment. It is not disputed that Muslum Ugurlu received a notice of intention to make a deportation order which he unsuccessfully appealed. It is not disputed that the Secretary of State was lawfully entitled to make a deportation order against Muslum Ugurlu when he became appeal right exhausted.
13. At paragraph 6 of the Panel determination the Panel note:
 6. On 16 April 2003, a letter was sent to the Respondent by the Appellant's solicitors, O'Keeffes, requesting revocation of the Deportation Order (F1 - Resp). There is some confusion surrounding this inasmuch as the only document entitled Deportation Order in the papers is the one dated 23rd December 2003 (H1 - Resp) which is not properly phrased inasmuch as it refers not only to the Appellant but to someone with a different name. However, it has not been disputed that there was a valid Deportation Order made, and, on 1st August 2005, O'Keeffes wrote again stating that the Appellant "is presently the subject of a Deportation Order", and requesting that he be allowed to remain.
14. If there is no valid deportation order it matters not what the solicitors have said in correspondence for they may have mistakenly believed a valid order had been made. It has not been shown that any such belief is sufficient to make an invalid order valid.
15. Even though this is not an issues discussed previously it does not prevent the Upper Tribunal raising an issue of jurisdiction of its own motion at this late stage.
16. The Panel were arguably incorrect when making the observation that the Order of the 23 December 2003 mentioned the appellant and another person. The exact terms of that Order are as follows:

HOME OFFICE

Home Office Reference U42389

Home Office Immigration and Nationality Directorate

IMMIGRATION ACTS 1971 AND 1988

IMMIGRATION AND ASYLUM ACT 1999

DEPORTATION ORDER

MUSLIM UGURLU

Whereas the Secretary of State deems it to be conducive to the public good to deport from the United Kingdom **MUSLIM UGURLU**, a person who does not have the right of abode within the meaning of the Immigration Act 1971, and whereas the said **MUSLIM UGURLU** is, accordingly, liable to deportation by virtue of Section 3(5)(a) of the said Act:

Now therefore in pursuance of Section 5(1) of the said Act, the Secretary of State, by this order, requires the said **STEFIELD AZARIAH KING** to leave and prohibits him from entering the United Kingdom so long as this order is in force.

And in pursuance of paragraph 2(3) of Schedule 3 to the said Act, the Secretary of State hereby authorises said **MUSLIM UGURLU** to be detained until he is removed from the United Kingdom.

Signed.

Minister of State

For and on behalf of the Secretary of State for the Home Department

Date: 23/12/03

Home Office
Queen Anne's Gate

17. There are two errors in the Deportation Order. The first of which is that the appellants name is not Muslim Ugurlu. It is Muslum Ugurlu. The second is that there appears no connection between Stefield Azariah King and the appellant. The operative part of the document contains the order of the Secretary of State for Sefield Azariah King to leave and prohibits him from entering the United Kingdom so long as this order is in force. It has not been shown there is an alternative order in force which correctly names the appellant or that an order in these terms, in the name of another, has any lawful effect upon the appellant.
18. The earlier 2002 appeal was against the decision to make a deportation order in the pre UK Borders Act 2007 regime and the refusal of the appeal against that decision remains valid. Unless a valid and lawful deportation order is signed the appellant cannot be removed under the relevant legal provisions and if there is no valid order there is nothing to revoke and so no lawful immigration decision against which the appellant can appeal.
19. If this is the case the Panel erred in assuming there was a valid order and a decision that conferred a right of appeal against a refusal to revoke. If the Order of 23/12/2013 is invalid there is nothing to revoke. The determination must be set aside on this basis and a lawful Deportation Order awaited if this is the case. If made under the automatic deportation provisions this will generate a right of appeal, unless certified, in relation to which further submissions and up to date evidence should be requested before any such order is made.

