



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/24436/2012

THE IMMIGRATION ACTS

Heard at Field House  
On 31 October 2014

Determination Promulgated  
On 7 January 2015

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

ENTRY CLEARANCE OFFICER

Appellant

and

NUSRET BORA

Respondent

Representation:

For the Appellant: Ms L Kenny, Home Office Presenting Officer  
For the Respondent: Mrs Eileen Bora - the Sponsor

DETERMINATION AND REASONS

1. The appellant in these proceedings is the Entry Clearance Officer ("ECO"). However, for convenience I refer to the parties as they were before the First-tier Tribunal.

2. Thus, the appellant is a citizen of Turkey, born on 20 November 1959. The proceedings arise out of his application on 19 September 2012 for entry clearance as a partner. In order to put matters into context, it is necessary to say something about the factual background to the application and the personal circumstances of the appellant and the sponsor, Mrs Eileen Bora.
3. The appellant and the sponsor, who is a British citizen, married in Turkey in 2003. They lived in Turkey until 2007 when the appellant was granted entry clearance as a spouse. They lived together in the UK until 2009 when they returned to Turkey. On 14 October 2011 the appellant was subjected to a serious physical attack which left him with significant mental and physical disabilities. It seems that the attacker was sentenced to a term of ten years' imprisonment for attempted murder.
4. The application for entry clearance which is the subject matter of this appeal was made on 19 September 2012. It was refused in a decision dated 8 November 2012. In summary, the basis of the refusal was that the appellant was not able to meet the financial requirements of the Immigration Rules as set out in Section E-ECP.3.1 and offers of financial support from third parties could not be taken into account.
5. The appeal came before First-tier Tribunal Judge Foulkes-Jones who considered the appeal without a hearing. In a determination promulgated on 11 September 2013 he dismissed the appeal under the Immigration Rules but allowed it on human rights grounds with reference to Article 8 of the ECHR.
6. An out of time application was made by the respondent for permission to appeal against the decision of Judge Foulkes-Jones. The basis of the application was that the appellant had been convicted of murder in 1986 in relation to events in 1984. That conviction was not disclosed on the application form for entry clearance. It is worth stating, in passing, that it is the sponsor's case that the respondent, or the Secretary of State, was aware of the appellant's conviction in the autumn of 2012 but did nothing with that information at the time. In relation to the non-disclosure of the conviction, the sponsor's case is that she was given "off the record" advice by the British Consulate in Turkey to the effect that the UK authorities would not have been aware of the conviction unless the appellant himself disclosed it. The sponsor, whilst acknowledging that she had been told by the appellant that he had a conviction for murder, was not told by the appellant what the actual details were. Nevertheless, for several reasons she does not believe that he was actually guilty of the offence.
7. Returning to the history of the appeal proceedings, permission to appeal the decision of Judge Foulkes-Jones having been granted, the appeal came before Upper Tribunal Judge Hanson and Deputy Upper Tribunal Judge Lindsley in the Upper Tribunal on 10 January 2014. By consent, the decision of Judge Foulkes-Jones was set aside, he not having been aware of the conviction. The appeal was remitted to the First-tier Tribunal for rehearing.
8. That hearing was before Judge Lindsley sitting as a Judge of the First-tier Tribunal. She allowed the appeal under Article 8.

9. Permission to appeal against her decision was granted and the matter next came before Upper Tribunal Judge Roberts on 22 July 2014. She concluded that Judge Lindlsey's decision was vitiated by error of law. She set aside her decision and re-made the decision, dismissing the appeal.
10. An application was made on behalf of the appellant for permission to appeal to the Court of Appeal, in respect of Upper Tribunal Judge Roberts' decision. The matter came before Upper Tribunal Judge Freeman who, on 14 October 2014, pursuant to rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008, set aside that part of Upper Tribunal Judge Roberts' decision in terms of the re-making of the decision. That part of Upper Tribunal Judge Roberts' decision in terms of there having been an error of law in the decision of Judge Lindsley, was not set aside by Upper Tribunal Judge Freeman.
11. In consequence of the decision having been set aside under rule 43 the appeal came before me for the re-making of the decision.

