



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

Appeal Number: UI-2021-001463
HU/06219/2020

THE IMMIGRATION ACTS

**Heard at Bradford
On 21 October 2021**

**Decision & Reasons Promulgated
On 3 December 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

DM

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan instructed by Legal Justice Solicitors.

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** The appellant is a citizen of Iran born on 27 December 1983.
- 2.** It is not in dispute that the appellant arrived in the United Kingdom on 18 January 2007 and claimed asylum, which was refused, and that decision upheld on appeal. A number further submissions were rejected under paragraph 353 of the Immigration Rules as they were a repeat of his earlier failed asylum claim.

3. The appellant was granted discretionary leave to remain between 20 January 2013 and 18 February 2019 and made an in-time application for further discretionary leave to remain on 7 August 2018. This application was not considered by the respondent until 19 June 2020 by which time the appellant had been convicted and sentenced at Sheffield Crown Court, on 30 September 2019, to a term of imprisonment of 16 months suspended for a period of 18 months for the offence of producing a controlled drug, Class B cannabis.
4. The appellant's appeal against the Secretary of State's refusal to grant further leave came before the First-tier Tribunal which was dismissed. The Upper Tribunal found error of law in that determination although specifically stated that the appellant's immigration history, criminality, findings regarding his private life in the United Kingdom were to be preserved findings.
5. The finding in relation to private life is that it was found the appellant, although he had a significant command of English language, had not established any other significant social cultural connections to the United Kingdom. It was noted the appellant had been in the United Kingdom at that stage for 14 years, now longer, but also that that his private life had been established during the time his presence in the United Kingdom was precarious.

Discussion

6. The matter comes back before the Upper Tribunal to enable it to give further consideration to the issue of the merits or otherwise of the decision under challenge.
7. There was much discussion regarding the ability of the appellant to satisfy the suitability requirements of the Immigration Rules which read:

Section S-LTR: Suitability-leave to remain

S-LTR.1.1. The applicant will be refused limited leave to remain on grounds of suitability if any of paragraphs S-LTR.1.2. to 1.8. apply.

S-LTR.1.2. The applicant is currently the subject of a deportation order.

S-LTR.1.3. The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years.

S-LTR.1.4. The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for less than 4 years but at least 12 months, unless a period of 10 years has passed since the end of the sentence; or

S-LTR.1.5. The presence of the applicant in the UK is not conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law.

S-LTR.1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do

not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.

8. It was not challenged before the Upper Tribunal at the error of law stage that the appellant did not fall foul of S – LTR 1.3 – 1.5. The issue is whether, considering the appellant circumstances cumulatively, he falls foul of S-LTR.1.6.
9. The relevant section of the refusal letter dated 19 June 2020, which refused the appellants human right claim, reads:

Suitability

For the reasons given below, your application falls for refusal on grounds of suitability in Section S-LTR under paragraph 276ADE(1)(i) of the Immigration Rules because you have a conviction – details as follows:

On 30 September 2019 at Sheffield Crown Court, you were convicted of the following offence:

Producing a controlled drug, that being Class B cannabis.

You were given a 16 month prison sentence - wholly suspended for 18 months. You were given an unpaid work requirement of 150 hours to be undertake prior to 29 September 2020. You were required to attend rehabilitation activity and imposed with a victim surcharge of £140.00. A confiscation order was imposed on 27 January 2020.

Section S-LTR: Suitability-leave to remain states the following:

S-LTR.1.1. The applicant will be refused limited leave to remain on grounds of suitability if any of paragraphs S-LTR.1.2. to 1.8. apply.

You have therefore failed to meet the following suitability requirement:

S-LTR.1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.

