



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

Appeal Number: RP/00005/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 14th December 2021**

**Decision & Reasons Promulgated
On 6th January 2022**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IS

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer

For the Respondent: Mr G Dingley, of Counsel, instructed by London Solicitors

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Turkey born in 1957, he is now 64 years old. He arrived in the UK in 1989 and claimed asylum. He was granted refugee status in 1991 and indefinite leave to remain in 1996.
2. In 2006 the claimant was convicted of being an unlicensed taxi driver and having no car insurance. He was fined and disqualified from driving for a month. In September 2017 the claimant was convicted of

conspiracy to supply a controlled drug class A, and in January 2018 he was sentenced to five years imprisonment. He was released from prison on licence 30th August 2019. In February 2018 the Secretary of State served him with notice of intention to deport and in January 2019 informed him she was considering revoking his refugee status. On 10th January 2020 a decision was made to revoke the claimant's refugee status, and he gave notice of appeal against that decision. His appeal against the decision was allowed by First-tier Tribunal Judge Beach in a determination promulgated on the 23rd October 2020.

3. Permission to appeal was granted to the Secretary of State and I found that the First-tier Tribunal had erred in law for the reasons set out in my decision which is appended to this decision as Annex A.
4. The matter now comes back before me to remake the appeal. The Secretary of State made a decision to revoke the claimant's refugee status on the basis that he had been convicted by a final judgement of a particularly serious crime and constituted a danger to the community of the UK in accordance with paragraph 339A(ii) of the Immigration Rules. At the same time the Secretary of State informed the claimant that his removal would not currently be enforced as at the current time it would amount to a potential breach of Article 3 ECHR.
5. It is accepted by both parties that the claimant has been convicted of a particularly serious crime as the trial judge found that he had taken an active and significant role in the supply of drugs with a street value of up to £100,000, and given that he was sentenced to a 60 month term of imprisonment The only issue in this appeal is therefore whether the claimant has rebutted the presumption that he is a danger to the community pursuant to s.72 of the Nationality, Immigration and Asylum Act 2002.

Evidence & Submissions – Remaking

6. The relevant evidence of the claimant in his written statement and oral evidence to the Upper Tribunal (given through a Turkish interpreter he confirmed he understood) is in short summary as follows. He acknowledges that he has committed a serious crime; deeply regrets doing what he did; and is absolutely certain that he won't be involved in any criminality in the future. He does not accept that he did any more than knowingly take the package from his co-defendants and store it until he handed it back to them. He argues that his telephone contact with his co-defendants, which was part of the prosecution evidence, was not part of the conspiracy to supply drugs but rather simply because of their being customers at his café in circumstances where they lived in a house opposite that café. He also denies giving the package to a man called AP, whom he says that he does not know, but says he gave it to one of his Turkish co-defendants. He does not accept the conclusion of the trial judge and in the OASys report that he committed the crime for financial advantage, saying he had his business and no money problems

at the time he committed the offence. He denies the finding of the trial judge that he had some awareness and understanding of the scale of the operation. He maintains he was involved due to an unconsidered, momentary, wrong decision made due to social pressure to help two regular customers at his café, his two Turkish co-defendants, and perhaps also made out of some fear of them, made at a time when he was having some marital problems with his wife and as a result was living with one of his daughters. The claimant acknowledges however that what he did was wrong in taking the package. He deeply regrets what he did, particularly as it brought shame on him and hurt his family members.