*Upper Tribunal hearing 31 October 2014 – preliminary matters*

12. Without making a definitive finding on the point, it does appear that there was some confusion as to the listing of the appeal before me, in that Ms Kenny indicated that the notice of hearing was not sent to the respondent by the Upper Tribunal in a timely manner. Ms Kenny said that she had learned that no one on behalf of the respondent had been instructed to attend the hearing which was listed for the afternoon and that she had been provided with the papers for the appeal about an hour or so before the hearing. She stated that in fact she had only had about ten minutes to consider the documents. She said that preparation time would take about an hour or an hour and a half which would bring the time to about 4.00 p.m. In those circumstances, she requested an adjournment.
13. The sponsor said that she had to return to Turkey (to be with the appellant) on Tuesday 4 November. The hearing before me was on Friday 31 October. The sponsor said that she was prepared for the hearing to proceed, adding that she had been "messed around" by the Home Office in the past. She said that leaving her husband at all is very traumatic for him.
14. I made enquiries to see whether there would be a court available to deal with the appeal on Monday 3 November, but no court was in fact available.
15. Ms Kenny repeated that there was further preparation that she would ideally have liked to have undertaken in order to conduct the appeal on behalf of the respondent. She did, however, state that she had grasped the gist of the issues in the appeal.
16. Whilst, in other circumstances, it may well be that the respondent's application for an adjournment would have been successful, I was mindful of the position of the sponsor, specifically with reference to her husband, the appellant, and the fact that she was returning to Turkey on Tuesday. To adjourn the appeal would have meant some further significant delay, and indeed expense on the part of the sponsor. It

would also mean that she would have to leave him again in order to attend a hearing before the Upper Tribunal.

17. Having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I decided that the interests of justice were best served by proceeding with the appeal.
18. Mrs Bora was accompanied by Mr Roger Sayers, described at one stage within the documents before me as a McKenzie friend. I indicated that I would allow him to assist the sponsor as necessary but in truth, the sponsor did not seek any assistance from Mr Sayers, she being able to make submissions and deal with points raised on behalf of the respondent as well as to clarify issues raised by me.
19. Because the appellant was not legally represented, the proceedings before me took the form of my hearing submissions on behalf of the respondent, as well as submissions by the sponsor, although inevitably some of what the sponsor had to say in fact constituted evidence. There did come a distinct time in the proceedings when the sponsor was cross-examined on behalf of the respondent. Whilst on one view, in terms of the re-making of the decision, it could have been said that there was no need for any further evidence, I concluded that in fairness to the appellant it would be appropriate for all aspects of the factual issues to be canvassed before me. In addition, I considered that it was necessary for the respondent to be able to explore in more detail some of the matters in issue.
20. In the light of the way matters proceeded, the next subheading is a compendium of the submissions and evidence before me.

#### *Submissions/oral evidence*

21. Ms Kenny relied on the grounds of appeal in relation to the decision of Judge Lindsley. The appellant had not disclosed on the application form the convictions for murder and the subsequent conviction for rioting whilst in prison. It was submitted that Judge Lindsley's determination does not give sufficient weight to those convictions. Furthermore, notwithstanding what is said about the care that the appellant needs, it is not clear who cares for him whilst the sponsor is not there. She had plainly been able to leave the country. The appellant lives with his brother and sister-in-law.
22. The appellant and the sponsor had chosen to live in Turkey and had been living there for about four years so it was hard to imagine that the sponsor had not formed some sort of private life during that time. Judge Lindsley had been correct in her assessment that the sponsor's relationships with family in the UK do not amount to more than normal emotional ties between such family members. The sponsor has a wish to live in the UK but it is not necessary for her to do so.
23. Insofar as the sponsor refers to problems with someone in the local police force, that is a local issue and she could live elsewhere. There was nothing in the evidence to

indicate that the appellant and sponsor coming to the UK was anything more than a desire rather than a need.