Discussion

3. It was accepted by all parties that the deportation order is defective in that the appellant's first name is Muslum and not Muslim and that there is no record of any connection between him and the individual known as Stefield Azariah King.
4. The misspelling of Muslum is clearly a typographical error and one that in itself will arguably have no material impact upon the validity of the deportation decision. The inclusion of the name King is, arguably, a more serious issue.
5. Mr Duffy provided a useful insight into the preparation of a deportation order which is based upon data recorded on the respondent's case management system. When a case worker is tasked to prepare a deportation order the names recorded on the system are automatically inserted into the draft document. In this case it is suggested that the name Stefield Azariah King must have been part

of the data entered by the respondent yet there is no evidence that this is a name used by the appellant, as an alias or otherwise.

6. Mr Duffy submitted that even though the operative part of the order was clearly defective the lack of challenge in the past by the appellant, or the raising of this issue, amounted to their acquiescence of the defect and acceptance that the deportation order applied to the appellant and should therefore be treated as a valid order.
7. In R (on the application of Nirula) v FTT (IAC) and SSHD [2012] EWCA Civ 1436 the Court of Appeal said that the Tribunal was entitled to take a point on its jurisdiction of its own motion. Indeed the Tribunal was well advised to air any doubts it had about its jurisdiction and invite submissions on that question and then decide it.
8. In Virk v Secretary of State for the Home Department [2013] EWCA Civ 652 it was held that although the SSHD had failed to raise before the First-tier Tribunal the issue of that Tribunal's jurisdiction to entertain a family's application for leave to remain, the Upper Tribunal was entitled to dismiss the family's subsequent appeal against the First-tier Tribunal's decision on the basis that the First-tier Tribunal had not had jurisdiction, notwithstanding that the point had not been raised below. In Virk it was said "Statutory jurisdiction cannot be conferred by waiver or agreement; or by the failure of the parties or the tribunal to be alive to the point". It was also said however that if the issue had not previously been raised then fairness required that the parties should be given the opportunity to address it.
9. Virk was followed in MS(Uganda) v SSHD [2014] EWCA Civ 50.
10. Miss Akter in reply submitted that there is no authority for the proposition that the failure by the appellant to be alive to this issue and/or to take proactive steps to raise the same had the effect of waiving the defect in the order. Mr Duffy was unable to refer the Tribunal to any authority supporting his position in relation to this point.
11. Authority for the proposition that "Statutory jurisdiction cannot be conferred by waiver or agreement; or by the failure of the parties or the tribunal to be alive to the point" is to be found in Virk.
12. The decision under challenge in this appeal is the refusal to revoke the deportation order and not an appeal against the deportation order itself. On the introduction of the Nationality Immigration and Asylum Act 2002 section 82 gave a person a right to appeal against an immigration decision. The term Immigration decision was defined and essentially included refusals of leave to enter, refusal of entry clearance, refusal of a certificate of entitlement, refusal to vary leave if the result of the refusal was that the person had no leave to enter or remain, variation of leave, revocation of indefinite leave, removals by way of directions under section 10 of the 1999 Act, a decision that an illegal entrant be

removed under schedule 2 of the 1971 Act, a decision to remove under section 47 of the 2006 Act (introduced in 2006) decisions to remove family, a decision to deprive a person of a right of abode, a decision to make a deportation order, and a refusal to revoke a deportation order.

13. Following the introduction of automatic deportation provisions in the UK Borders Act 2007 section 82(3A) also provided a right of appeal against a decision that section 32 (5) of the 2007 Act applied, which is not possible under the pre 2007 regime.
14. If a deportation order is invalid there can be no jurisdiction to entertain an appeal against a purported revocation decision as there is no valid order requiring the appellant's deportation and exclusion to revoke. The revocation decision must, therefore, also be invalid or have no effect.
15. The importance of accuracy in the drafting of the deportation order is clearly illustrated by the text of the order itself where it is written "Now therefore in pursuance of Section 5(1) of the said Act, the Secretary of State, by this order, requires the said to leave and prohibits him from entering the United Kingdom so long as this order is in force". This can have serious repercussions for an individual and it is reasonable to expect that the order correctly records the name of the person it is intended to apply too, and against whom the Secretary of State has exercised the power conferred upon her, in this section. Especially in light of the fact a person made the subject of a deportation order is entitled to receive a proper lawful copy of the decision.
16. In this case the order does not have the effect of advising Muslum Ugurlu of the making of an order for his deportation or exclusion from the UK during the duration of that order. It has not been shown by the respondent that such an order addressed to an unidentified third party can be taken as applying to the appellant just because this is what the respondent may have intended.
17. I find the deportation order, in so far as it purports to be an order for the deportation of Muslum Ugurlu from the United Kingdom, is defective and invalid and has no effect in law in requiring the appellant to leave the United Kingdom. I find as a consequence that as there is no valid deportation order the refusal to revoke the deportation order is invalid as there is nothing to revoke. As such there cannot be an appeal against the revocation decision.