7. The claimant says that his error has meant that he nearly lost his family, that he has lost friends and his business, and is deeply ashamed of himself. He now understands that drugs are very bad for others and really cause harm as a result of courses he took in prison. He says that it is in his favour that he behaved well in prison, taking over 20 courses.
8. The claimant also says that he has completely changed his life and no longer spends time in Turkish coffee shops, where some of those involved in criminality spend time, and has cut off all contact with his Turkish co-defendants, and instead spends time with his family and at the Turkish community centre where his son is a volunteer. He was involved with voluntary work via this community centre helping deliver some donated food to vulnerable people in the pandemic. He is reconciled with his wife, who has multiple health needs and many hospital appointments which he enables her to attend. He plays a vital caring role in his family, not only for his ill wife, but also for two of his children (the two witnesses in his appeal) who have an inherited eye disease which means that they are partially sighted so need help from him driving them, as they cannot do this, and with other matters. His other daughter has two children and works, and he spends time looking after them, taking them to and from school and to the community centre at weekends to help her out. He says that currently he is not allowed to work due to his immigration position but if this matter is resolved he could work as a shop keeper or driver, as he has these skills, and that he has a lot of family connections which will enable him to get work. He says that as a result of all of these matters he will never offend again.
9. The evidence of the claimant's son, MS, as in his written statement and oral evidence (given in English) is, in short summary, as follows. He is partially sighted due to genetic condition. He has been a committed volunteer with a Turkish community centre over the past 27 years, and is responsible for opening up and referring people to specific services, as he has been unable to get paid work due to his sight disability. He has a daughter who is at university from a marriage which ended in divorce. He did not speak to the claimant for a year after his conviction as he was so shocked and angry that the claimant had brought shame on the family in this way. His girlfriend then persuaded him to make

contact again. He says that the claimant's criminal behaviour has lost the claimant his business, and cut him off from his children and grandchildren for a period of time. He believes that the claimant committed the offence because he found it hard to say no to helping criminal people who asked him to take a package which was going to be collected. He believes the claimant was stupid to do this. He does not believe that the claimant would commit any future offences because of the affect it has had on him and the family. The claimant is deeply ashamed of what he did, and since he came out of prison he is now closer to his children and grandchildren, and is spending time with his family, going to family events such as weddings, and at the Turkish community centre which he, MS, helps run rather than with the claimant's old associates or criminal elements, who are into gambling and the like, and who can be found in Turkish coffee shops. He confirmed that the claimant had done delivery work during the pandemic, taking donated food to vulnerable people in the Turkish community. MS is in regular daily contact with the claimant by mobile phone, and thus would be able to check on his location and who he is with even though he does not think this will be necessary. MS is certain that the claimant won't commit any further offences.

10. The evidence of the claimant's daughter, OS, from her written statement and oral evidence given in English is, in summary, as follows. She shares a home with the claimant and her mother. She is very close to the claimant and loves him deeply. She says that they have always had very happy and close family relationships. She is reliant on the claimant due to being partially sighted, and he drives her to and from work if the sun is bright or it is dark. She says that having two and a half years when she could not see the claimant much due to his prison sentence was devastating. The family had not expected this. She believes that the claimant has learned his lesson and won't reoffend because he would not risk losing his family a second time. She said that the claimant had otherwise always been a law abiding and hard-working man, so this offending was very out of character. She was very shocked by his conviction. She does not believe that the claimant did more than take the package of drugs as a result of being friends with customers of his café. She accepts that the claimant has never said to her he was responsible for selling drugs. She says that the claimant is no longer in touch with his old friends and associates from the café and instead spends his time at home and not out socialising with people who might commit crime. She is certain that the claimant will not offend in the future.
11. Ms Cunha for the Secretary of State relies upon the reasons for refusal letter and made oral submissions. She argues in short summary as follows. The claimant is a danger to the community given the nature of the particularly serious crime he was convicted of, which involved the supply of class A drugs which harm those addicted to them, those closest to those addicts and the wider community. It is noted that the OASys report states that the crime was committed for financial reasons

whilst separated from his wife, and so he could commit another offence should he be in need financially or if he had future family problems; although the claimant denies he had financial problems and says that he was living with his daughter when he committed his offence, and so it seems that ultimately that the claimant really gives no proper motivation as to why he committed the crime. It is also noted that the claimant had an active role in the offending as set out in the sentencing remarks of the trial judge, and he had been found to be as culpable as the other defendants, but neither the claimant nor his children, the witnesses OS and MS, were willing to admit his full involvement in a conspiracy to sell heroin worth £100,000 as found by the trial judge, and instead minimised it. It is argued that as the full extent of the claimant's criminality, as set out in the sentencing remarks, is not accepted that it is more likely that the claimant will recommit crime and pose a danger to the community, and less likely that the family will be in a position to stop the claimant using criminal methods to make easy large sums of money.