10. It is accepted that evidence from the Probation Service shows the appellant has been assessed as presenting at low risk of offending but that does not mean no risk and if he was to re-engage with similar criminal acts the harm that could result is likely to be serious.
11. I accept the findings of the First-tier Tribunal Judge in the earlier determination that the length of the prison sentence is indicative of the appellant being involved in producing cannabis on a commercial scale, and that the evidence did not support the claim that the appellant was involved as a result of coercion; he claiming that he worked in the production of cannabis to pay off a drug debt that he had acquired to feed his habit. The concerns of attempting to minimise actions rather than taking full responsibility for them recorded earlier is in accordance with the evidence given, and I see no reason to find otherwise. Likewise, I see no reason to make a finding different to that arrived at by the First-tier Tribunal that there is no evidence the appellant has continued to be involved in the production or possession of illicit drugs.

12. Reference was made by Ms Khan to the fact the appellant’s sentence of imprisonment was suspended. She provided for the benefit of the Tribunal a copy of the Sentencing Council guidelines effective from 1 February 2017 in relation to the imposition of community and custodial sentences. It is settled law that a suspended sentence of imprisonment is not a stand-alone offence as the first thing the sentencing body needs to consider is whether the necessary custody threshold has been passed. In this case, in relation to the production of Class B drugs, Cannabis on a commercial scale, that requirement was clearly satisfied. That is an important point as it was clearly the view of the Sentencing Judge that the offence was so serious that neither a fine alone nor a community sentence could be justified. The Sentencing Guidelines shows that the circumstances of the individual offence and the factors assessed by offence specific guidelines will determine whether the degree of seriousness is made out. The second matter to be considered was whether it was unavoidable that a sentence of imprisonment should be imposed. Again, it was clearly the view of the Sentencing Judge that a custodial sentence was more appropriate on the facts than a community order or any other non-custodial sentence. It was clearly considered that imposing a custodial sentence was the proportionate way of achieving the aims of sentencing. It is not made out the sentence of imprisonment imposed upon the appellant was anything other than the shortest term commensurate with the seriousness of the offence on the facts. In relation to the question of whether the sentence can be suspended, as it was in this case, the guidelines read:

Can the sentence be suspended?

A suspended sentence **MUST NOT** be imposed as a more severe form of community order. A suspended sentence is a custodial sentence. **Sentencers should be clear that they would impose an immediate custodial sentence if the power to suspend were not available.** If not, a non-custodial sentence should be imposed.

The following factors should be weighed in considering whether it is possible to suspend the sentence.

Factors indicating that it would not be appropriate to suspend a custodial sentence	Factors indicating that it may be appropriate to suspend a custodial sentence
Offender presents a risk/danger to the public	Realistic prospect of rehabilitation
Appropriate punishment can only be achieved by immediate custody	Strong personal mitigation
History of poor compliance with court orders	Immediate custody will result in significant harmful impact upon

others

The imposition of a custodial sentence is both punishment and a deterrent. To ensure that the overall terms of the suspended sentence are commensurate with offence seriousness, care must be taken to ensure requirements imposed are not excessive. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

- 13.** Without sight of the Sentencing Judge's remarks it is not clear how the factors were balanced, but on the evidence it appears that what would have been relevant would have been the prospect of rehabilitation, strong personal mitigation in relation to the reason the offence was committed. It is important to note that in the guidelines there is further reinforcement of the fact that a suspended sentence is a custodial sentence.
- 14.** My assessment has been made by reference to the sentencing guidelines in force at the date the appellant was sentenced rather than the more recent revised guidelines which impose greater sentences for drug offences in recognition of the impact upon society of drugs and the changes that have occurred in relation to the strength and nature of illicit substances now available in the UK.
- 15.** The specific wording of S-LTR.1.6. is relevant. *"The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK"* clearly encompasses situations such as that in which the appellant finds himself in that his conviction having been suspended was not found to fall within paragraphs 1.3 to 1.5. It is the case that the Secretary of State has a wide power of evaluative judgement to assess what might or might not be conducive to the public good and a wide discretion in terms of whether an individual's conduct, convictions, character, associations or other reasons make it undesirable to permit a person to remain in the United Kingdom.
- 16.** The obligation upon the Secretary of State was to establish whether the facts giving rise to the application of S - LTR.1.6. arose, which is not disputed on the basis of the appellant's conviction for producing class B drug, cannabis, on a commercial scale. It was then necessary for the Secretary of State to evaluate whether refusing the application and removing the appellant from the United Kingdom will be conducive to the public good.
- 17.** Much was said before me about the risk of offending and a submission the appellant presents a low risk to the community of reoffending, which is relevant as it is necessary to establish and evaluate the risk to the public, i.e. whether there was a substantial risk of disorder. As noted above low risk is relevant but that is not no risk.
- 18.** In relation to the question of the degree of deference that should be given to the Secretary of State's assessment of the public good, it is important not to lose sight of the fact that the assessment made is not

