



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01512/2019 (V)

THE IMMIGRATION ACTS

Decided at Field House via Skype
For Business
On 19th May 2021

Decision & Reason Promulgated
On 10th June 2021

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AZIZ DAGLI
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Kotas, Senior Presenting Officer

For the Respondent: Mr O Jibowu, of Counsel, instructed by Rogols Solicitors

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Turkey born on 25th February 1965. He came to the UK as a visitor in October 1989. He married a British Citizen, Ms Karen Cross, on 4th April 1990, and applied to remain as a spouse. His application

was granted, and on 17th March 1994 he was granted indefinite leave to remain in the UK.

2. On 17th October 2018 the claimant was convicted of an offence of grievous bodily harm and sentenced to 54 months (4.5 years) imprisonment at Leicester County Court. As a result of this conviction the Secretary of State served on him a notice of intention to deport on 7th December 2018. The claimant raised human rights grounds as to why he should not be deported, but the Secretary of State concluded that a deportation order should be signed against him, and this was done on 14th January 2019. The appeal against that deportation order was allowed on human rights grounds by First-tier Tribunal Judge Obhi in a determination promulgated on the 30th September 2019. Permission to appeal was granted to the Secretary of State by First-tier Tribunal Judge LS Bulpitt on 16th January 2020. On 15th June 2020 I found, in a decision on the papers, that the First-tier Tribunal had erred in law and set aside that decision for the reasons which can be found in my decision at Annex A.
3. In light of the need to take precautions against the spread of Covid-19, and with regard to the overriding object set out in the Upper Tribunal Procedure Rules to decide matters fairly and justly, this matter was heard via Skype for Business, a format to which neither party raised an objection. There were no significant problems of audibility or connectivity at the hearing once the claimant was resent the joining link to the hearing.
4. The matter comes before me now to remake the appeal. The parties both confirmed that there was no objection to the finding of an error of law on the papers applying Rule 34 of the Upper Tribunal Procedure Rules 2008 in light of the decision in R (on the application of JCWI) v President of the Upper Tribunal (IAC) [2020] EWHC 3103 (Admin).
5. In my error of law decision, I retained from the decision of the First-tier Tribunal the findings summarised at paragraphs 8 and 9 of my error of law decision.
6. Directions from Upper Tribunal Judge Gill dated 27th August 2020 required the claimant to inform the Upper Tribunal if the remaking hearing would involve witnesses giving oral evidence and whether an interpreter was required by 5th September 2020, and directed that any witness statements be served 10 days prior to the hearing. In my error of law decision I required that there should be skeleton arguments served and filed by the parties by 28th July 2020, and an agreed consolidated bundle serve 7 day prior to the remaking hearing. The claimant filed a consolidated bundle and a skeleton argument in accordance with these directions, and informed the Upper Tribunal that there would be witnesses giving evidence, but no need for an interpreter. No skeleton argument was provided by the Secretary of State, for which Mr Kotas apologised.

Evidence & Submissions – Remaking

7. The evidence of the claimant from his written statements and oral evidence is, in summary, as follows. He arrived in the UK with a six month visa to complete a language course in October 1989. He met and formed a relationship with a British citizen Karen Cross, now Dagli, and they were married on 4th April 1990. Karen had a daughter H, who was 6 years old when they married, and whom the claimant brought up as a child of the family. He obtained permission to remain on the basis of his marriage, and initially did unskilled work as a machine operator in two printers and a pork pie factory in Leicester and worked as a general labourer on building sites in Leicester. The couple had two children together: a boy, R, born in 1991 and a girl, B, born in 1992. The claimant has been known by the English name Ben, rather than Aziz his Turkish name, since before he came to the UK.
8. Sadly, the claimant's wife was then diagnosed with cancer of the uterus and had three major operations. He could not cope and started to drink excessively, and was convicted of a number of drink-driving offences, but after doing a drink-driving course he ceased offending in this way. He progressed to doing work as a joiner and Corian fabricator in Leicester and Rugby. His wife made a recovery from her cancer, and he moved to working for himself fitting kitchens and bedrooms for customers and as a subcontractor for companies. During the credit crunch he returned to work as a joiner for two companies and acquired skills in plumbing. He then worked for himself again designing and fitting kitchens, bathrooms and bedrooms. He has a good circle of friends in Leicester; prior to imprisonment he was a member of Northampton Archery Club and did work for homeless and animal welfare charities, and has been a kind and helpful neighbour as is reflected in the letters from friends supporting him remaining in the UK.
9. The claimant deeply regrets his criminal behaviour on 23rd September 2017, and says he will never offend again. In prison he completed courses in cleaning and IT skills. He is entirely integrated into British life as are all of his friends and family here. He was released from prison in January 2021 and has returned to live with his wife. Since coming out of prison the claimant has set up a new company fitting kitchens and bathrooms, and believes that he can establish himself well in this area again if permitted to remain in the UK. He has already started to obtain work and has money in a bank account relating to this business. He will use subcontractors and provide employment to others as he is getting older and cannot do it all himself. He is also planning to employ his son R to give him a sense of hope and purpose despite his debilitating medical condition, and has registered for PAYE to be able to do this properly. An email from the claimant's probation officer, dated 18th May 2021, confirms the records relating to the claimant show that he has complied with his conditions of release, has been in employment, and demonstrated a positive attitude during supervision.