12. Mr Dingley relied upon his skeleton argument and made oral submissions on behalf of the claimant. It is argued, in short summary, that the claimant does not constitute a danger to the community for the following reasons. He has only been convicted of the one serious offence in 2017. It was a one-off offence committed when the claimant was vulnerable having temporarily separated from his wife to whom he has been married for 45 years. It is argued that he is now 64 years old and has been reunited with his wife, children and grandchildren. He feels genuine shame and remorse for his offending and is adamant that he will not commit any further offences. It is submitted that this position is supported by the evidence of the claimant, his family and the OASys report. It is argued that from the OASys report it is clear that he has a very low risk of re-offending. It is clear from the OASys report that his family are a protective factor, which is in keeping with their evidence before the Upper Tribunal. Lifestyle is identified as a risk factor in the OASys report, and the evidence before us is that this has changed: he no longer owns a café or spends time in Turkish coffee shops, and has broken off contact with those associates who were involved with crime. The claimant is now out of that environment and spends time with his family and with the Turkish community association. The social work report of Salome Oduebo supports the witness evidence of the claimant having very strong family ties. Even if the full extent of the offending is not accepted by the claimant and his children it is acknowledged by all of them that he committed a crime and served a sentence of imprisonment, and that was a shameful thing with awful consequences. The claimant has moved on from the person he was when sentenced; he has reflected whilst in prison and done courses to increase his understanding of drugs crime; and is now leading a reformed life. The claimant would not risk the loss of his family by re-offending.
13. At the end of the hearing I reserved my decision.

Conclusions – Remaking

14. This is an appeal against the revocation of the claimant's protection status under s.82(1)(c) of the Nationality, Immigration and Asylum Act 2002. This step has been taken by the Secretary of State under paragraph 339AC(ii) of the Immigration Rules on the basis that he has been convicted by a final judgement of a particularly serious crime, and he constitutes a danger to the community of the UK. This provision of the Immigration Rules reflects the limits of the protection against refoulement of a refugee set out in Article 33(2) of the 1951 Geneva Convention. S.72 of the Nationality, Immigration and Asylum Act 2002 creates a presumption that the claimant is both convicted of a particularly serious crime and constitutes a danger to the community as he was convicted of an offence in the UK and was sentenced to a period of imprisonment of more than two years. The claimant has conceded that he has been convicted of a very serious crime. The burden of proof is on the claimant to rebut the presumption that he constitutes a danger to the community, and I must determine whether he has done this based on the evidence before me.
15. In determining this issue I start from what was said in the sentencing remarks of his Honour Judge A Hammerton at Snaresbrook Crown Court in January 2018. It is clear that the Judge rejected the claimant's evidence as to the role he played in the conspiracy to supply heroin. It was found that he had taken an active role in the supply of drugs with the two other Turkish co-defendants, who the claimant says were customers in his café. It was found that he was motivated by financial advantage and had some awareness of the scale of the operation. The claimant was observed by police handing over a green plastic bag, later found to contain just under 1kg of heroin, to AP, the defendant who the claimant says he did not know. There was telephone evidence that the claimant was in contact with the two Turkish co-defendants before and after the handover of the drugs. The Judge found that there were no aggravating factors to the crime. The mitigating factors were found to be that the conspiracy was for a short period of time, 27th June to 1st July 2016, that the claimant was over 60 years old, that he had not been in prison before and was entitled to some credit for his guilty plea.
16. The OASys Assessment of the claimant dated 9th December 2021 was based on his previous convictions, his pre-sentence report, prison records and RNR assessment. The risk of serious recidivism at 1.38 of the report is assessed as 0.06% / low. His risk of general offending within two years at the same paragraph was 9% and therefore also low. It is notable that the claimant was released into the community on 30th August 2019, and so has already spent two years and three months in the community, albeit with probation supervision, and has not reoffended. He currently reports once every four weeks, which is said to be in line with his low risk of serious harm assessment.