of an individual but of the UK as a whole. The fact this involves consideration of strategic or overarching issues going beyond the specific facts of an appeal was discussed by the Court of Appeal in the earlier case of N (Kenyan) v Secretary of State for the Home Department [2004] EWCA Civ 1094 in which May LJ said at [64]

"Where a person who is not a British citizen commits a number of very serious crimes, the public interest side of the balance will include importantly, although not exclusively, the public policy need to deter and to express society's revulsion at the seriousness of the criminality. It is for the adjudicator in the exercise of his discretion to weigh all relevant factors, but an individual adjudicator is no better able to judge the critical public interest factor than is the court. In the first instance, that is a matter for the Secretary of State. The adjudicator should then take proper account of the Secretary of State's public interest view."

19. Also at [83] Judge LJ said:

"The "public good" and the "public interest" are wide-ranging but undefined concepts. In my judgment [...] broad issues of social cohesion and public confidence in the administration of the system by which control is exercised over non-British citizens who enter and remain in the United Kingdom are engaged. They include an element of deterrence, to non-British citizens who are already here, even if they are genuine refugees and to those minded to come, so as to ensure that they clearly understand that, whatever the circumstances, one of the consequences of serious crime may well be deportation. The Secretary of State has a primary responsibility for this system. His decisions have a public importance beyond the personal impact on the individual or individuals who would be directly affected by them. The adjudicator must form his own independent judgment. Provided he is satisfied that he would exercise the discretion "differently" to the Secretary of State, he must say so. Nevertheless, in every case, he should at least address the Secretary of State's prime responsibility for the public interest and the public good, and the impact that these matters will properly have had on the exercise of his discretion. The adjudicator cannot decide that the discretion of the Secretary of State "should have been exercised differently" without understanding and giving weight to matters which the Secretary of State was entitled or required to take into account when considering the public good."

20. Of relevance to conduct involving the commercial production of drugs is the impact of drugs within the wider community of the United Kingdom. Many publications relating to the impact of addiction to drugs speak of the devastating impact on those affected which can destroy lives, and lead to poor health, and even premature death. In relation to the effect of addiction on society, the NHS regularly reports substantial numbers of hospital admissions with a primary diagnosis of drug-related mental health and behavioural disorders, poisoning by illicit drugs, drug-related deaths, in addition to violent crime and domestic abuse and routine drug abuse, many requiring treatment by the emergency services. The estimated cost of drug abuse in addition to the NHS runs into millions of pounds each single year which is a drain upon a valued resource which is under considerable strain

without such issues. Relevant to the appellant's criminality is that those who manufacture and supply prohibited drugs commit crime which police resources are required to deal with both in relation to those who produce and those who may use illicit drugs. Even if it was to be argued by some that rather than criminalising the taking of drugs such as those produced by the appellant the focus should be on rehabilitation, there would also be a considerable cost to the NHS or public services in providing such support which has not, to date, been shown to be an effective use of public funds.