24. The sponsor referred me to the fact that Judge Foulkes-Jones had allowed the appeal under Article 8 and there was no challenge to that decision for about nine weeks. It was nine weeks later that the BBC broke the news of the appellant's convictions. It was only then that there was a challenge by the Home Office.
25. The sponsor referred to Judge Lindsley's determination and the cases that she had referred to. This was not a case of a "wish" to live in the UK. Those were Judge Lindsley's words, not hers.
26. The sponsor said that she was aged 69 and is on various medications. She has high cholesterol, joint pain and thyroid problems. She is not a well person herself. She needs to look after the appellant 24 hours a day, seven days a week. She has to look after him in every sense. Since the attack on her husband her life has been absolute hell. Within the Home Office's own Rules, in some circumstances convictions resulting in sentences of over four years' imprisonment can be looked at sympathetically.
27. It is not a case of a wish to live in the UK but a need to, in order for her quality of life. It is a misconception to think that Turkish families stick together. On the two occasions when she had to come to Tribunal hearings in January and March 2014, her son came to Turkey on one plane and she went out on another. He stayed for a week in Turkey in January and a week in March, looking after her husband.
28. In July, in relation to the hearing before Judge Roberts, she was able to persuade two of her husband's sisters to come up from Alanya and Anatalia, 800 Km away. It took two of them to look after him.
29. She lives with the appellant's older brother and his sister-in-law. She owns half of the house. Her husband's brother works all night and sleeps during the day. His wife works all day and is out most evenings. In 18 months she had not seen the appellant's sister-in-law give him so much as a glass of water.
30. On this occasion, she was so stressed that her son asked her to come over and have some time with them. She did not know that she would be given this opportunity to plead her case again. She had had to come back to deal with matters in the event that the decision of Judge Roberts stood. There were issues to be dealt with in relation to the house in the UK for which she had to come back.
31. On this occasion, she had to pay someone £400 for a period of three weeks to look after the appellant, as his sisters could not do so. That is a lot of money and above the going rate in Turkey. That answers the point as to who looks after him when she is in the UK.
32. They had already moved away from the place in which they had been fearful. They moved two years ago, shortly after the first refusal of the application. To move to

another part of Turkey would involve rent and expenses. She is not able to sell the house at the moment and her husband needs somewhere stable in which to live. In any event, moving would not solve the isolation that they feel and the day-to-day difficulties. Her brother-in-law does want to sell the property but £50,000 would be all that they would get for it. Her brother-in-law owns half of the property. It would be sold in a flash if they could come back to England. It is an old property which was built before the earthquake in 1999 and it is subject to possible property damage.

33. She has six grandchildren and two sons, extended family and all her friends in the UK. It is true that some could come and visit but now her husband is bedridden and disabled he would not be able to cope with a visit for two weeks at a time.
34. Gary, her youngest son, has experience of caring for disabled people. He and her eldest son knew about her husband before the incident and between 2007 and 2009 they lived in the UK. The appellant had a great relationship with them. They are both very frustrated about not being able to do more to help.
35. They have plans as to how they would help if he came to the UK, by taking him out of his bed everyday and putting him in a chair, and taking him out for trips in a car. At the moment the appellant is in bed 24 hours a day and looking at a blank wall.
36. There are reports from two neurosurgeons who say that there is no medical or surgical procedure which would help with her husband's condition. All she wants to do is to improve the quality of his and her life. The only costs would be prescription charges. The public interest does not say that he is a danger to anyone.
37. She knows from the information that she has that he did not commit the offence of murder. The "riot" was actually a celebration, although it is the case that the incident had to be quelled. It was not, however, a riot. After that the appellant had had a clean record. When he was in England for two years he worked and paid taxes and was a model citizen. The conviction was 28 years ago.
38. In cross-examination the sponsor said that she had had a thyroid problem for quite a long time. She has been taking medication for stress since the attack on her husband in 2011. She has had hypertension medication for at least the last fifteen years.
39. The property in Turkey has been owned for about seven years. If the appellant was allowed to come to the UK they would try to sell the property.
40. The person who is taking care of her husband at the moment whilst she is in the UK is a retired nurse, not someone that she knows personally.
41. In answer to my questions, the sponsor said that following the refusal of the application for entry clearance they had moved away from the holiday resort of Alanya. If relatives came to visit and stayed in a hotel, that would be expensive. Her sons could stay with them on short visits but there is a lot of animosity in the family between her husband's elder brother and her sons. They are angry that he does not do anything to help.

