



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/17515/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Field House

**Decision & Reasons
Promulgated
On: 17th October 2017**

On: 16th October 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**DOGAN DEMIR
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Qureshi, Counsel instructed by Stuart & Co Solicitors
For the Respondent: Ms Pal, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Turkey date of birth 1st February 1972. He seeks leave to remain in the United Kingdom on human rights grounds.
2. The Appellant's case, put first to the Secretary of State for the Home Department and then to the First-tier Tribunal, was that he was in a genuine and subsisting relationship with his British partner Terri Headley, that they live together with their two British children, and the Appellant's British step-son.
3. Both Respondent and Tribunal accepted that the Appellant is the

biological father of the two children concerned, but rejected his claim to be living with them and their mother. In granting permission to appeal Upper Tribunal Judge Kebede specifically refused to grant permission to challenge this finding on co-habitation, or rather the lack of it.

4. The remaining ground, upon which permission was granted, concerns the approach taken by the Tribunal to the questions posed by s117B(6) of the Nationality, Immigration and Asylum Act 2002 (as amended):

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

5. The central plank of this appeal is a submission that the determination fails to adequately address either limb of this test.

The Decision of the First-tier Tribunal

6. The starting point of the Tribunal was to make a general finding that the Appellant is not a reliable witness [at 10]. The Tribunal notes that he had lived and worked in the UK without permission to do so, and that on at least one occasion had exercised deception in an application for entry clearance: in 2010 he claimed to be visiting a friend when in fact the true purpose of the trip was to attend the birth of his second child [10]. The Tribunal rejected with reasons his claim to have no family members left in Northern Cyprus [11]. It rejected the evidence that he had been living with the mother of the children [15]. Turning to the position of the children the Tribunal found as follows:

“18. I find that the best interests of the children are to remain in their current family unit which I find is living with their mother and half-sibling. There is very little evidence before me regarding the quality of the relationship that the appellant has with the boys or the frequency of contact. I place weight on the fact that although Ms Headley provided a letter with the appellant's application stating that the appellant takes and collects the children from school this was not supported by a letter from the school, and it is not wholly credible given that Mr Demir works whereas Ms Headley does not. In assessing the nature of his relationship with his sons I also place weight on the fact that there were

no supporting witness statements or witnesses, despite the appellant's oral evidence that he knew Ms Headley's parents before he met her, or her evidence in her witness statement that they are a close family. In addition, quite unusually, I was not provided with any photographs of the appellant with his sons.

19. Taking the evidence as whole I am satisfied that on the balance of probabilities, the appellant provides financial support for his sons and that he has some contact with them. The fact that Ms Headley took them to Cyprus to meet their grandfather and aunts is evidence in my mind of some relationship with the appellant, although the level of this is not clear to me because I am not persuaded that the family live together. I am however satisfied that the appellant's removal would interfere with his right to respect for family life with his children".

7. The findings are then interposed by some directions as to the approach to be taken in Article 8 appeals before the following conclusion is reached:

"23. With regards to s117B(6)(a) I am not persuaded, for the reasons set out above, that the strength of the appellant's relationship with his sons is such that the public interest does not require his removal, particularly when balanced against his poor immigration history, my poor credibility findings and the fact that he does not meet the immigration rules. I do not find that the children's best interests require his continued residence in the UK. Ms Headley can take the children to visit the appellant and it is always open to him to apply for entry clearance in the UK in an appropriate category".

Error of Law

8. This appeal came before me for a preliminary hearing on the 1st August 2017. The Respondent was on that occasion represented by Senior Presenting Officer Mr Avery. The Appellant was represented by Mr Mallan of Counsel. Both made submissions on whether the decision of the First-tier Tribunal contained errors such that it should be set aside.
9. Mr Avery submitted that the determination had to be read as a whole, and that it was implicit in the reasoning, particularly at [23] (set out above) that the Tribunal did not accept that there was a genuine and subsisting parental relationship. If sub-section 117B(6)(a) was not met, it did not matter what the findings might be on s117B(6)(b). As to those findings, Mr Avery submitted that the Tribunal had clearly drawn adverse conclusions as to the immigration history of the

Appellant such that it would be entitled to find that the decision to refuse leave would be proportionate. Overall it was submitted on the Secretary of State for the Home Department's behalf that the Tribunal had addressed all relevant factors.