17. The OASys report finds, at paragraph 2.1, that the claimant minimises his involvement in the crime, sticking to the history that was found not to reflect his true level of involvement at the criminal trial, but that he does accept responsibility for committing the crime, which he says was done out of naivety, and that he has consequentially become more vigilant about his associations because of the impact on himself and his family. It is assessed that the potential for financial gain was a motivating factor in committing the offence but that poor consequential thinking skills and associates also contributed, as set out at paragraph 2.8 of the report. It is concluded that a desire for a lifestyle he could not otherwise afford motivated the offence along with negative associates.
18. There are a number of factors which the OASys report concludes were not linked to the offending behaviour of the claimant: accommodation; education training and employability; financial management; relationships/family; alcohol misuse; and emotional well-being. It is concluded that the claimant now demonstrates a good understanding of how his offending affects individuals and the community as a whole; and that he is very motivated to address his offending behaviour as set out at paragraph 12.9 of the report. At paragraph 12.8 of the OASys report it is repeated that the claimant is very motivated to address his offending behaviour, and also stated that he is very capable of having the capacity to change and reduce offending. It is also noted that he has engaged well with probation across his licence.
19. The evidence of the social work report of Salome Oduebo is not relevant directly to assessing whether the claimant is a danger to the community, as the social worker very properly says that this is not within her area of expertise. I find that the report is however supportive of the claimant currently playing a vital and active family role in supporting his wife and daughter OS, who both have health problems, and having a committed family life with all three of his children and with his grandchildren. The report also supports the contention that the family have accepted the claimant back after his prison sentence: showing him acceptance and love; and have assisted his reintegration into the community after his time in prison. It is the opinion of the social worker that the claimant felt very ashamed of himself for having committed the crime and having been imprisoned. I find that this is a proper report, complying with requirements for evidence before the Upper Tribunal, that can be given weight with respect to the issue of the claimant's family ties and commitment, and attitude to his offending, and note that Ms Cunha did not submit otherwise.
20. The Secretary of State argues that I should find that the claimant is a danger to the community because he does not accept that he did all of the things which led to his conviction, and that because he and his family do not accept that he was actively and knowingly involved in a conspiracy to supply round £100,000 of class A drugs, namely heroin. Ms Cunha argues that the failure to take this on board means that despite the low assessment of risk by OASys and the protective factors

of supportive family, accommodation, employment skills, and a lack of drug/alcohol or other addiction issues the claimant poses a danger to the community as he may reoffend in this serious way again. Ms Cunha did not submit that the witnesses were not credible, but simply, as I understood, that they were not able to face the full truth about the claimant's conviction and what he had done in terms of drugs dealing, and so a greater risk of recidivism existed from the claimant than if the full truth were accepted by the family.

21. I find that the witnesses, OS and MS, gave honest evidence but have been unable to accept the full truth about the claimant's criminal behaviour as it is too painful and inconsistent with the rest of their experience of the claimant as their father, and so have preferred to accept the partial truth he has told them, but, that said, they do regard him as having made a very serious and shameful mistake causing them and the whole family serious harm.
22. I find that despite not facing the full truth the claimant is, as has been found by the writer of the OASys report, very motivated to change his offending behaviour and has the capacity to do this. With the support of his close family, I find, that he has changed his socialisation pattern. He no longer attends Turkish coffee shops where pro-criminal elements can be found, and he no longer owns his own café where the particular co-defendants in his offence were often to be found. He now devotes his time to his family or attends a community centre where he socialises and sometimes does elements of voluntary work. I find that the terrible shame that the claimant brought upon himself and his family as a result of being imprisoned, along with the separation from his loved ones whilst in prison, is a very strong motivating factor against the temptation that he gave into when committing his offence, attempting to obtain funds for a lifestyle which he could otherwise not afford. I find that further protective factors against reoffending are that the claimant's wife is now very unwell and dependant on him, and they have been married for 45 years and are now once again in a settled marriage; and that his children have all accepted him back into their lives and all rely upon him for help either due to their being partially sighted or for assistance with childcare.
23. The claimant was convicted of a single offence relating to the supply of drugs, which whilst very serious, was noted to involve a short-lived conspiracy by the trial judge. He has not been convicted of any further offences in the two years and four months since he was released from prison, and is only subject to a once a month reporting condition to probation. I find that he has engaged well with courses to aid his rehabilitation in prison, and gaining a greater understanding of the wider damage to society and individuals caused by the drugs trade, and also that he has benefited from his probation service supervision, as it is said that he engages with it well. He is now 64 years old. I find that the claimant's son is very clear with him, even if he does not believe he had the serious role in the drugs crime the court found, that his support is

conditional on the claimant's future law-abiding behaviour and avoiding criminal type elements. I accept the evidence of MS that they are all in very regular phone contact and would become quickly aware if the claimant were not continuing to lead the family/community association life away from any potential criminal associates, and so are in position to influence the claimant, reminding him of the risk of losing and damaging his family, were he to ever return to socialising with pro-criminal elements in coffee shops.