Decision

18. **The First-tier Tribunal materially erred in law and that determination has been set aside. In light of the finding the underlying deportation order is invalid and any decision purporting to refuse to revoke the same has no legal standing/effect/validity, I remake the decision as follows. The Upper Tribunal has no jurisdiction as there is no valid decision against which the appellant can appeal. A lawful deportation order is awaited.**

Anonymity.

19. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 8 April 2016

ANNEX A



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/02156/2013

THE IMMIGRATION ACTS

Heard at Field House
on 12 February 2016

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MUSLUM UGURLU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R Akther instructed by Duncan Lewis Solicitors

For the Respondent: Mr K Norton Senior Home Office Presenting Officer.

ERROR OF LAW FINDING

1. This is an appeal against a determination of a panel of the First-tier Tribunal composed of First-tier Tribunal Judge KSH Miller and Mr B D Yates (non-legal member), hereinafter referred to as 'the Panel', who in a determination

promulgated on the 23 May 2014 dismissed the appellants appeal against the refusal of the Secretary of State to revoke a deportation order made against him.

2. The chronology is as follows:

1 January 1956	Appellant born in Turkey
2 June 1989	Appellant enters the UK using a false passport. Claim for asylum made which is refused but appellant granted 12 months ELR.
26 June 1996	His wife and two younger children having joined the appellant in the UK, they are all granted ILR.
23 July 1998	Appellant convicted of conspiracy to supply heroine on guilty plea. Seven years imprisonment and confiscation order in the sum of £12,000 made.
3 March 2011	Appellant served with Notice of Liability to Deportation.
28 December 2011	Notice of Intention to make Deportation Order served.
6 August 2002	Appeal against Notice to Make Deportation Oder dismissed.
16 April 2013	Appellant's representative requests revocation of the Deportation Order.
23 December 2003	Deportation order signed (under section 5(1) Immigration Act 1971).
1 August 2005	Letter from appellant's solicitors asked for appellant to be permitted to remain on compassionate grounds and highlighting the fact his wife and daughter Dilara had now been naturalised as British citizens.
27 November 2007	Respondent wrote to appellants solicitors referring to the fact it has always been the intention to deport the appellant following dismissal of appeal on 5 July 2002 and that the submissions made were not accepted as a fresh claim.
3 December 2012	New representatives wrote to the Secretary of State requesting that the appellant be permitted to remain in the UK. Claiming the appellant was unclear about his position and had an established family and private life in the UK.
29 August 2013	Further submissions made to respondent.
2 October 2013	Reasons for refusing to revoke deportation order issued granting the applicant an in-country right of appeal. It is stated that no exceptional circumstances have been made out which might justify the revocation of the Deportation Order.
1 May 2014	Appeal before the Panel at Taylor House.
23 May 2014	Determination promulgated dismissing the appeal.
12 June 2014	Permission to appeal to the Upper Tribunal refused by First-tier Tribunal Judge Foudy on basis the Panel considered the evidence with the required degree of care and the grounds amount to no more, at best, than a disagreement with the findings made.