10. The claimant says that he has no connections with Turkey and has only travelled there for the funeral of his father and for occasional holidays, and has equally had holidays in Spain, France and the USA. He says that the only work he did in Turkey, prior to coming to the UK, was in the army. He joined at 17 years, become a sergeant in the air force at the age of 18 years until he left when he came to the UK when he was 24 years old. It would not be possible to go back to this career. He says that he could not make a living in Turkey as all his connections and experience as a self-employed fitter are in the UK and he lacks paper qualifications and is nearly at the official Turkish retirement age of 60 years, and further he would not get a pension there as he has not worked for the past 30 years in Turkey. When he travelled to Turkey for his father's funeral in 2018 he saw that there were very high levels of unemployment even amongst young people, and he does not believe he would be able to support himself through self-employed work in his country of origin as no one would take him seriously at his age. He and his wife have only a few hundred pounds of savings to fall back on which would not suffice for him to be able to rent somewhere as 6 months or a year's rent is needed upfront in Turkey. The claimant accepts that he speaks Turkish but as he has no Turkish friends and has been in the UK for 31 years it is possible to tell that he does not and has not lived in Turkey for some time from the way he speaks.
11. The claimant says he could not imagine not living in the UK with his wife, the three adult children and 5 grandchildren: J aged 17 years from his step-daughter H and T aged 11 years from his step-daughter H; and M aged 9 years, R aged 5 years and I aged 3 months from his son R. They all live in Leicester, H and her partner and children live about half a mile away from the claimant and his wife; and R with his partner and children and B live about 12 miles away. They see each other a lot, almost every day.
12. The claimant says that he has suffered from depression since before he went to prison and for which he has been prescribed Fluoxetine, an anti-depressant both prior to prison and whilst in prison, and which he continues to take now. He argues that his mental health would also make it difficult for him to attempt to take on a new life in Turkey at his age. Ultimately, he does not believe he would survive if he had to return to Turkey with no family, no work, no home, no money and without any financial support from the Turkish government.
13. The claimant says that he also needs to remain in the UK to assist his son R with his life-long Crohn's disease. Before he went to prison he kept an eye on R and provided him with some work and ensured that he took his medication correctly. R has not coped well whilst he was in prison for 2 years and 3 months and is currently not compliant with his medication as he is having a mental breakdown, suffering from anxiety and drinking too much alcohol. When the claimant came out of prison everywhere was in lockdown so it was not possible for the claimant to immediately provide for

R, but since April 2021 he has set about sorting things out. He drives him to hospital for his appointments around once a month and checks he is taking his medication. Neither R nor his wife can drive. R comes to stay with the claimant and his wife for three nights of the week so as to give him and his family a break, particularly as his wife has a new baby and they want to protect the grandchildren (M, R and I) from seeing R when he is in a bad way. The claimant will also shortly be able to provide R with some work which will assist him with acquiring some self-respect. Due to R's medical conditions (anxiety and Crohn's which means he constantly needs the toilet and is often in pain) he has never had work except with the claimant.

14. The claimant says that his wife did her best with R whilst he was away but ultimately R needs his help. R's siblings cannot help as the claimant does as they have their own work and families: he is the only one who is self-employed and so is able to have the flexibility to give R the support he needs.
15. Medical notes from R's GP for May 2021 shows that he is currently suffering from a flare up of his Crohn's disease, for which he is awaiting further investigations, and also that he is failing to take his medication for this condition, and that he suffers from depression and anxiety with panic attacks for which he has been prescribed Sertraline. The notes also record that he is drinking a litre of brandy or whisky twice a week. The notes indicate that the stress of the deportation proceedings against the claimant are contributors to the worsening of his mental health and his failure to take his Crohn's disease medication. A letter dated 19th April 2021 from Dr Peerally of the gastroenterological department at Leicester University Hospital sets out that R has terminal Crohn's disease, meaning that it is a condition which will last his entire life. It also expresses concerns that R's is not managing his medication properly and instead of taking what was prescribed is buying potent steroid medication from the internet and taking it completely randomly. Dr Peerally has made a plan to gradually take R off these inappropriate drugs and replace them with safer steroids, and to do further investigations as R is still opening his bowels 6 to 10 times a day.
16. The claimant says that his wife could not live in Turkey as she cannot speak Turkish and has a long history of mental health problems. She is nearly 60 years old and has lived in Leicester all of her life. She works part-time for Sharps Bedrooms and could not live away from her children and grandchildren. She is emotionally and financially dependent on the claimant, and he on her. They own their own home without a mortgage. Whilst he was in prison his wife survived, in part, on money he got from selling his car and other savings he provided her with before starting his sentence. He was given additional bail to sort out his affairs to do this by the judge prior to serving his sentence.