42. She would never have dreamed of buying half the house but her husband's family kept asking for money. They decided then to buy a portion of the house. She obtained the title deeds to half the house.
43. In further submissions Ms Kenny said that it was a serious matter for the appellant's convictions to have been hidden from the ECO. The sponsor's claim to have no private life is simply not plausible given the length of time she had spent in Turkey. If the situation in relation to the apparent hostility of the appellant's brother and sister-in-law was so bad they would not continue living there. It would be possible for them to relocate in Turkey, and live somewhere more suitable to their needs.
44. The visits from the sponsor's supportive sons would be able to continue and that would provide the sponsor with some respite or relief. In the meantime, the sponsor has been able to employ a nurse. There is no reason why such professional help could not be provided on a regular basis. There is nothing to suggest that care is not available in Turkey.
45. The sponsor repeated, that finding somewhere else to live in Turkey would not solve the problems. It was difficult living with the appellant's family but the question was what were the alternatives. She owns half the house and is entitled to live there. She is not saying that it is unbearable but it is very difficult. She had had to borrow money from her sons to pay for the nurse and she is living on an overdraft. She is not able to do that on a regular basis and care is not readily available. It is difficult to find such care and difficult to find someone who could be trusted.
46. The appellant gets shouted at because he calls out for her, the sponsor. He gets called "cabbage head" by his family. She tries to explain to them that it is not his fault, that he needs to see her all the time. For example, when she goes to the bathroom or the kitchen, he calls out for her and would say that he had missed her. He behaves like a 4 year old child. Emotionally, it is very draining.
47. At the end of the hearing I allowed both parties a period of seven days to provide written submissions in relation to the relevance to the appeal of the Immigration Act 2014 ("the 2014 Act"). No written submissions were received on behalf of the respondent but on behalf of the appellant submissions were provided.

*Upper Tribunal Judge Freeman's 'rule 43' set aside*

48. It is as well to clarify that the framework within which the hearing before me took place is established by Judge Freeman's decision under rule 43. That rule allows the Upper Tribunal to set aside a decision which disposes of proceedings, "or part of such decision, and re-make the decision or the relevant part of it". It is clear from Judge Freeman's decision that it was only part of Judge Roberts' decision that was set aside, namely that part that deals with the re-making of Judge Lindsley's decision. Thus, at paragraph (f) Judge Freeman stated that Judge Roberts was not arguably wrong to decide that the appellant's appeal should not have been allowed, going on to explain why he came to that view. At paragraph (n) it is stated that Judge Roberts'

re-making of the decision was to be set aside and re-made by another Judge of the Upper Tribunal.

49. Thus, the hearing before me was for the re-making of the decision, the issue of error of law in Judge Lindsley's decision having been dealt with by Judge Roberts.

*Re-making the decision*

50. It is evident that a significant amount of the appellant's case is not in dispute. So much is clear from the immigration decision refusing entry clearance. There it is stated that the ECO acknowledges that the appellant was the victim of a serious attack and as a result has extensive physical disabilities and brain damage. It was also acknowledged that the appellant needs "at the moment" permanent care. It is stated that it is recognised that the sponsor is unhappy in Turkey and that the burden of the appellant's care is "problematic". The sponsor had provided to the ECO a considerable amount of information regarding the situation of the appellant and the sponsor in Turkey, care that the appellant needs, his life in Turkey compared to that in the UK, the sponsor's financial situation and information provided by doctors in the UK. The sponsor's age and what she says about her health difficulties were also acknowledged.
51. Judge Lindsley made certain findings of fact which are unaffected by the error of law. At [34] she found that the appellant has family life with his wife, the sponsor, and that they had been married for eleven years and cohabited throughout that period. She found that they have lived together both in Turkey and in the UK for a period of two years with the appellant having entry clearance as a spouse during that time.
52. Notwithstanding the sponsor's view in relation to the appellant's conviction for murder and what she said about the use of a torture based confession with the lack of any other evidence, she found that the appellant had in fact committed the murder of a woman whom she understood to have been a cousin, as well as the murder of her young child. During his prison sentence he was also involved with a prison riot and given an additional sentence of seven months' imprisonment, which he served in 2003. She did, however, accept that the sponsor and the other witnesses had given truthful evidence to the effect that they found it difficult to believe that the appellant could have committed the murders, given the positive qualities they know in him. It appears that the appellant was released as a result of presidential pardon.
53. At [42] Judge Lindsley concluded that the appellant had also tried to hide the fact of his convictions from the respondent, instead of declaring them on the application form. She found that the appellant and the sponsor knew and understood that these should have been declared. She went on to state that whilst they may have received some unofficial advice from the British Consulate, they ought to have declared the convictions.
54. At [43] she concluded that the appellant clearly does not represent a risk of reoffending and did not do so at the time of the decision to refuse entry clearance.



The evidence was to the effect that he had no other convictions other than the murders and the prison riot.