12 August 2014	Renewed application for permission refused by Upper Tribunal Judge C Lane on basis the conclusions of the Panel have been arrived at following a thorough and even-handed assessment of the evidence. The Panel took into account the medical evidence and the severity of the appellants offending.
11 December 2014	Permission to bring judicial review to challenge the decision of Upper Tribunal Judge C Lane granted by the Honourable Mrs Justice McGowan on the basis it is arguable that the family circumstances of the appellant in this case, in combination with the length of delay in seeking to take action to remove amount to compelling circumstances.
9 January 2015	Order of Master Gidden in the absence of a request for substantive hearing, the decision of the Upper Tribunal to refuse permission to appeal is quashed.
28 January 2015	Permission to appeal to the Upper Tribunal granted by Mr C M G Ockelton, Vice President of the Upper Tribunal.
11 November 2015	Hearing adjourned as appellant's previous representative Blavo & Co were the subject of an intervention by the Solicitors Regulation Authority (SRA). Duncan Lewis have taken over. To list after 1 January 2016.
6 January 2016	Application for adjournment by Duncan Lewis on basis they had not been formally instructed and need to undertake a public funding assessment. Not opposed. Application granted to be listed after 6 February 2016.
12 February 2016	Error of law hearing. The task of the Upper Tribunal being that set out in section 12 Tribunals, Courts and Enforcement Act 2007.

3. An appeal against a deportation order has to be considered by reference to paragraph 390 of the Immigration Rules which is in the following terms:

390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:

- (i) the grounds on which the order was made;
- (ii) any representations made in support of revocation;
- (iii) the interests of the community, including the maintenance of an effective immigration control;
- (iv) the interests of the applicant, including any compassionate circumstances.

4. Other relevant provisions are to be found in paragraphs 390A - 392:

390A. Where paragraph 398 applies the Secretary of State will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors.

391. In the case of a person who has been deported following conviction for a criminal offence, the continuation of a deportation order against that person will be the proper course:

(a) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than 4 years, unless 10 years have elapsed since the making of the deportation order when, if an application for revocation is received, consideration will be given on a case by case basis to whether the deportation order should be maintained, or

(b) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of at least 4 years, at any time,

Unless, in either case, the continuation would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, or there are other exceptional circumstances that mean the continuation is outweighed by compelling factors.

391A. In other cases, revocation of the order will not normally be authorised unless the situation has been materially altered, either by a change of circumstances since the order was made, or by fresh information coming to light which was not before the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order.

5. Paragraph 392 has no application as the appellant has not been deported and remains in the United Kingdom.

Discussion

6. Although there is no specific mention of paragraph 390 in the determination it appears the Panel considered the requisite elements. It is noted that the appellant was sentenced to seven years imprisonment and the comments of the sentencing Judge at [43], 390(i) and (iii). Representation made in support of revocation were considered even if not detailed in the determination, 390(ii). The interests of the applicant are mentioned at [45].
7. It is noted at [42] of the determination:

42. It was accepted on behalf of the Appellant by Miss Akther that for the Appellant's appeal to succeed, we would have to find that there were "exceptional circumstances". In the case of *MF (Nigeria) v SSHD* [2013] EWCA Civ 1192, it was stated that "exceptional" means circumstances in which deportation would result in unjustifiably harsh consequences.
8. The Panel found the appellant and his wife not to be credible for the reasons set out at [41 (i)- (ix)] of the determination.
9. The chronology shows there is an issue in relation to delay in this case. The key findings at [44-47] are as follows:
44. In any event, maybe in part because of the above, as well as the fact that he was not living in one place, no effective action was taken to remove the Appellant. However, this does not mean, in our view, that because he has not hitherto been removed, the Deportation Order should now be revoked. – We accept that he has lived here for twenty five years. However, the fact that he has not in this time learned to speak English fluently is indicative of the fact that he has not integrated into society in this country in the way that might be expected of others.
45. Of course, were the Appellant to return to Turkey, it would have an impact, we accept, on his wife. However, as he have highlighted above, we do not accept all of her evidence, and we find it improbable that, as she claimed, she would neither go with him nor even visit him. We do not find that she requires his assistance because of her health needs. If she did, we are satisfied that there would have been evidence regarding this. We should say, moreover, that we do not accept that they have not even considered what plans would be made available in the event of the Appellant being removed.
46. Likewise, we do not consider that the position of the Appellant's son, Kenan, features heavily in this case, given the absence of evidence either from him or about him.
10. A number of issues have arisen in relation to the making of an error of law material to the decision to dismiss the appeal.