17. Mrs Karen Dagli's evidence is, in summary, as follows. She is very upset at the thought of the claimant being deported from the UK, and could not imagine life without him. She could not leave the UK to live in Turkey because she could not leave her home, children and grandchildren as they are all very close. She says that she also could not adjust to living with the claimant in Turkey as she does not speak Turkish, or indeed any other foreign language, does not understand the society there, and could not work as she does in the UK. She has a job working three days a week booking appointments for designers to go to people's homes for Sharps Bedrooms. The claimant does not follow a Turkish lifestyle in any way. She and the claimant also need to remain in the UK to help her son R who has Crohn's disease, which causes him to suffer from fatigue and pain on bad days, and further he also suffers badly from anxiety and is drinking too much. She says she has tried to help R and is very worried about him, but it is only the claimant R accepts help from with his ill-health. No one else in the family could help R with his medical problems bar the claimant. She also helps R by looking after her granddaughter on a regular basis, and also helps her daughter H with childcare for her daughter T twice a week and at weekends if she has to work. Mrs Dagli also needs the claimant to survive financially. She struggled whilst he was in prison and has been in receipt of tax credits due to her low wage, and only has a small amount of savings of around £1000. She also suffers from anxiety, for which she takes medication, and two autoimmune conditions including a thyroid problems.
18. The claimant relies upon the report of Dr Marzio Ascione, chartered clinical psychologist dated 7th September 2019. Dr Ascione sets out his qualifications and confirms his duty to the court. Pertinent findings in the report are as follows: that the claimant is intellectually in the high average range but with characteristics of attention deficit hyperactivity disorder: that the claimant suffers from moderate level depression for which he has been prescribed Fluoxetine since October 2018; separation from his family is likely to cause the claimant's mental state to deteriorate, which, if untreated, would make it difficult for him to obtain employment; and the claimant is at low risk of re-offending in the community.
19. It is argued by the Secretary of State in the reasons for refusal letter and in oral submissions from Mr Kotas, in summary, as follows. He accepts there are no issues of credibility. It is simply a matter of applying the facts to the legal framework. The claimant has been sentenced to 54 months imprisonment so the public interest in his deportation will only be outweighed by the existence of very compelling circumstances over and above those described in the exceptions to deportation at 1 and 2 of s.117C of the Nationality, Immigration and Asylum Act 2002.
20. The more serious the offence committed the greater the public interest is in the deportation. It is argued that this claimant committed a very serious offence as he could have caused death and not just serious injury as he was

using his car as a weapon, and this must be given proper weight in the proportionality exercise.

21. With respect to the second, family life, exception to deportation it is argued that this is not met for the following reasons. It is not conceded that it would be unduly harsh for Mrs Dagli to accompany her husband to Turkey but no specific submissions were made on this point. It is however argued that it would not be unduly harsh for the claimant's wife to remain in the UK without him, and thus that the second exception cannot be met. This is because Mrs Dagli has her three children, two with partners, and five grandchildren near to her, and with whom she has almost daily contact, so she would not be alone. She owns her own home and so could continue to live there. So, despite her long marriage with the claimant, her anxiety and depression her situation would not be unduly harsh if he were deported.
22. With respect to the first, private life, exception, it is argued that whilst he might have some difficulties on return the claimant cannot show that he would have very significant obstacles to integration. It is argued that he would be able to establish a private life in Turkey within a reasonable period of time because he lived in Turkey for the first 24 years of his life, speaks Turkish and as it is not accepted he would not be able to work as there is no country of origin evidence that it is hard for older people to obtain work and he has transferrable skills.
23. It is also argued that there are no very compelling circumstances over and above these exceptions as the sad impact on the family of the claimant's deportation is simply the ordinary consequences of deportation. It is argued that the evidence before the Upper Tribunal lacks any sort of prognosis for R if the claimant is not there to provide him with help with his medication and appointments, and that practically he could get himself to the hospital. R did not himself give evidence. There is no direct caring role of the claimant for R, and there is no Article 8 ECHR family life relationships between the adults in the family. The fact that the claimant is at low risk of reoffending is simply not enough to meet this very high test in the context of his conviction and sentence of imprisonment.
24. For the claimant it is argued by Mr Jibowu that the first exception is met as it would be unduly harsh for family life between the claimant and his wife to take place in Turkey as he has no ties there ; he has not lived there for 30 years and would not be able to obtain work or accommodation there, and because his wife is a breadwinner for the family and could not work in Turkey, and because this would leave their son R, who is seriously unwell without their care; and also that their grandchildren would be without their care and support which in turn facilitates the claimant's step-daughter H in her work and R's partner in her work. It is argued that it would be unduly harsh for the claimant's wife to remain in the UK without him as they have a thirty year marriage, and in the context of her suffering from anxiety,

depression and two autoimmune conditions and having to deal with R alone when he does not respond to her as he does to the claimant.