55. In the same paragraph she found that since the attack on the appellant in 2011 he is now physically and mentally disabled in such a way that he cannot stand unaided or care for himself and is, as explained by the sponsor, scared of others including former friends and his own family members due to his acute vulnerability.
56. At [45] Judge Lindsley accepted that the appellant and the sponsor are treated with hostility by the appellant's family members who are unwilling to help with the appellant's care and who treat him roughly and in a way which the sponsor finds demoralising and which is "alarming, saddening and painful to the appellant". She gave examples such as that the appellant's family call him "cabbage head", give him mouldy food, only occasionally agree to assist with showering him and then use water that is too hot. Medication is obtained, for example, sleeping tablets, from doctors who have never met the appellant and which medication is given without reference to his particular condition, and which the sponsor fears will cause him harm.
57. As to the situation that would prevail in the UK, she concluded at [46] that they would live with the sponsor's adult sons who love and respect the appellant and who are willing to provide physical care, have the patience to look after a disabled man with respect, and have time to share friendship with him. She concluded that the sponsor's sons had demonstrated their love and respect for the appellant whom they refer to as their stepfather, not just by writing letters and attending the Tribunal hearings but by spending significant periods of time in Turkey as his carer, performing intimate tasks for him. She also concluded that there would be an extended community of friends, including Mr Sayers, who would provide moral and practical support to the family in the UK.
58. At [47] she referred to medical evidence to the effect that there was no "surgical or clinical intervention that would be relevant for him to receive". However, she found that the limitations on the care he receives in Turkey due to the sponsor's lack of support from his family may lead to medical problems. She accepted that being bed-ridden causes medical issues such as pressure ulcers and depression which would be likely to be avoided if he were cared for in the UK by the sponsor and her adult sons, and thus could be lifted out of bed and placed in a wheelchair during the day.
59. In terms of the sponsor's private life, Judge Lindsley found that her private life is "non-existent" in Turkey. She cannot speak good Turkish and is thus hampered in all communications. She found that she has no friends to turn to for support and socialising, no local church community for joint worship and moral support and is denied the opportunity to be with her sons and grandsons and see them grow up. She stated that the sponsor is without the familiar surroundings of Kent and Sussex where she has lived for the majority of her life and where she feels at home. She stated that the sponsor is denied the majority of benefits of her British citizenship.

60. At [49] she concluded that the sponsor was clearly anxious about possible further threats to the appellant and to her from the policeman who provided her husband with employment prior to the attack. She accepted that those fears are genuinely held by the sponsor and concluded that they further hamper the quality of private life that is possible for the sponsor in Turkey.
61. In relation to accommodation in the UK, she concluded that it would be more than adequate and that they would have a private bedroom, sharing only the communal areas with the sponsor's sons, rather than having to exist in a cramped space, having only the end of the sitting room divided off with furniture as their own space, which they presently have in Turkey, without quietness and privacy, whilst living with the appellant's brother and sister-in-law in an atmosphere of resentment and hostility.
62. It is plain that the appellant is not able to meet the relevant requirements of the Immigration Rules for entry clearance as a partner. In the first place, he is not able to meet the suitability requirements under S-EC.1.4 in the light of his conviction and sentence for a term of imprisonment of more than twelve months.
63. Furthermore, he is not able to meet the financial requirements of the Rules as set out in paragraph E-ECP.3.1 in terms of income. Those requirements are to the effect that income of at least £18,600 per annum is needed but the sponsor's only source of income is a pension paying in the region of £10,100 per annum.
64. No copy of any applicable guidance to Entry Clearance Officers has been provided, in terms of 'exceptional circumstances' or 'compelling or compassionate circumstances'. Nevertheless, in the notice of decision the ECO states that full consideration as been given to the "compassionate factors" of the application, although the conclusion was that those factors did not warrant the issuing of a visa outside the Immigration Rules. The Entry Clearance Manager's review also refers to compassionate circumstances, stating that the ECO referred the case to the UK for consideration outside the Immigration Rules "on compassionate grounds".
65. Insofar as this is consideration of a discretion outside the Rules, it is not a discretion that I have power to interfere with (see Section 86(6) of the Nationality, Immigration and Asylum Act 2002).
66. However, it is evident that the facts of this appeal call for consideration under Article 8 of the ECHR. That, it seems to me, has never been in issue.
67. In considering Article 8, I adopt the structured approach set out in Razgar v SSHD [2004] UKHL 27. The ultimate question in this appeal, is whether the decision of the respondent amounts to a disproportionate interference with the right to family and/or private life of the appellant, but also taking into account the same rights of the sponsor. The Article 8 rights of the sponsor are clearly in play here (see Beoku-Betts v SSHD [2008] UKHL 39).
68. Much of the fact finding exercise has already been done by Judge Lindsley. I should however state, that the mere narration of the appellant's and the sponsor's