21. But that is only one element, and detailed submissions were made by Ms Khan in relation to the 'limbo' argument. At [8 -9] of her Supplementary Skeleton Argument Ms Khan writes:

8. The Appellant further relies on the case of *AM, R (on the application of) v Secretary of State for the Home Department (legal "limbo")* [2021] UKUT 62 (IAC) (1 February 2021) and would submit that the refusal of further leave will place the Appellant in a state of limbo that would breach article 8. Following the guidance in the case of *RA (Iraq) v Secretary of State for the Home Department* [2019] EWCA Civ 850, the four stage test to be adopted in this case is as follows:

"Stage 1: distinguish between prospective 'limbo and actual 'limbo"
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63. *The term 'limbo' is a convenient shorthand for describing the position of a person whom the SSHD wishes to deport or remove, but there is a limited prospect of ever effecting his deportation or removal (for the purposes of this judgment, the terms deport and deportation should be viewed interchangeably with remove and removal). The term 'limbo' is loosely used to cover individuals who may be in one of two discrete states: (i) first, someone in respect of whom a decision to deport has been taken, but no deportation order has in fact been made; or (ii) second, someone in respect of whom a deportation order has already been made but who has not yet been deported. In many cases, an individual in the first state (such as this Appellant to date) may have suffered little or no day-to-day impact on his or her private or family life. Thus, for a person in the first state, the effect of possessing leave to remain under s. 3C of the Immigration Act 1971 (i.e. pending appeal) will have been that they are free to work and to enjoy private and family life. This may be described as prospective 'limbo'. Where, however, in the second state, a deportation order has in fact been made, there will normally be no leave to remain, and the individual will be unable to work, claim benefits or receive more than basic GP care under the NHS. This may be described as actual 'limbo'.*

64. *In approaching any claim based on 'limbo' grounds, therefore, it is necessary first of all to distinguish between these two different situations, namely prospective 'limbo' and actual 'limbo', when assessing the balance between (a) the public interest in making or sustaining a decision to*

deport and then a deportation order on the one hand, and (b) the impact on Article 8 and other Convention rights of an individual on the other. The former state of prospective 'limbo' is likely to weigh less heavily in the balance in the interests of the individual than the latter state of actual 'limbo', but each case will depend on its own facts and the periods involved.

(2) Stage 2: Prospects of effecting deportation must be remote

65. There is a threshold question to be addressed as to the (non) 'deportability' of the individual. In order to raise a 'limbo' argument in the first place, i.e. whether the public interest justifies making or sustaining a decision to deport or issuing a deportation order itself, the following must be demonstrated: (i) first, it must be apparent that the appellant is not capable of being actually deported immediately, or in the foreseeable future; (ii) second, it must be apparent that there are no further or remaining steps that can currently be taken in the foreseeable future to facilitate his deportation; and (iii) third, there must be no reason for anticipating change in the situation and, thus, in practical terms, the prospects of removal are remote.
66. If those criteria are not satisfied, a challenge to an otherwise lawful decision to deport, or deportation order, on the basis of 'limbo' (or prospective 'limbo') calling into question whether the public interest in deportation should be overcome by considerations of family or private life or other Convention rights, is likely to face formidable, or potentially insuperable, obstacles.

(3) Stage 3: Fact-specific analysis

67. Where those criteria are satisfied, a court or tribunal must next engage in a fact-specific examination of the case. This will typically comprise both a retrospective and prospective analysis, including: (i) an assessment of the time already spent by the individual in the UK, his status, immigration history and family circumstances; (ii) the nature and seriousness of any offences of which the individual has been convicted; (iii) an assessment of the time elapsed since the decision or order to deport; (iv) an assessment of the prospects of deportation ever being achieved (see above); and (v) whether the impossibility of achieving deportation is due in part to the conduct of the individual, e.g. in not co-operating with obtaining documentation.

(4) Stage 4: Balancing exercise

68. The fourth stage is the balancing exercise to be carried out between (a) the public interest in maintaining an effective system of immigration control, and in deporting those who ought not to be in the United Kingdom and (b) an individual's Article 8 and other Convention rights
69. This will involve an assessment of (i) whether the individual remaining in a state of 'limbo' (or prospective 'limbo') will

have an impact on the individual's Article 8 or other Convention rights and, if so, the extent of that impact; and (ii) how far that impact is proportionate when balanced with the public interest in the decision to make an order, or to sustain the same.