24. Ultimately weighing all of the evidence I conclude that the reasoned OASys report assessment that the claimant poses a low risk of reoffending is accurate. I find, as the OASys report found, that he is strongly motivated and capable of changing so that he does not reoffend. I find that the very clear evidence that he has actively dissociated himself with a way of life where he encountered pro-criminal elements to be very important; along with the salutary and educational experience of imprisonment; the overwhelming support of his family who have returned to him despite the shame he has brought upon himself and them; and his own ability and commitment to lead a law-abiding life. On the basis of all of the evidence before me I conclude that the claimant has rebutted the presumption that he poses a danger to the community.

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 and all of the findings.
3. I remake the appeal by allowing the appeal against revocation of the claimant's refugee status.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original claimant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: Fiona Lindsley
2021
Upper Tribunal Judge Lindsley

Date: 16th December

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Turkey born in 1957. He arrived in the UK in 1989 and claimed asylum. He was granted refugee status in 1991 and indefinite leave to remain in 1996.
2. In 2006 the claimant was convicted of being an unlicensed taxi driver, having no car insurance, fined and disqualified from driving for a month. In September 2017 the claimant was convicted of conspiracy to supply a controlled drug class A, and in January 2018 he was sentenced to five years imprisonment. He was released from prison on 30th August 2019. In February 2018 the Secretary of State served him with notice of intention to deport and in January 2019 informed him she was considering revoking his refugee status. On 10th January 2020 a decision was made to revoke the claimant's refugee status, and he gave notice of appeal against that decision. His appeal against the decision was allowed by First-tier Tribunal Judge Beach in a determination promulgated on the 23rd October 2020.
3. Permission to appeal was granted to the Secretary of State by Upper Tribunal Judge Jackson on 27th February 2021 on the basis that firstly it was arguable that the First-tier Tribunal had erred in law in making a material mistake of fact or perverse finding that the claimant was a low risk of reoffending. Secondly, in giving inadequate reasoning as to why reliance was placed on a probation report which had arguable weaknesses as it was not based on a personal assessment of the claimant. Thirdly, in accepting the evidence of the claimant's children when it was arguable that the sentencing remarks showed that he had a significant role in the offence for which he was convicted.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law. The hearing was held via a remote Teams hearing in light of the need to reduce the transmission of the Covid-19 virus, and in light of this being found to be acceptable by both parties, and being a means by which the appeal could be fairly and justly determined. There were no difficulties of connectivity or audibility.

Submissions – Error of Law

5. In the grounds of appeal and oral submission Mr Avery for the Secretary of State argued, in summary, as follows. The Secretary of State made a decision to revoke the claimant's refugee status on the basis that he had been convicted by a final judgement of a particularly serious crime and constituted a danger to the community of the UK in accordance with

paragraph 339A(ii) of the Immigration Rules. The only issue in the appeal was whether the claimant had rebutted the presumption that he was a danger to the community pursuant to s.72 of the Nationality, Immigration and Asylum Act 2002.