25. It is argued by Mr Jibowu that the second exception is met as there would be very significant obstacles to the claimant's integration in Turkey due to his age; lack of job/work prospects; lack of accommodation; lack of family support and thus ultimate probable destitution in that country.
26. It is argued therefore that as the claimant meets the two exceptions to deportation, as he would have very significant obstacles to integration if returned to Turkey and because it would be unduly harsh both for his family to live without him in the UK or for his wife to live with him in Turkey, that there are compelling circumstances over and above those exceptions in part because two exceptions are met. In addition, it should be considered that the claimant is vital to R, as without him, whilst he has been in prison, R has slipped into a very bad and medically dangerous place. Other family members simply not able help, practically and due to not having the same relationship, and R's prospects would be dire without the claimant. The claimant remaining will not only safeguard R's health but also give him work which no one else has or would give him, and which is vital to his self-esteem. In the context where the offending was out of character and there is no possibility that he will reoffend, it is argued that the evidence shows that there are compelling circumstances over and above the exceptions and the appeal should be allowed.
27. At the end of the hearing I reserved my determination.

Conclusions - Remaking

28. The proper legal approach to the determination of this appeal is to firstly consider whether the claimant can meet either or both of the exceptions to deportation at s.117C(4) and (5) of the Nationality, Immigration and Asylum Act 2002. Secondly, I must conduct a balance sheet exercise to determine whether the claimant can meet s.117C(6) of the Nationality, Immigration and Asylum Act in which I balance the strength of the public interest in his deportation against whether there are matters over and above the exceptions and decide whether his deportation is proportionate thereby applying the test of whether there are very compelling circumstances over and above exceptions.
29. I find that the evidence from the witnesses is credible. There were no submissions to the contrary by Mr Kotas for the Secretary of State. The claimant and his wife both gave detailed answers to all questions; their oral and written evidence was consistent, and their evidence was consistent with each other and the documentary evidence submitted. I find there was no attempt to exaggerate their situation. I also find that the report of Dr Ascione is one to which weight can be given. It is written by an appropriately qualified expert and is one which complies with the standards for expert

reports. No submission was made by Mr Kotas that the report should not be given weight. I have also placed reliance on the GP notes and letter from Dr Peerally from Leicester Royal Infirmary dated 19th April 2021 with respect to R's ill-health.

30. I have retained from the decision of the First-tier Tribunal findings that in committing his criminal offence the claimant used his car as a weapon and could have killed the victim, and that the victim may have lasting injuries, and thus as a result the offence is clearly a serious one for which there is an obvious and strong public interest in his deportation.
31. I have retained from the First-tier Tribunal the following findings in the claimant's favour: that he entered a guilty plea (albeit at a late stage); that his actions in committing the index offence were very much out of character and he has expressed remorse; that he was a model prisoner and was on unconditional bail; that he has lived in the UK for over 30 years and is socially and culturally integrated in the UK; that he has no ties with Turkey and would have start anew if sent there; that he has a genuine and subsisting relationship with his wife and has a close and supportive family unit with his adult children and step-child and grandchildren; that the claimant's adult son, R, is unwell with Crohn's disease and is reliant on his father for assistance.
32. The private life exception to deportation at s.117C(4) of the 2002 Act has three requirements: firstly, whether the claimant had been lawfully resident for most of his life; secondly, whether he is socially and culturally integrated in the UK; and thirdly whether there would be very significant obstacles to the claimant's integration in Turkey. It is not dispute that the first and second requirements are met based on the retained findings from the First-tier Tribunal. I must consider whether the third element is met based on the evidence before me.
33. The key guidance on the test of very significant obstacles to integration is to be found in SSHD v Kamara [2016] EWCA Civ 813. In essence the test to be applied is whether if returned to Turkey the claimant would be enough of an insider to have a meaningful private life. The burden is on the claimant to show this, and the threshold is a high one as indicated by the word "very".
34. It is a preserved finding from the First-tier Tribunal that the claimant has no family or friends in Turkey, and has had no links with that country so would be starting anew. The claimant has no useful work experience to build on in Turkey, as his only work was in the Turkish army and I find that he would not be able to return to this at his age (56 years) and after this period of absence. The claimant contends that he would not be able to find work in Turkey due to his age, as he is nearing the Turkish pensionable age of 60 years, in the context of high unemployment. The Home Office Turkey Background Note of April 2021 records that the unemployment rate is 10.9%,

with over a fifth of the population living below the poverty line. I accept that obtaining work which would not result in him living in absolute poverty would be very difficult for the claimant on return to Turkey. He would have the benefit of speaking reasonable Turkish, but I accept his submission that his 31 year absence during which he has had no contact with the Turkish Diaspora in the UK will have left his language outdated in some ways and his manner of marks him as an outsider. I also find that no family member in the UK is in a position to support the claimant in Turkey: his wife has a small part-time job and receives tax credits; and his children are clearly not in well paid employment which would enable them to provide any significant help for the claimant financially in Turkey. However, I must consider also that the claimant has shown himself to be a resourceful man: working since he was given permission to remain in the UK in various unskilled capacities, and then developing skills in the making of kitchens and bathrooms, and indeed most recently taking steps to re-establish himself in his bathroom and kitchen fitting self-employed business in the UK after leaving prison.

