



**Upper Tribunal
(Immigration and Asylum Chamber)**
HU/13125/2019

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House (via
Teams)
On 8 July 2021**

**Decision & Reasons
Promulgated
On 2 August 2021**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**AA (TURKEY)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance or representation

For the Respondent: Ms Isherwood, Senior Presenting Officer

DECISION AND REASONS

1. I am satisfied that notice of this hearing was sent to the appellant's last known address in the United Kingdom on 18 June 2021. There is no explanation for his absence (although see below) and I am content that it is in accordance with the overriding objective to proceed with this long-delayed appeal in his absence.

2. There has been some concern in this case as to whether the appellant has left the United Kingdom. A hearing before Judge Pickup was adjourned with directions for that reason. Further directions were issued by Judge Canavan in an attempt to clarify the position. It seems that the respondent was previously able to confirm that removal directions were set earlier this year, at the appellant's request, but there was no evidence that he had actually boarded the plane.
3. The position has been rendered rather clearer by subsequent events. Ms Isherwood was able to confirm before me that the Home Office system records a visit to the appellant's address in London E3 on 18 May 2021. The appellant's mother and brother were there but not the appellant. They informed the Immigration Officers that the appellant had returned to Turkey and were able to provide a telephone number for him in Turkey.
4. I am satisfied, in these circumstances, that the appellant has left the United Kingdom and that his appeal is to be treated as abandoned by operation of statute: s92(8) of the Nationality, Immigration and Asylum Act 2002 refers.
5. Ms Isherwood nevertheless invited me to consider and rule upon the decision which is under appeal to the Upper Tribunal. It is a decision which was made by Judge M A Khan on 3 January 2020, dismissing the appellant's appeal against the respondent's refusal of his human rights claim. That decision followed an earlier one that the appellant should be deported from the United Kingdom as a result of his commission of various criminal offences.
6. Judge Khan found that the appellant was liable to deportation because he was a persistent offender who had amassed 15 convictions for 18 offences in the space of four years: [41]. He noted that these were mostly acquisitive offences which had been used to fund the appellant's drug habit. The judge noted that the appellant had lived in the UK since the age of 11; that his immediate family lived in this country; and that he suffered from mental health issues including schizophrenia: [45]. He noted that the appellant had no qualifying partner or child in the UK: [50]. Ultimately, he concluded that the appellant's deportation was a proportionate course of action: [51].
7. The grounds of appeal are in many respects misconceived. There is an argument directed at the correctness of the sentence passed on the appellant in the Crown Court. That is obviously a matter to be pursued elsewhere. There is a complaint that the appellant's removal would be contrary to Article 3 ECHR but there is no suggestion that any such argument was pursued before the FtT. There is also a contention that the judge was

required to adjourn in order to obtain further medical evidence but there is no suggestion that any adjournment application was made. Other arguments are merely a disagreement with the conclusion as to proportionality reached by the judge. The grounds conclude with an allegation that this was not a case 'where the respondent should play around with law and policies rather than helping the vulnerable person to overcome his difficulties and his illness'.

8. Unsurprisingly, the judge of the FtT who granted permission found the grounds unhelpful. Stronger epithets might have been equally fitting. Nevertheless, in fairness to the appellant, permission was granted because the judge had referred to a paragraph of the Immigration Rules in its previous iteration and had failed to consider the first statutory exception to deportation in s117C of the Nationality, Immigration and Asylum Act 2002.
9. There can be no doubt that the judge erred in failing to consider whether that statutory exception to deportation applied to the appellant. It is wholly unclear how he failed to do so, since he set out the whole of section 117C at [49] of his decision. He certainly considered whether exception 2 (family life) applied, and concluded that it did not. Ms Isherwood accepted, with her usual frankness, that the judge had erred in law in failing to consider Exception 1. She submitted, however, that this error was immaterial to the outcome of the appeal.
10. I agree with Ms Isherwood's submission in this respect. Had the judge considered whether Exception 1 applied to this appellant, the only rational conclusions he could have reached are as follows.
11. As to whether the appellant has been lawfully resident in the UK for most of his life, the position is clear. He was born in 1986. He entered the UK in 1995 and was granted leave to remain in June 1997. He received Indefinite Leave to Remain the following year, and held that leave until a deportation order was made against him on 16 October 2018. He is therefore 35 years old and has lived lawfully in the UK for 21 years. He satisfies this first part of the statutory exception, therefore.
12. The second subsection requires the appellant to show that he is socially and culturally integrated into the United Kingdom. The meaning of that provision has been explored in a number of authorities, including Binbuga v SSHD [2019] EWCA Civ 551; [2019] Imm AR 1026 and CI (Nigeria) v SSHD [2019] EWCA Civ 2027. In the latter decision, Leggatt LJ (with whom Hickinbottom and Ryder LJ agreed) observed that social and cultural integration in the UK connotes integration as a law-abiding citizen: [60]. Whilst the appellant has spent his entire adult life

and more in the UK, it is quite clear that he has not spent all of that time as a law-abiding individual. He became addicted to class A drugs, spent most of his time with other offenders, and financed his habit by burglary and theft. He is evidently not integrated into this country and the FtT could not, had it turned its mind to that question, have concluded otherwise.

13. The third and final question need not in the circumstances be considered because the appellant cannot satisfy the second limb of Exception 1. He cannot, in any event, establish that there would be very significant obstacles to his re-integration to Turkey. He is a man with mental health problems who has not been in his country of nationality for some years. The judge's unchallenged findings of fact, however, were that he has the support of family members in Turkey and that he would be able to receive treatment for his mental health issues there. Despite his long absence from his country of nationality, he does not begin to cross the high threshold contemplated by this subsection, as discussed in cases such as Parveen v SSHD [2018] EWCA Civ 932.
14. It is for those reasons that the appellant could not have satisfied Exception 1 if the FtT had turned its mind to that statutory provision, as it should have done.
15. Nor can the appellant show that there are very compelling circumstances over and above those described in the exceptions. He does have family in the UK and deportation would separate him from them for many years. In light of the judge's findings about his circumstances on return to Turkey, however, and in light of the very strong public interest in the deportation of a persistent offender such as this appellant, it is not shown that there was any material legal error in the conclusion reached by the FtT in this regard.

Notice of Decision

The decision of the FtT did not involve the making of an error of law which was material to the outcome of the appeal. That decision shall accordingly stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction

applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. I continue this direction, which has been made at all previous occasions without objection from either party.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 July 2021