6. It is argued that the First-tier Tribunal errs in law because at paragraph 59 of the decision it is found at paragraph 61 the decision that the probation report assesses the claimant as being at low risk of reoffending. It is argued that there is a failure to engage with the probation report and assess it in the context that the report was made without talking to the claimant and without access to key current information such as regarding the offence and the claimant's thinking, behaviour and attitudes linked to offending, his circumstances such as employment, accommodation, substance abuse, relationships, lifestyle and health, and that the report states that the claimant is at low risk of causing harm but not that he is at low risk of reoffending. It is argued that risk of reoffending is particularly important a factor when considering whether the claimant is a danger to the community as supplying drugs to dealers might not be a factor which is considered to cause harm in the sense of violent harm to others but is definitely an activity which endangers society. Further at paragraph 63 the claimant is found not to have accepted full responsibility for his offence, and in this context it is argued that it was not adequate for the First-tier Tribunal to simply rely upon the fact that he had done courses in prison and says he did not intend to reoffend in the future. The fact that the claimant had not reoffended over the 13 months he had been out of prison was also not sufficient as he had been on licence during that time.
7. Secondly, it is argued that there was insufficient reasoning for finding the evidence of the claimant's son and daughter, that he would not reoffend, credible as the First-tier Tribunal does at paragraph 64. The claimant's son tried to minimise the culpability of the claimant as recorded at paragraph 60. The evidence of both was that they could not believe that the claimant was capable of the offence, as set out at paragraphs 35 and 28 of the decision. As the sentencing remarks make it clear that the claimant had a significant role in the supply of heroin. It is therefore unclear why the First-tier Tribunal found that the claimant's family would now be a deterrent to his reoffending when they were not previously.
8. Ms Shaw argued that the probation officer clearly did have some evidence in drafting the report and it was not the case that there was no information. The First-tier Tribunal did record that the report was written without speaking to the claimant at paragraph 62 of the decision, so this was in the judge's mind when she weighed the evidence. Ms Shaw also argued that there were some reasons given which might indicate that low risk did also refer to offending, and not just causing harm, as there was reference to the claimant being 62 years old and having no convictions between 2006 and the index offence in 2017. It was open to the First-tier Tribunal to conclude that the shock to the claimant of losing

his business and nearly losing contact with his children and grandchildren would be protective factors against the claimant offending in the future, and thus in showing he would not be a danger to the community.

9. At the end of the hearing I indicated to the parties that I found that the First-tier Tribunal had materially erred in law and would set out my full reasons in writing, and that I would therefore set aside the decision and all of the findings. I informed the parties that the remaking hearing would take place in the Upper Tribunal due to the relatively narrow issue that was to be remade.

Conclusions - Error of Law

10. The probation risk assessment and report generated on 18th September 2020 states repeatedly that it was completed using limited/sparse information and without talking to the claimant, and with “No information at the time of completing this assessment”. I find that this means that there was no current information available to the probation officer about the index offence, the offending behaviour, his employment, substance misuse, relationships, lifestyle and associates and health and wellbeing and that the report was compiled using historical information from the file. I find that the First-tier Tribunal erred in law at paragraph 62 of the decision in concluding that having contact with the claimant, and therefore up to date information, was “not necessarily essential” to form an assessment, as this statement is unreasoned and is at odds with the opinion of the writer report itself who states repeatedly in the report that information will be sought from the claimant and the assessment updated.
11. The assessment of the claimant being low risk, under “Risk Assessment” is related to there being no factors indicating serious harm to himself or others. I find that this report was mischaracterised at paragraph 61 of the decision of the First-tier Tribunal as providing support for the finding that the claimant was at low risk of reoffending. I find that this misrepresentation of the evidence to be a material error of fact which affected the conclusion of the First-tier Tribunal in allowing the appeal because clearly whether the claimant was at low or high risk of reoffending as a drugs dealer would impact significantly on whether he was a danger to the community. Further the report sets out considerations that could go both ways on the issue of whether the claimant is likely to reoffend: we know that he is complying with his court order, has some support with accommodation from his ex-wife and is seeking and gaining sporadic self-employment which might be protective factors but on the other hand the report indicates that the offence was committed for financial gain and that financial struggles could lead to further offending, and that ‘lifestyle and associates’ intervention could be needed.

12. It was open to the First-tier Tribunal to conclude that the evidence of the claimant, his son and daughter that the shock of losing his business and almost losing contact with his children and grandchildren would be an important protective factor against reoffending as is done at paragraphs 64 and 65 of the decision. However, this factor, along with the claimant having expressed remorse and engaged with courses in prison and having stated he would not reoffend in the future is, I find, insufficient to make the errors with respect to the probation evidence immaterial particularly given that it was also found by the First-tier Tribunal that the claimant had not yet taken full responsibility for his offending behaviour.

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 and all of the findings.
3. I adjourn the remaking of the appeal.

Directions:

1. Any further evidence on which a party chooses to rely must be filed with the Upper Tribunal and served on the other party 10 days prior to the remaking hearing.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original claimant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 29th June 2021