35. Mr Kotas has accepted that the claimant would have difficulties in re-integrating himself in Turkey, but submitted that he would not have very significant obstacles to such integration. I find however that there are two additional factors which must be considered: the claimant's mental health and the context of his family life in the UK. The claimant suffers from moderate depression for which he is prescribed medication, and this condition existed both prior to his imprisonment, during and continues to the present day: this is his evidence, but it is also supported by the report of Dr Ascione. I find that the accepted tight family bonds in the UK with his wife of 31 years, adult children and grandchildren in the UK have facilitated the claimant psychologically in finding work and re-establishing his private life. The claimant himself identifies family and his mental health problems as matters pertinent to his not being able to work in Turkey in his statement of 13th May 2021 at paragraphs 7 and 8. I conclude that without these ties, in the context of his moderate clinical depression and the lack of any alternative support network Turkey, and given the degree of difficulty a man of his age would have in finding work in Turkey given the levels of unemployment in that country, a place which has become alien to him, and without formal qualifications, that the claimant would have very significant obstacles in finding work. I accept without work, accommodation would be all but impossible to obtain, and that other aspects of a private life would not fall in place for the claimant and find that he would be a real risk of destitution. Ultimately, I therefore conclude that the claimant meets this third aspect of the private life exception to deportation.
36. The test for the exception to deportation relating to family life at s.117C(5) of the 2002 Act requires that it would be unduly harsh to a partner or minor child for the claimant to be deported. There is no submission that this test can be met through a relationship with a minor child, the claimant's children

are all adults, so in this appeal the question is whether the claimant can show that it would be unduly harsh for his wife, Mrs Dagli, to have to go and live with him in Turkey and that it would be unduly harsh for her to remain in the UK without him whilst he is deported. Unduly harsh is an elevated threshold connoting something severe or bleak, as per MK(s.55 – Tribunal Options) Sierra Leone [2015] 223 (IAC), but this test is not one which requires some element of exceptionality: indeed as the Court of Appeal in HA (Iraq) v SSHD [2020] EWCA Civ 1176 have said it could potentially be quite commonly found to exist. Unduly harsh is not a test to be equated with very compelling circumstances, although in this appeal I must of course revert to this test in the final consideration.

37. Mr Kotas made no substantive submissions on whether it would be unduly harsh for the claimant's wife, Mrs Dagli, to have to go and live in Turkey with him. I find that it would be for the following reasons: she is a British citizen who has lived her whole life in Leicester and lives in an extended family situation with her three children all continuing to live very close by and with almost daily contact with them. Mrs Dagli provides care several times a week to two of her granddaughters to facilitate the work of their parents, and also assists with care of her adult son R several times a week to keep him away from his family when he is not in a fit state to be with them due to his physical and mental problems. Mrs Dagli speaks no Turkish or indeed any other foreign languages, and has had no contact with the Turkish Diaspora in the UK. She is 59 years old. She has a long-standing job which she wishes to continue doing in the UK, and I find she would not be able to obtain work in Turkey due to her lack of language skills. She has health problems: she suffers from anxiety and has two autoimmune conditions for which she receives treatment in the UK, and which would make adaptation to life in Turkey without language skills, the prospect of work, her children, grandchildren, friends and work impossible for her to cope with and thus unduly harsh.
38. Mr Kotas however did submit that it would not be unduly harsh for Mrs Dagli to remain in the UK without the claimant whilst he is deported to Turkey. In essence he argued that her close family network of children and grandchildren; her work; the fact that she owns her own home with no mortgage and thus will not be rendered homeless by the claimant's deportation means that her life in the UK could not be described as sufficiently bleak, and thus unduly harsh, without the claimant. I find however that this is to fail to consider the psychological impact of the claimant's deportation in the context of a marriage of 31 years. In her witness statement she says that her "world would fall apart if he is to be deported". I accept this evidence. Mrs Dagli suffers from physical and mental health problems, and her evidence is also that she has struggled to make ends meet financially from her three day a week job whilst the claimant was in prison. I find that she would not be in a position to afford to make regular visits to the claimant in Turkey to see her life partner. I accept, on the basis of her and

the claimant's credible evidence, she would be left alone to struggle with the care of her seriously psychologically and physically unwell son R, who does not respond to her and for whom she cannot offer work as the claimant can. I find that ultimately in the context of all of the evidence it can properly said that life in the UK without the claimant would be very bleak for Mrs Dagli and thus unduly harsh if he were deported.