10. In a written decision dated the 3rd August 2017 I indicated that the decision of the First-tier Tribunal was set aside: I so found because I was not satisfied that the Tribunal had properly addressed the questions posed by s117B(6) NIAA 2002.
11. The determination had started at the correct point. Having dismissed the appeal in respect of the rules the Tribunal went on to direct itself to the *Razgar* framework. It found there to be a family life, and an interference. Proceeding to the questions of necessity and proportionality the Tribunal properly directed itself to the 'public interest factors' set out in s117B. The findings [at 22] in respect of ss(1)-(5) were open to it on the evidence before it. When the determination turns to address s117B(6) however, the determination appears to lose its way.
12. The question at sub-section (a), whether or not there is a genuine and subsisting parental relationship, was one of pure fact. It could not be influenced by the public interest in the Appellant's removal, nor by his poor immigration history. The language used by the Tribunal appeared to indicate that the Tribunal accepted that there was a parental relationship, but that was a matter to be balanced, at that stage, against the public interest: "I am not persuaded, for the reasons set out above, that the strength of the appellant's relationship with his sons is such that the public interest does not require his removal". Whilst the Tribunal was troubled by the paucity of evidence (the bundles having been prepared to go to the issue of cohabitation) all of the evidence that there was pointed one way, to there being a subsisting parental relationship. The evidence as to the relationship was that he was the boys' biological father, that he supported them financially, that he plays with them and helps them with school work, that they had been taken to Cyprus to meet their paternal family and in the words of Ms Headley that he brought them "joy and happiness". The Tribunal failed to address that evidence in answering a simple question of fact because it misdirected itself to the relevant factors at paragraph 23. That was a material error of law.
13. As to the second limb of section 117B(6) - reasonableness - the fact that the children could visit their father in Northern Cyprus, or that he could apply for entry clearance, went nowhere to answering the question posed at sub-section (b), namely whether it was *reasonable to expect them to leave the UK*. The grounds point to the Respondent's well-known policy on whether it would be reasonable to require British children to leave the UK. That guidance, approved in principle in MA (Pakistan) [2016] EWCA Civ 705, was to the effect that where removal would entail "a parent" travelling outside of the EU, "the case must always be assessed on the basis

that it would be unreasonable to expect a British Citizen child to leave the EU with that parent". It would only be appropriate to refuse leave in cases involving criminality or a very poor immigration history. In his submissions Mr Avery contended that the latter is precisely what the Appellant has, and that on that basis any error in reasoning should be found to be immaterial. Whilst that is a submission that the Respondent would be entitled to make in the remaking, I am not satisfied that it is sufficient to save the reasoning at paragraph 23 of the determination. The First-tier Tribunal cannot be said to have properly addressed the question of reasonableness, not least because it has failed to have regard to the Respondent's published guidance on the matter.

14. I directed that the matter come back before me for remaking. The hearing resumed on the 16th October 2017.

The Re-Made Decision

15. As I noted at the 'error of law' hearing, the bundles prepared for the First-tier Tribunal had gone almost exclusively to the issue of whether Mr Demir lived with Ms Headley. Those representing him had apparently proceeded on the basis that cohabitation of the parents would *prima facie* establish a parental relationship. Since Judge Kebede had expressly refused permission for that issue to be re-opened, I directed that further evidence be provided as to Mr Demir's relationship with the children.

The Evidence

16. The evidence came in a bundle dated the 10th October 2017.
17. The Appellant's witness statement is dated the 4th October 2017. He avers that he is close to Ms Headley's family and that he cannot imagine life without his children, his stepson B who is 9, and his sons O and J who are 7 and 5 respectively. He claims to be involved in all aspects of their lives. The Appellant told me that he and his partner are now expecting their third child, due on the 27th March 2018. In respect of the family's finances Mr Demir told me that his partner works part time and that her mother also helps. She works part time but is usually home after school. The youngest child J is five years old. They are all attending school. When Terri is working he takes the children to school. Other days she takes them. They start at 8.55 and finish at 3.30pm. Asked about his stepson, the Appellant said that he has a good relationship with B. He thinks of him as his son but recognises that B does also have his own father. He confirmed that B's biological father sees him on Sundays, and afterschool on Mondays. He described the boy's father as a "good guy". His stepson normally comes home straight after school, or goes to his grandmothers in the same estate. Sometimes he will play out with his