circumstances in a sense presents only a one dimensional view of their life in Turkey. However, their circumstances are brought to life by the evidence of the sponsor and by what are, it seems to me, two important documents amongst those provided by the sponsor. These are, a document which is described in an appendix, Appendix 6, of documents provided by the sponsor, being a log of events whilst the appellant's stepson Gary took care of the appellant whilst the sponsor attended the hearing at the Upper Tribunal on 10 January 2014. That daily log of events extends from 8 January 2014 until 15 January 2014. It very much supports the conclusions of Judge Lindsley in terms of the attitude of the appellant's brother and sister-in-law to him. It also reveals in stark form the very intimate care that the appellant plainly needs.

69. The second document is described as Appendix 7 and is a daily log kept by the sponsor "regarding the care of the Appellant while living in Adapazari offered in proof of abusive, inhuman and degrading behaviour by the Appellant's family". Aside again, from bringing to life, as it were, the intense physical demands of caring for the appellant, it reinforces evidence already given about the, often, hostility and indifference of the appellant's brother and sister-in-law.
70. It is always true that in cases of refusal of entry clearance there is a spectrum of consequences, hardship, or difficulty for the disappointed applicant and their sponsor or other family members. In some cases, the hardship, or even disappointment, may be relatively modest. It seems to me, that this appellant's case is at the other end of the extreme. If allowed to come to the UK the appellant would benefit from the care and support of other family members of the sponsor in the UK. Whilst there is no medical evidence on this issue, it is reasonable to infer that his life in the UK and any rehabilitation that there may be in prospect would be enhanced by his living here. Undoubtedly, the sponsor's life would be immeasurably enriched by having the care, support and friendship of family and friends in the UK. That is all apart from the alleviation of the significant hardship on her in having to care for the appellant.
71. I do accept that the decision of the respondent amounts to an interference with the appellant's private life in the sense that his private life would also be significantly enriched by being in the UK with the benefits that I have described. Likewise, there is an interference with the sponsor's private life for the same reasons. I am not satisfied that there is interference with their family life which they have together in Turkey. It is family life which is fraught with difficulty, as is obvious from the facts, but it is family life nevertheless.
72. There are, however, factors in the proportionality assessment which weigh against the grant of entry clearance. The first of these is the fact of the appellant's convictions. He was convicted of murdering a woman and her young child, albeit many years ago. He was also convicted of a riot in prison, although that it seems to me is very much a subsidiary matter.
73. There is no risk whatsoever of the appellant committing any further offences, given his physical and mental condition. Deportation cases, that is cases of expulsion from

the UK, are not much in point here except to say that it is recognised that there is more to the public interest than the risk of reoffending. The risk of reoffending plainly has an important part to play in excluding from the UK people who are likely to commit criminal offences. That is not the case with this appellant. Public interest in deterrence has a part to play, but less of a part to play than in expulsion cases. In an expulsion or deportation case the argument for deterring others is clearer. Foreign nationals are expected to be aware that if they commit offences they face the risk of removal. In the case of entry clearance, an offence committed before any application for entry clearance was ever in contemplation does not bring deterrence into play in the same way.

74. That is not to say, however, that deterrence has no part to play in the suitability criteria in terms of convictions. There plainly can be cases where offences are committed notwithstanding the intention to come to the UK in some capacity or another, and for which criminal convictions may amount to a disqualification.
75. Similarly, it is reasonable to conclude that the public are entitled to expect that, as a general matter, the UK does not host individuals who have been convicted of serious offences, regardless of whether there is a risk of that individual reoffending.
76. Thus, in a significant way, the appellant fails to meet one of the important requirements of the Immigration Rules, that is to say that relating to suitability, in the light of his conviction.
77. In addition, there is the question of the failure to meet the financial requirements of the Rules. Any analysis of the extent to which the appellant's sons would be able to assist financially were the appellant to come to the UK does not alter the fact that the appellant is not able to meet those financial requirements, those Rules representing the Secretary of State's view of the level of income required by an appellant seeking entry clearance. That provision of the Immigration Rules plainly also has a public interest element.
78. As I have indicated, I invited the parties to provide written submissions in relation to the 2014 Act. Section 19 of that Act inserted an amended section 117 into the Nationality, Immigration and Asylum Act 2002. So far as material, the new provisions are as follows:

**“PART 5A**

**ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS**

**“117A Application of this Part**

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must

(in particular) have regard –

(a) in all cases, to the considerations listed in section 117B, and  
 (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), “the public interest question” means the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2).