39. The ultimate question in this appeal is whether the claimant can meet the test at s.117C(6) of the Nationality, Immigration and Asylum Act 2002. It is not sufficient that both of the above exceptions to deportation for those who have sentences less than four years are met, as this claimant was sentenced to four and a half years for his criminal behaviour. The question is whether there are very compelling circumstances over and above the exceptions at s.117C(4) and (5) of the 2002 Act. This is ultimately a proportionality exercise balancing the criminal behaviour and the very strong public interest in the deportation of foreign criminals against the impact of deportation on the claimant's private and family life ties to the UK. As per the discussion in HA (Iraq) v SSHD this is a test which will impose a very high threshold, when properly applied, and so be very rarely met.
40. An aspect of the public interest in the deportation of the claimant is, I find, diminished. This is the aspect of the public interest which concerns protection of the public. I find that the claimant poses a low risk of recidivism due to his genuine remorse, the index offence being found to be out of character, his good behaviour and constructive engagement with his time in prison, the evidence of compliance with his conditions on release from prison and the psychological evidence of Dr Ascione that the claimant poses a low risk of reoffending. However, the public interest contains two other important factors: maintaining the integrity of the immigration control system designed to deport foreign criminals and deterring other would be foreign criminals. Although, some consideration should also be given to the fact that the sentence is one of four years and six months, and so is at the lower end of those having to meet the s.117C(6) 2002 Act test under the statutory scheme the claimant has been convicted of a serious crime of violence which could have killed the victim and did in fact caused serious injury. When all of these factors are considered I find that the public interest in deportation must be given very serious weight.
41. On the balance sheet in favour of the claimant I weigh the fact that I have found, for the reasons I set out above, that he would have very significant obstacles to integration and that it would be unduly harsh to his wife for him to be deported, and thus that he is able to show that he meets both exceptions to deportation at s.117C(4) and s.117C(5) of the Nationality, Immigration and Asylum Act 2002. I find that over and above meeting the exceptions the high degree of the claimant's integration in UK society, his very long period of lawful residence in the UK, his total dislocation from his country of origin and particularly his genuine and subsisting 31 year

marriage to a British citizen are factors which go beyond the minimum requirements of the exceptions, and are exceptional and should be given significant weight.

42. In addition, I find that there is the consideration of the care and support the claimant provides to his adult son R. I do not find that there is a formal carer relationship, but I do find on the credible evidence of the claimant and his wife that there is, most unusually as R also has his own family, a family life relationship between the claimant and R. This is because, I find, there are more than normal emotional ties between them resulting from real, effective and committed support by the claimant, and thus family life applying the conclusions of the Court of Appeal in Rai v ECO Delhi [2017] EWCA Civ 320 and Kugathas v SSHD [2003] EWCA Civ 31.
43. The facts that R is suffering from serious life-long Crohn's disease, is abusing alcohol, failing to take the prescribed medication properly and dangerously taking drugs purchased from the internet are corroborated by documentary medical evidence from his GP and hospital doctor. I accept the credible evidence of both witnesses that it is only the claimant who has the relationship with R which means that he will listen to him about his medical conditions. I find this high degree of dependency, creating family life ties, exists because R spends three nights a week with the claimant and his wife due to his problems with Crohn's disease, anxiety and his inability to manage his medication in a rational way and his resorting to excessive and dangerous drinking of alcohol on a twice weekly basis which makes it highly undesirable for him to remain with his own partner and three young children, aged 9, 5 and three months. I find that now the claimant is out of prison and lockdown has loosened the claimant is starting to be able again to manage R's medication and to facilitate him attending hospital appointments which he needs for further investigations into his Crohn's disease. I find that it is only because of their father and son relationship that R is able to do this and that it is because of the special accommodations that the claimant makes because of this relationship and the fact that the claimant runs his own business, that R has been and will be able to do some work, and that this is important to his self-respect.
44. In these circumstances I find that in addition to the claimant being able to over and above meet the requirements of the two exceptions a factors that weighs strongly in his favour is the family life ties the claimant has with R, and the impact on R's health and R's own family and Mrs Dagli which his deportation would have, as they would be left to struggle coping with R without prospects of improving his compliance with his medication and providing meaning for his life for him through work.
45. In conclusion I must weigh the strong public interest in the deportation of the claimant who has committed a most serious crime of violence and spent four and a half years in prison against the right to respect for family and

private life of him as a person who can meet two exceptions to deportation, who has significant aspects of meeting those exceptions which I find to be properly over and above the minimum basis of meeting them, particularly his 31 year marriage to a British citizen, and who has in addition a family life relationship providing real, effective and committed support to his adult son R, and is uniquely able to assist R who is in a parlous physical and psychological condition. I conclude that it can properly be said that there are very compelling circumstances in this case, and that this is one of the rare and exceptional cases where the claimant is entitled to succeed in his appeal as deportation would ultimately amount to a disproportionate interference with his right to respect for his Article 8 ECHR rights.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal dismissing the appeal.
3. I remake the appeal by allowing it on Article 8 ECHR grounds.