cousin, or go on his iPad. The two little ones play at home. Mr Demir makes them food. They also go to their grandmother's house - she lives in the next block - and they also go to the park. If the children are ill their Mum takes them to the doctor - Mr Demir explained that he does not feel that his English is good enough to deal with things like that. For the same reason he does not go to parents evenings, although he does attend assembly. In response to Ms Pal's questions Mr Demir said that his youngest son goes to bed at 7pm. He is usually put to bed by his Mum because he sleeps easier with her. Mr Demir said that his youngest eats everything - he loves sugar and last week he was told by the dentist that his teeth have gone bad so now Mr Demir says that he must eat an apple every day instead. The middle child loves cereal. They don't tend to eat Cypriot food because he does not cook - the family tend to eat food prepared by Terri or her mother. Mr Demir takes them out to park - they play football, takes them out on their bikes. The children play with their friends on the estate where they live. Mr Demir confirmed that he and Ms Headley are planning to get married. They have just received the permission of the Home Office to do so and are planning a wedding for next year.

18. Ms Terri Headley's statement, also the 4th October 2017, is the effect that she and the Appellant have been in a relationship since January 2010. She adopted that statement and gave further oral evidence. She says that he gave her support at that time because she was a single parent, and that her eldest son, from an earlier relationship, now calls the Appellant "Daddy". He plays with the children and helps them with their homework. He takes them to and from school at times. Ms Headley explains that even if she were willing to relocate to Northern Cyprus she would not be able to do so because she would require the consent of her eldest child's father, which would not be forthcoming. B sees his biological father every week. B has mild learning difficulties and also suffers from hypoglycaemia so you have to keep an eye on him - if he doesn't eat or his blood sugar drops he can have seizures. He sees his dad on a Sunday and Monday and in holidays. In her oral evidence Terri Headley said that she is working in a coffee shop as a waitress. She works 24 hours per week. Sometimes in the morning, sometimes in the afternoon. Lately she has done a bit less because of being pregnant - she has not been well. If Terri is working the Appellant takes/collects them from school. She describes Mr Demir as being a "hands on dad". The children really love him. In the morning he does the breakfast. He has taken them on school trips. He helps them with their homework - even though his English is limited. They know it is a bit harder for him to read the English books. Asked by Ms Pal to give an example of the kind of things that he does with them she said that he will take them to the park, to the softplay area, down the river. He baths them in the evening. If they want him to take them upstairs to bed they will say so. Ms Headley said that the Appellant does all the normal things that you would expect a father to do. She agreed that she does lie down with the children in the evening but that she is trying to get them to stop depending on her for that. Ms Headley

said that they have always lived together. Their previous house they lived in from February/March 2011. Their current house they moved into in 2013. The council moved them after their other son was born.

19. I was provided with a statement by Mrs Jeanette Mary Headley, who is Terri Headley's mother. Mrs Headley confirms that she has known the Appellant for over 10 years. When he started going out with their daughter she and her husband embraced him as part of their family. She describes him as a "very good man" who takes care of his children and takes an active role in their lives. Mrs Headley attended the hearing. She adopted the statement that she had signed. In response to Ms Pal's questions she confirmed that she lives about 2 minutes away from the Appellant, her daughter and the children - they live on the same estate. They all live as a family. He is a "hands on dad". He takes them to the park and takes the children to school (although not every day). The children come and see her most days, as do their cousins who also live on the same estate or nearby. Mrs Headley stressed that the children are very close to their cousins, and that they all feel very comfortable running in and out of her house and playing nearby. She has ten grandchildren and three more on the way. Terri's three children currently have cousins aged 13, 12 (x2), 9 (x2), 7 and 4. They all play together and are very close to her and her husband. They also regularly see her mother-in-law (their Great-Grandma) who lives down the road. Mrs Headley's own mother lives in Kent and they also see her but not as much because she has not been well. In response to my questions Mrs Headley confirmed that to her knowledge the children do not speak any Turkish apart from the odd word. She agreed that they do understand some of what their Dad says if he speaks to them in Turkish but would not be able to respond. They would be like aliens if they went to Cyprus. Mrs Headley confirmed that the Appellant and Terri have been planning a wedding. They have been to see the Registrar and have taken all the forms they need.
20. I was provided with a statement by Ms Victoria Swan, dated 4th October 2017. She has known the Appellant and Ms Headley since 2011. They were neighbours and their children attend the same school. She describes the Appellant and Ms Headley as "very good parents". She would often see them in the park with the children and had the opportunity of seeing them at home when she visited, and when their children visited her home. She believes that the Appellant is "very committed" to the welfare of his children. Ms Swan did not attend the hearing to give oral evidence. She had a medical appointment: a letter from her doctor was provided as confirmation of this.
21. Ms Kelly Murton provided a statement dated the 4th October 2017. She is another neighbour, who has known the Appellant and his family since 2010. Her children attend the same school as the Appellant's. She has often seen him taking them to, and collecting them from, school. She has seen him attending school assemblies,