The validity of the Deportation Order

11. This is not a matter upon which submissions were invited at the hearing before the Upper Tribunal or upon which a grounds of appeal seeks to rely but has arisen as a result of a 'Robinson' obvious point.
12. It is not disputed that the appellant's correct name is Muslum Ugurlu which has been used by the respondent in correspondence relating to his situation. It is not disputed that Muslum Ugurlu was convicted on his guilty plea of drug related offences for which he was sentenced to seven years imprisonment. It is not disputed that Muslum Ugurlu received a notice of intention to make a deportation order which he unsuccessfully appealed. It is not disputed that the

- Secretary of State was lawfully entitled to make a deportation order against Muslim Ugurlu when he became appeal right exhausted.
13. At paragraph 6 of the Panel determination the Panel note:
 6. On 16 April 2003, a letter was sent to the Respondent by the Appellant's solicitors, O'Keeffes, requesting revocation of the Deportation Order (F1 - Resp). There is some confusion surrounding this inasmuch as the only document entitled Deportation Order in the papers is the one dated 23rd December 2003 (H1 - Resp) which is not properly phrased inasmuch as it refers not only to the Appellant but to someone with a different name. However, it has not been disputed that there was a valid Deportation Order made, and, on 1st August 2005, O'Keeffes wrote again stating that the Appellant "is presently the subject of a Deportation Order", and requesting that he be allowed to remain.
 14. If there is no valid deportation order it matters not what the solicitors have said in correspondence for they may have mistakenly believed a valid order had been made. It has not been shown that any such belief is sufficient to make an invalid order valid.
 15. Even though this is not an issues discussed previously it does not prevent the Upper Tribunal raising an issue of jurisdiction of its own motion at this late stage.
 16. The Panel were arguably incorrect when making the observation that the Order of the 23 December 2033 mentioned the appellant and another person. The exact terms of that Order are as follows:

HOME OFFICE

Home Office Reference U42389

Home Office Immigration and Nationality Directorate

**IMMIGRATION ACTS 1971 AND 1988
IMMIGRATION AND ASYLUM ACT 1999**

DEPORTATION ORDER

MUSLIM UGURLU

Whereas the Secretary of State deems it to be conducive to the public good to deport from the United Kingdom **MUSLIM UGURLU**, a person who does not have the right of abode within the meaning of the Immigration Act 1971, and whereas the said **MUSLIM UGURLU** is, accordingly, liable to deportation by virtue of Section 3(5)(a) of the said Act:

Now therefore in pursuance of Section 5(1) of the said Act, the Secretary of State, by this order, requires the said **STEFIELD AZARIAH KING** to leave and prohibits him from entering the United Kingdom so long as this order is in force.

And in pursuance of paragraph 2(3) of Schedule 3 to the said Act, the Secretary of State hereby authorises said **MUSLIM UGURLU** to be detained until he is removed from the United Kingdom.

Signed.

Minister of State

For and on behalf of the Secretary of State for the Home Department

Date: 23/12/03

Home Office
Queen Anne's Gate

17. There are two errors in the Deportation Order. The first of which is that the appellants name is not Muslim Ugurlu. It is Muslum Ugurlu. The second is that there appears no connection between Stefield Azariah King and the appellant. The operative part of the document contains the order of the Secretary of State for Stefield Azariah King to leave and prohibits him from entering the United Kingdom so long as this order is in force. It has not been shown there is an alternative order in force which correctly names the appellant or that an order in these terms, in the name of another, has any lawful effect upon the appellant.
18. The earlier 2002 appeal was against the decision to make a deportation order in the pre UK Borders Act 2007 regime and the refusal of the appeal against that decision remains valid. Unless a valid and lawful deportation order is signed the appellant cannot be removed under the relevant legal provisions and if there is no valid order there is nothing to revoke and so no lawful immigration decision against which the appellant can appeal.
19. If this is the case the Panel erred in assuming there was a valid order and a decision that conferred a right of appeal against a refusal to revoke. If the Order of 23/12/2013 is invalid there is nothing to revoke. The determination must be set aside on this basis and a lawful Deportation Order awaited if this is the case. If made under the automatic deportation provisions this will generate a right of appeal, unless certified, in relation to which further submissions and up to date evidence should be requested before any such order is made.
20. In the event a valid deportation order exists the pleaded grounds of challenge are considered below.