Signed *Fiona Lindsley*
Upper Tribunal Judge Lindsley

26th May 2021

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Turkey born on 25th February 1965. He came to the UK as a visitor in October 1989. He married a British Citizen on 4th April 1990, and applied to remain as a spouse. His application was granted, and on 17th March 1994 he was granted indefinite leave to remain in the UK. On 17th October 2018 he was convicted of an offence of grievous bodily harm and sentenced to 54 months imprisonment at Leicester Country Court. As a result of this conviction the Secretary of State served on him a notice of intention to deport on 7th December 2018. The claimant raised human rights grounds as to why he should not be deported, but the Secretary of State concluded that a deportation order should be signed against him, and this was done on 14th January 2019. The appeal against that deportation order was allowed on human rights grounds by First-tier Tribunal Judge Obhi in a determination promulgated on the 30th September 2019.
2. Permission to appeal was granted to the Secretary of State by First-tier Tribunal Judge LS Bulpitt on 16th January 2020 on the basis that it is arguable that the First-tier Tribunal erred in not utilising the correct test, namely whether there are very compelling circumstances over and above those described in Exceptions 1 and 2, as required at s.117C(6) and instead applied a lower test of compelling circumstances.
3. In light of the need to take precautions against the spread of Covid-19 and with regard to the overriding object set out in the Upper Tribunal Procedure Rules to decide matters fairly and justly directions were sent out to the parties by email on 20th April 2020 seeking written submissions on the assertion of an error of law with a view to determining that issue on the papers, and giving an opportunity for any party who felt that a hearing was necessary in the interests of justice to make submissions on that issue too. No response was received from either party.
4. The matter came before me to determine whether it is in the interests of justice to decide this matter without a hearing and if so to determine whether the First-tier Tribunal has erred in law. I find that it is appropriate to determine whether there is an error of law on the papers given that: neither party has put forward any submissions objecting to proceeding in this way, the claimant is represented by Rogols solicitors who were served with the directions as well as his having been provided with a copy personally; and given that more than six weeks has elapsed since the directions were sent out, and compliance with the directions should have taken place within four weeks.

Submissions – Error of Law

5. In the grounds of appeal it is argued by the Secretary of State, in summary, that the First-tier Tribunal erred in law in applying the wrong legal test when making findings and failed to give appropriate weight to the claimant's circumstances and the public interest, in accordance with the case law. As the appellant has been sentenced to 54 months imprisonment the public interest in his deportation will only be outweighed by the existence of very compelling circumstances over and above those described in the exceptions at 1 and 2 of s.117C of the Nationality, Immigration and Asylum Act 2002. Although this correct test is set out at paragraphs 13, 37 and 44 of the decision it is not applied when the test is implemented at paragraph 52 of the decision, as at that point only "compelling circumstances" are mentioned. The more serious the offence committed the greater the public interest is in the deportation, see MS [2019] UKUT 122. It is argued that this claimant committed a very serious offence as he could have caused death and not just serious injury as he was using his car as a weapon, and this was not given proper weight in the proportionality exercise. It is also argued that the four compelling circumstances identified were insufficient as: the impact on the family was simply an ordinary consequences of deportation; although the claimant is found to be integrated in the UK it was wrong to find he lacked ties with Turkey when he had lived there until he was 24 years old, he had visited a number of times, he had work skills he could apply there, is fit to work and can presumably speak Turkish. Although the claimant has lived in the UK for 30 years he lived in Turkey for 24 years prior to this. The demanding test set out by the Court of Appeal in NA (Pakistan) is not met on the facts of this case.
6. There is no Rule 24 notice and no submissions are put forward by the claimant in relation to the issue of error of law in response to the directions.

Conclusions – Error of Law

7. At the beginning of the "Findings" section, at paragraph 37 of the decision, the First-tier Tribunal sets out a very clear and correct self-direction that this appeal can only succeed if "there are very compelling circumstances over and above those described in Exceptions 1 and 2", and notes that this creates a particular hurdle to the appellant. The First-tier Tribunal Judge reminds herself again with respect to this test at paragraph 44 of the decision. I do not find that it is significant that the "very" is missing at paragraph 49 of the decision. The First-tier Tribunal also correctly adopts the balance sheet approach, placing reliance on the decision in Hesham Ali [2016] UKSC 60.
8. The First-tier Tribunal notes that the claimant had used the car as a weapon and could have killed the victim at paragraph 37 of the decision and so fairly sets out the seriousness of his criminal offending and the force of the public

interest at the start of the findings section. At paragraph 51 there is a reminder that the victim of the attack may have lasting injuries.