other children's birthday parties and taking his children on "play dates". In her oral evidence Ms Murton said that she lives about one minutes' walk from the Appellant and his family. She has a son aged 6, and both he and she have visited the family, because her son is in the same class as their middle child O. As far as Ms Murton is concerned Mr Demir lives in the home and is a father to the children. She sees him probably once per week, maybe twice, taking the children to school. Also - particularly in the summer - she has seen the Appellant and the children at picnics in the park.

22. In terms of documentary evidence I was shown a letter from [School], which confirms that the school records show the Appellant to be a registered point of contact ('father') in respect of his two biological children. Numerous photographs were provided of the Appellant and his family.

The Legal Framework

23. My starting point must be the Immigration Rules. If the Appellant cannot qualify for leave to remain under the Rules I will consider whether it would nevertheless be contrary to the United Kingdom's obligations under Article 8 ECHR to remove him from the UK. This requires me to consider first whether he has established a family and/or private life in this country such that Article 8 would be engaged by an interference with it; the extent of any such interference; whether the interference would be lawful (ie within the legal powers of the Secretary of State for the Home Department) and in pursuit of a legitimate aim; and ultimately whether it would be proportionate to the aim sought to be achieved.
24. In my assessment of proportionality I must have regard to the 'public interest' factors set out at section 117B of the Nationality, Immigration and Asylum Act 2002:

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.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

25. In Treebhowan [2015] UKUT 674 the then President of this Tribunal Mr Justice McCloskey held that s117B(6) was of a different nature from the public interest factors set out in ss(1)-(5). It is expressed in mandatory terms so that if both limbs (a) and (b) are satisfied, the result is that it would be disproportionate to remove the appellant in question. The decision on whether it would be reasonable for a qualifying child to leave the country therefore assumed great significance in such claims. In MA (Pakistan) the Court of Appeal agreed that s117B(6) was capable of being determinative in the proportionality balancing exercise. It did not however agree with

McCloskey J about what factors might be relevant in that enquiry. McCloskey J had suggested that that question was to be answered solely with reference to the child. Drawing an analogy with the approach taken in deportation appeals to the test of “undue harshness”, Elias LJ was satisfied – albeit reluctantly – that the Secretary of State was correct in her contention that the test in fact required the public interest to be weighed in to the balance. This would include all the pertinent matters set out at s117B(1)-(5), as well as any other ‘suitability’ issues, such as criminality. Against that would be weighed any number of factors relating to the ‘best interests’ of the child, for instance: education, healthcare, ties to the country where he would live if he had to leave the UK, the location and strength of ties with other family members.

26. Another important factor would be the child’s nationality: ZH Tanzania v Secretary of State for the Home Department [2011] UKSC 4. In her published policy on the application of Article 8 ‘outside the rules’ the Secretary of State acknowledges that nationality has an important role to play, albeit applying a different legal *ratio* from the Supreme Court in ZH. Recognising the consequences that flow from the decision in the CJEU case of Zambrano [2011] (C-34/0) the Immigration Directorate’s Instructions¹ read as follows:

Save in cases involving criminality, the decision maker must not take a decision in relation to the parent or primary carer of a British Citizen child where the effect of that decision would be to force that British child to leave the EU, regardless of the age of that child. This reflects the European Court of Justice judgment in Zambrano. The decision maker must consult the following guidance when assessing cases involving criminality:

- Criminality Guidance in ECHR Cases (internal)
- Criminality Guidance in ECHR Cases (external)

Where a decision to refuse the application would require a parent or primary carer to return to a country outside the EU, the case must always be assessed on the basis that it would be unreasonable to expect a British Citizen child to leave the EU with that parent or primary carer.