Ground 1 - Article 8 ECHR

21. This is the first of the pleaded grounds in which it is asserted there has been no finding as to whether the Panel accepts or rejects either family or private life in the UK. A number of elements are set out in the skeleton argument before the Panel as follows:

- The Appellant has been in the UK since 2nd June 1989.
 - 24 years and 10 months spent in the UK.
 - Appellant has never gone back to Turkey.
 - Has substantial family life in the UK with his British Citizen wife who is disabled and dependant in him for everyday needs (medical evidence contained in the HO bundle).
 - Appellant has 2 children. Also has grandchildren and nieces and nephews.
 - He has been usefully employed in the past.
 - Behaved well in prison (as noted in first determination).
 - He is full of remorse for his actions.
 - **Crime free for the past 15 years and 10 months.** Thus there is no evidence of a propensity to reoffend.
 - Over 10 years have lapsed since the signing of the Deport Order in December 2003.
 - The UK has been the Appellants home since 2nd June 1998. **For nearly 25 years the Appellant has resided in the UK and not been back to Turkey.**
22. It is also asserted in the ground that the Panel failed to address the risk of re-offending which is said is relevant to the proportionality test.
23. The Panel were aware of the evidence put before them, both written and oral but it is fair to say that there is no specific mention of the weight the Panel gave to the family and private life they accepted exists in the UK and the impact of this upon the assessment of the proportionality of the decision.
24. The issue re-offending is a relevant factor when assessing the interests of the community [para 390 (iii)]. There does not appear to have been any consideration of, or finding made, in relation this element of the appeal.
25. The importance of these factors can be seen by reference to the decision in Kaplan and Others v Norway (Application no. 32504/11) ECtHR (First Section) in which it was held that there was a breach of Article 8 in removing the claimant to Turkey despite a 1999 conviction for aggravated assault, in part because family life had been established before going to Norway, because of the burden on the youngest autistic child, because on the facts the offence was not that serious, but also because the authorities took no measures to deport the Claimant for about six years and apart from minor offences he had not offended again.

Ground 2 – Medical issues

26. It is pleaded that the Panel totally ignored the medical evidence available to them.
27. It is noted that the medical issues featured prominently in the order of the Honourable Mrs justice McGowan by reference to the personal family circumstances. The case before the Panel was that the appellant's wife needs the physical and emotional support of her husband for reasons set out in the representations and her witness statement of the 29 April 2014. It was also said that as a British Citizen Mrs Ugurlu should not be required to leave the UK in order to maintain a relationship with her husband. Miss Akther advised the

Upper Tribunal that this is, in reality, a family splitting case as Mrs Ugurlu will not travel with her husband if he was to be deported to Turkey.

28. At paragraph 4 of the Grounds for Permission dated 2 July 2014 it is asserted:
4. There was medical evidence before IJ Miller, to which he gave no consideration or mention of. There was additional medical evidence about to be submitted in the morning of the hearing, which the IJ declined to wait for.
29. This is an issue recorded at paragraph 11 of the determination in the following terms:
11. There was a bundle of documents, A1 - D24, submitted on behalf of the Appellant. In addition, Miss Akther had prepared a skeleton argument. She stated that there were medical reports due to arrive in respect of the Appellant's wife and son, Kenan. However, there was no application for an adjournment, and indeed, we would have been unlikely to have granted the same, given the fact that the case had been listed for hearing as long ago as the 4th December 2013. In any event, no reports arrived either during the course of the hearing or before we had concluded our deliberations concerning the case. None has been received since.
30. It is not disputed that no application for an adjournment was made. Miss Akther stated the Panel were in a hurry and not minded to wait but unless an application was made it is not known if it would have been refused although an indication by the Panel this may have been the case is noted. No explanation for the failure to provide detailed medical evidence in accordance with directions has been provided. There appears to have been an attempt to provide additional material, as Miss Akther indicated, which was sent by fax on 1 May 2014 at 9:50, ten minutes before the commencement of the hearing. It does not appear this was before the Panel.
31. The Tribunal has now had access to the judicial review bundle from which Miss Akther made her submissions. This had as an exhibit medical evidence by way of letters from the appellants wife's GP dated 1 May 2014, 15 August 2013 and 16 May 2013.
32. It is accepted there was some medical evidence before the Panel in the respondents bundle. The index to the appellants trial bundle in relation to medical evidence for the appellant's wife and his son, who has mental health issues, is said 'To follow'.
33. In the respondents bundle is a copy letter from O'Keeffe Solicitors dated 16 April 2003 stating the appellant's son Kenan is receiving treatment for a condition which is considered to be of a serious nature and that they have written to Camden and Islington NHS Trust to obtain the relevant information [R's bundle at F1]. A letter from the NHS Mental Health and Social Care Team at Camden, dated 11 April 2003 is to be found at [R' bundle G2] which states that following assessment of Kenan the probable diagnosis is that of Schizophrenia.
34. A copy of the letter of 16 April 2003 from the GP [R's bundle G5] states that the appellant's wife's disability results from untreated congenital dislocation of the