9. In the claimant's favour, in summary, it is found as follows: that he had entered a guilty plea (albeit at a late stage); that his actions in committing the index offence were very much out of character and he has expressed remorse; that he was a model prisoner and is on unconditional bail; that he had lived in the UK for 30 years and is socially and culturally integrated in the UK; that he has no ties with Turkey and would have start anew if sent there; that he has a genuine and subsisting relationship with his wife and a close and supportive family unit with his adult children and step-children and grandchildren; that the claimant's adult son, R, is unwell with a chronic condition and is reliant on his father for assistance and that having to rely upon adult care services would not be the same for him as being helped by the claimant, the father he knows and trusts.
10. I do not find that it has been show by the Secretary of State that any evidence is missing from the consideration by the First-tier Tribunal. The question is whether the "very compelling circumstances" test was properly applied to the facts of the case by the First-tier Tribunal, and thus whether the decision of the First-tier Tribunal proper explains how there are very compelling factors over and the exceptions to deportation.
11. Whilst the public interest may be somewhat diminished on the facts of this case in relation to protection of the public, as it would appear that there is a low risk of recidivism due to claimant's remorse and the index offence being found to be out of character, the public interest in maintaining the integrity of the immigration control system designed to deport foreign criminals and in deterring foreign criminals remains an extremely weighty factor.
12. I find that it cannot be said that this decision is a sufficiently reasoned application of the correct test for deportation for the following reasons. The private life exception to deportation involves three factors: firstly, whether the claimant had been lawfully residence for most of his life, secondly whether he was socially and culturally integrated in the UK, and thirdly whether there would be very significant obstacles to the claimant's integration in Turkey. The first and second requirements are clearly found to be met by the First-tier Tribunal, but the third element is not addressed, as having to start a new with no ties is not the same as having very significant obstacles to integration. As such it is not found that the private life exception to deportation can be met by the claimant in the decision. The test for the exception to deportation relating to family life requires that it would be unduly harsh on a partner or minor child. There is no finding of undue harshness in relation to any such family member, or, going beyond the wording of the exception, in relation to the adult child family members. As there is no finding that the family life exception is met. There is no evidence not considered in relation to these exceptions which is explicitly found to be

a similar weighty significance. I find that the decision is therefore insufficiently reasoned in relation to the proportionality exercise that must be carried out in a deportation case such as this. There is no finding that an exception is met and no reasoning as to why there is something very compelling above that exception; or alternatively there is no explanation as to why the facts of the case, whilst not meeting an exception, show very compelling circumstances over and above the exceptions.

13. I preserve the factual findings of the First-tier Tribunal summarised at paragraphs 8 and 9 above, but set aside the decision allowing the appeal.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal dismissing the appeal but preserve the findings as indicated at paragraph 13 above.
3. I adjourn the remaking of the appeal.

Directions - Remaking

1. Having regard to the Pilot Practice Direction and the UTIAC Guidance Note No 1 of 2020, the Upper Tribunal is provisionally of the view that the forthcoming hearing in this appeal might properly be held remotely, by Skype for Business, on a date to be fixed within the period **July to September 2020**.
2. **No later than 14 days** after these directions are sent by the Upper Tribunal (the date of sending is on the covering letter or covering email):
 - (a) the parties shall file and serve by email any objection to the hearing being a remote hearing at all/by the proposed means; in either case giving reasons; and
 - (b) without prejudice to the Tribunal's consideration of any such objections, the parties shall also file and serve:
 - (i) Skype contact details and a contact telephone number for any person who wishes to attend the hearing remotely, which might include the advocates, the original appellant or an instructing solicitor; and
 - (ii) dates to avoid in the period specified.

3. **If there is an objection to a remote hearing**, the Upper Tribunal will consider the submissions, and will make any further directions considered necessary.
4. **If there is no objection to a remote hearing**, the following directions supersede any previous case management directions and shall apply.
 - i. **The parties** shall have regard to the Presidential Guidance Note: No 1 2020: Arrangements During the Covid-19 Pandemic when complying with these directions.
 - ii. **The parties** shall file with the Upper Tribunal and serve on each other (a) an electronic skeleton argument and (b) any rule 15(2A) notice to be relied upon within **28 days** of the date this notice is sent.
 - iii. **The appellant** shall be responsible for compiling and serving an agreed consolidated bundle of documents which both parties can rely on at the hearing. The bundle should be compiled and served in accordance with the Presidential Guidance Note [23-26] at least **7 days before the hearing**.
5. The parties are at liberty to apply to amend these directions, giving reasons, if they face significant practical difficulties in complying.
6. Documents or submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents.
7. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

Signed *Fiona Lindsley*
Upper Tribunal Judge Lindsley

15th June 2020