In such cases it will usually be appropriate to grant leave to the parent or primary carer, to enable them to remain in the UK with the child, provided that there is satisfactory evidence of a genuine and subsisting parental relationship.

(emphasis added)

¹ Family Migration: *Appendix FM Section 1.0b* Family Life (as a partner or parent) Ten Year Routes, published August 2015

Discussion and Findings

27. For the Appellant Ms Qureshi conceded that he could not meet any of the requirements of the Immigration Rules. He could not meet the requirements of Appendix FM as they relate to partners, since on the undisturbed findings of the First-tier Tribunal he had not demonstrated that he and Ms Headley live together in a permanent relationship. I am bound to say that having heard the evidence of the four witnesses before me today I have no doubt at all that the Appellant and Ms Headley are a couple and that they have been living together for years, but given the terms in which Judge Kebede granted leave, that is not a matter that I am able to revisit. Nor, conceded Ms Qureshi, can the Appellant meet the requirements of Appendix FM relating to 'parents'. That is because these provisions relate only to single parents. Any arguments relating to the Appellant's private life, arising under paragraph 276ADE, were lost before the First-tier Tribunal and Ms Qureshi did not seek to resurrect them.
28. That then is my starting point. The Appellant is an illegal entrant with no hope of successfully regularising his position under the Immigration Rules. I am nevertheless mindful that he does *prima facie* have a family in this country including three young children and I am therefore satisfied that it would be appropriate to consider his Article 8 rights outwith the Rules.
29. I am satisfied that the Appellant Mr Demir enjoys a family life in this country with his partner Terri Headley, his stepson B and with his sons O and J. The evidence of the witnesses was consistent and compelling. I have no reason at all to doubt their stated position that he and Ms Headley have been in a relationship for a number of years, have lived together at a number of different addresses and that he is a "hands on dad" to his biological sons and his stepson. Were any further evidence needed to support the proposition that there is a currently subsisting family life, I note that Ms Headley is currently pregnant with what will be the family's fourth child.
30. I am satisfied that the decision to refuse Mr Demir leave, and the attendant expectation that he leaves the UK and returns to Northern Cyprus would have a substantial and immediate impact on the family. I am satisfied that there is no prospect at all of Ms Headley and the children going to live in Cyprus with him, given their roots in this country and the fact that they have extended family networks here. I am satisfied that the decision is one capable of engaging Article 8.
31. The decision to remove a non-British national with no leave to remain is plainly one that is lawfully open to the Secretary of State for the Home Department to take. I am satisfied that the aim of the decision, the maintenance of immigration control is a legitimate aim

engaging factors in Article 8(2) including the economic well-being of the country and the rights and freedoms of others. I am satisfied that the decision is rationally connected to the legitimate aim pursued.

32. The question is whether, taking all relevant factors into account, it is proportionate. By way of s19 of the Immigration Act 2014 parliament introduced significant amendments to the 2002 Act, so that it now sets out mandatory considerations that must be weighed in the balance in all Article 8 cases. I deal with those 'public interest factors' first.
33. I remind myself that the Appellant Mr Demir does not have any lawful right to remain in this country, and that the First-tier Tribunal found him to have deliberately evaded immigration control by, for instance, lying about his purpose of entry in 2010 when he came back to this country to attend the birth of his son. The maintenance of immigration control is in the public interest and that is a matter that must attract significant weight in my assessment.
34. I cannot be satisfied that this family could properly be described as financially independent. Although I accept that Mr Demir has from time to time worked to support his family, and that he facilitates Ms Headley doing so now, by their own admission their household income falls well short of the minimum income requirements set out in Appendix FM. I accept that he wishes to work and if given the opportunity to do so lawfully he will in the future achieve financial independence, but that is not the position at the date of this hearing and so that is a factor that must weigh against him in the balance.
35. Notwithstanding his own self-deprecation in respect of his language ability I find that Mr Demir is able to speak English to the extent that he has been able to integrate into life in the UK. In giving his evidence he at times found it difficult to make himself understood, but I accept that this is because he was in a strange and perhaps stressful environment, and that he was being asked to comment on matters that he might not otherwise be discussing. He and Ms Headley have evidently managed to communicate sufficiently to raise a family together; his mother-in-law Mrs Headley did not indicate that she has any difficulties in understanding him; as Ms Murton testified he has managed to make friends in the community and she gave no indication of any language barrier. In the absence of evidence that any of these witnesses speak Turkish I accept that they all speak to the Appellant in English.
36. I can attach only a little weight to the Appellant's relationship with Ms Headley, since it was established when he was in this country unlawfully. So too I can only attach a little weight to the private life that he has established here. This would include his relationships with his neighbours and Ms Headley's extended family.
37. I turn then to the questions at the heart of this appeal, those