**117B Article 8: public interest considerations applicable in all cases**

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person’s immigration status is precarious.

...”

79. Thus, under Section 117B, the maintenance of effective immigration controls is in the public interest. It is also in the public interest and in the interests of the economic wellbeing of the United Kingdom that persons who seek to enter or remain in the UK are able to speak English, and that they are financially independent. The provisions in relation to foreign criminals have no application to the circumstances of this appeal, those provisions being concerned with the deportation of foreign criminals.
80. I have taken into account the written submissions provided by the sponsor in relation to the 2014 Act. Materially, the sponsor refers to the appellant being able to speak English, a matter that does not appear to be in dispute. She also repeats that the impact on the economy may be in the form of occasional prescription drugs only. Insofar as she refers to Judge Lindsley's assessment of the amount of funds that would be available to the appellant and the sponsor, I have already dealt with that matter with reference to the financial requirements of the Rules.
81. In general terms, in the covering letter dated 3 November 2014, post-hearing, the sponsor refers to the respondent's lack of preparedness for the hearing before me, suggesting that this raises a reasonable doubt in her mind in terms of whether this was a deliberate tactic to hide further inefficiencies at the Home Office. She suggests

that albeit that is a small issue in the scheme of things, it “impacts on the fairness to the appellant when the Home Office can get away with gaining extra time by possible deception thereby over-running the stated time guidelines to the detriment of the appellant”. There was, it should be said, no criticism by the sponsor in relation to Ms Kenny, and nor could there be.

82. The letter refers to what are said to be “unsubstantiated and uninformed speculation” on behalf of the representatives for the respondent, for example in terms of assertions that the appellant and the sponsor could live in another part of Turkey, despite her having repeatedly dealt with that matter. Similarly, the assertion that it is nothing more than a “wish” for the appellant and the sponsor to be in the UK.
83. Whilst I accept that a denial of entry clearance to the appellant will have significant personal implications for the sponsor, as well as for the appellant, I am not satisfied that the respondent's decision does, or would, amount to a disproportionate interference with the appellant's Article 8 rights in terms of family or private life. As I have already made clear, I accept that the lives of the appellant and of the sponsor would be significantly improved were the appellant to be permitted to come to the UK. However, there is evidence that albeit on an infrequent basis, the sponsor is able to obtain some respite from the intense physical and emotional strain of looking after her husband. Her son or sons have been able to visit from time to time whilst the sponsor has been in the UK. There is no reason to suppose that those visits could not continue, either whilst the sponsor remained in Turkey or whilst the sponsor visited the UK. I accept that this would involve a financial burden on the sponsor and/or her sons, but the evidence does not establish that such visits could not continue.
84. Furthermore on at least one occasion referred to in the evidence, the appellant's sisters have been able to visit to provide care for him in the absence of the sponsor. In addition, nursing care has been purchased for a period of three weeks. Whilst this evidence postdates the decision, it is evidence which relates to the circumstances as at the date of the decision.
85. I of course accept that those temporary and infrequent periods of relief for the sponsor are no substitute for the much fuller and enriching private life that she, and the appellant, would be able to enjoy in the UK. Nevertheless, in all the circumstances, I am satisfied that the respondent has established that the decision to refuse entry clearance is a proportionate response to the legitimate aim pursued. That legitimate aim encompasses the public interest factors I have referred to, as well as maintenance of an effective immigration control that provides certainty and predictability to those seeking entry clearance.
86. Accordingly, the decision of the First-tier Tribunal having been set aside, I re-make the decision, dismissing the appeal under the Immigration Rules and under Article 8 of the ECHR.

*Decision*

87. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision of the First-tier Tribunal having been set aside, the decision is re-made, dismissing the appeal under the Immigration Rules and under Article 8 of the ECHR.

Upper Tribunal Judge Kopieczek

6/01/15