hip which has led to a shorter leg and that she is at increased risk of developing arthritis and walks with a limp.

35. At page M3 of the respondents bundle is a copy of the letter dated 15 August 2013 repeating the diagnosis of congenital dislocation of the hips which are said to have become arthritic. The third paragraph of the letter is in the following terms:

“Despite two sticks, she walks with difficulty. She reports it difficult to get in and out of bed and needs assistance to lift her right leg into bed. She needs help to turn over in bed. She gets assistance to get in the bath and to get dressed. She finds it painful to stand for any prolonged periods so needs others to do the cooking. She informs me that this assistance is currently provided predominantly by her husband.”

36. The comment in the determination at [45] that if the claimed dependency is genuine there would have been evidence of the same is suggestive of a failure of the Panel to consider this evidence, and that in the witness statements, on this issue. Similarly the comment in [45] in relation to Kenen is suggestive of a failure to consider the evidence made available. It is accepted the medical evidence is limited and some dated but this is not the Panels comment. The evidence also fails to set out in clear detail the reality for the family if the appellant is removed or provide a proper explanation or why the appellant’s wife is not willing to undergo a hip replacement operation which will cure/resolve her condition.
37. A further issue upon which the Panel were aware but failed to make findings is that in relation to the claim by the respondent that a substantial part of the delay in this case has been as a result of the fact the appellant absconded and could not be traced. This is denied by the appellant who claims that during the relevant period he remained at the same residential address known the respondent but no one came to see if he was there or to remove him. This may be relevant for in ZZ (Tanzania) v SSHD [2014] EWCA Civ 1404 when there was an extensive delay, the Court of Appeal took into account when dismissing the appeal that the Respondent was overworked and under-resourced and the fact the appellant had remained in the UK unlawfully.
38. Having considered the determination as a whole and the cumulative effect of the issues discussed above I find that the Panel have erred in law in failing to consider the evidence made available with the required degree of anxious scrutiny and in failing to make findings on material issues. The determination shall be set aside.

Directions

39. The following direction apply to the future management of this appeal:
- i) List for a Resumed (substantive) hearing before Upper Tribunal Judge Hanson sitting at Field House on Friday 8 April 2016 at 10.00AM. Time estimate 3 hours.
 - ii) A Turkish interpreter shall be provided.

- iii) The parties shall file an agreed indexed and paginated bundle containing all the evidence they intend to rely upon, no later than 4.00pm 25 March 2016. Witness statements in the bundle must be signed, dated, contain a declaration of truth, and stand as the evidence in chief of the maker who shall be tendered for cross-examination and re-examination.
- iv) Evidence not filed in accordance with the time limit specified, in 39(iii) above shall not be admissible without permission of the Tribunal. Such permission to be sought on written application to be made before the expiration of the specified period containing an explanation for the failure to comply with directions, the person responsible, the nature of the evidence that it has not been possible to file in time, the relevance of this evidence to the issues under consideration, whether the other party consents, the prejudice to either party in admitting or omitting the evidence, when the evidence will be available, and the effect of granting permission upon the hearing date.

Signed.....
Upper Tribunal Judge Hanson

Dated the 15 February 2016