posed by s117B(6) NIAA 2002. Having extensively cross-examined all of the witnesses Ms Pal made the very realistic concession that the Appellant does enjoy a genuine and subsisting parental relationship with his sons and with B. She quite properly recognised that she could do little else, given the overwhelming evidence to that effect and the lack of any countervailing material. I accept and find as fact that the Appellant does enjoy a genuine and subsisting parental relationship with his sons, who as British nationals are 'qualifying', as defined by s117D of the NIAA 2002.

38. The final question is whether it would be reasonable to expect those children to leave the UK. I have given consideration to the matters arising from my analysis of (1)-(5) of s117B. I have borne in mind the adverse findings of the First-tier Tribunal in respect of the Appellant's attitude towards immigration control, and at the forefront of my mind has been the fact that Article 8 is not a general dispensing power. It does not confer upon couples the right to choose where they live. I am however satisfied that in the particular circumstances of this case it would not be 'reasonable' to expect any of these boys to leave the UK. That being the question that parliament found to be determinative, it follows that the appeal must be allowed. My reasons are as follows.

39. I start with B. B cannot leave the UK because he continues to have a relationship with his father. There is every indication that the relationships in the family as a whole continue to be amicable. Mrs Headley explained the frequency with which B sees his Dad, and the Appellant himself describes him as a "good guy". I have every reason to believe that this is therefore a relationship which will subsist in the future. I am satisfied that it would not be at all reasonable to expect this child, already perhaps particularly vulnerable because of his health concerns and learning difficulties, to leave the UK and his father behind. I have no hesitation in accepting Ms Headley's (unchallenged) evidence that B's father would not permit him to leave the country.

40. In respect of O and J I accept and find as fact that they enjoy a close relationship with their older brother. The three boys are the indivisible core at the centre of this family unit and it would be wholly contrary to the best interests of all three if they were to be split up. The adverse impact upon them would in my view be disproportionate to the aim pursued. I note that as well as their relationships with each other the boys also enjoy a close relationship- perhaps in this day and age exceptionally so - with their cousins, aunts, uncles, grandparents and great-grandparents who all live within a few minutes' walk of their home. Mrs Headley's portrayal of her open-door policy was particularly striking, with her grandchildren treating her home in effect as an extension of their own. I find that these children have grown up in a warm, supportive and loving extended family and it is everything that they have ever known. It is their 'normal' and I am satisfied that it would be very much contrary to their best

interests to interfere with that. I am satisfied that in the particular circumstances of this case those best interests must prevail over the public interest in refusing leave: it would not be 'reasonable' to expect the boys to leave the UK.

41. Given the terms in which s117B(6) is drafted it is not necessary for me to consider the possibility of Mr Demir returning to Cyprus and applying for entry clearance to return as a partner under the terms of Appendix FM, but I do so for the sake of completeness. There is another baby on the way. Ms Headley made it clear in her evidence how much she already depends on Mr Demir to look after the children. She is, if left as a single mother with a very young baby, extremely unlikely to meet the minimum income requirements even under the recently amended provisions. Mr Demir is not, in those circumstances, going to get entry clearance. The separation is very likely to be prolonged and substantial. Mr Demir will miss out on the crucial early years of bonding with his new child, as well as the opportunity to continue being a father to his sons. Conversely the children will lose the undeniable benefit of growing up in a stable home with two parents. I do not regard that as an interference proportionate to the aim pursued, even weighing in the very substantial public interest.
42. It will be observed that I have reached my findings without reference to the boys' nationality and to the significant weight that much be attached to their right to enjoy the benefits that citizenship of the UK entails. Nor have I considered it necessary to refer to the Respondent's policy cited above. I simply note that both the policy and the guidance in ZH (Tanzania) reinforce my decision.

Decisions

43. The decision of the First-tier Tribunal contains a material error of law and it is set aside.
44. The appeal is allowed on human rights grounds.

Upper Tribunal Judge Bruce
17th October 2017