70. The public interest in question is principally the public interest in maintaining an effective system of immigration control, and in deporting those who are in the UK illegally. There is no separate public interest in preventing such individuals from e.g. working or relying on benefits or gaining the full range of free health care. Parliament has, however, decreed by statute that such benefits and opportunities are to be withheld from those here illegally. Parliament must be taken to have intended that the lack of such benefits and opportunities will form a disincentive to coming or remaining here illegally. The statute has to be read in accordance with s.3 of the Human Rights Act 1998. It is compatibility with Article 8 and other Convention rights which is relevant - not 'criminalisation' of the Appellant's presence in the UK as Mr Chirico would suggest. Further, the parallels he seeks to draw with the Hardial Singh principles are of marginal assistance since they arise in the different context of release from temporary detention (c.f. *R (Hardial Singh) v. Governor of Durham Prison* [1983] EWHC 1 (QB)).

71. The principal basis on which it might be said that the public interest in continued 'limbo' may be so weakened, such that Article 8 rights or other Convention rights might tip the balance, will normally only arise in cases where it is clear that the public interest in effective immigration is extinguished because, in practical terms, there is no realistic prospect of effecting deportation within a reasonable period (see above).

72. Further, as Simler J said in *R (Hamzeh and others)* (supra) at [50]:

"[50] There is no policy or practice whereby persons whose removal from the UK cannot be enforced, should, for this reason alone, be granted leave to remain. It is not difficult to see why this should be the case. A policy entitling a person to leave to remain merely because no current enforced removal is possible, would undermine UK immigration law and policy, and would create perverse incentives to obstruct removal, rewarding those who fail to comply with their obligations as compared to those who ensure such compliance. Moreover, in the same way as immigration law and policy may change, so too the practical situation in relation to enforcing removal may change or fluctuate over time so that any current difficulties cannot be regarded as perpetual."

22. The decision of the Upper Tribunal in AM was appealed by the Secretary of State and came before the Court of Appeal on 10 June 2022. Lord Justice Dingemans, who gave the judgement, wrote that the appeal raised issues about the circumstances in which an

individual, who is in a state referred to in the authorities of “limbo”, may be entitled to some form of status pending their removal. It was noted that previous decisions have described “limbo” as being a state where an individual has no leave to remain in the United Kingdom, but there is no current prospect of that individual being deported from the UK.

- 23.** It was accepted by the Court of Appeal that the correct approach to such cases is that set out in RA (Iraq) which was that followed by the Upper Tribunal.
- 24.** The Court of Appeal found no basis for interfering with the decision as it was found that in the very unusual circumstances of that particular case the Tribunal was entitled to grant a declaration in the terms they did. The factual assessment is set out in the Court’s judgement from [22] in the following terms:

Factual background

22. A comprehensive account of the relevant facts is set out in the judgment of the UTIAC. The parties also helpfully provided answers to various factual questions raised in the hearing in the Court of Appeal but, in the final event, none of the answers in our judgment altered the factual analysis undertaken by the UTIAC.
23. AM is a national of Belarus. AM claims to have arrived in the UK clandestinely in a lorry on 8 January 1998 when it appears he was about 21 years old. On 12 January 1998 AM claimed asylum giving a name. He gave the Secretary of State a document purporting to show that he had been employed in a book-binding factory in Minsk. He claimed some involvement in opposition activities.
24. On 16 April 1999 AM was convicted of actual bodily harm and false imprisonment and sentenced to an aggregate sentence of 3 years and 6 months imprisonment and recommended for deportation.
25. AM's claim for asylum was refused on 12 December 2000. AM appealed and his appeal was dismissed by an adjudicator in a decision dated 2 February 2001. The adjudicator made adverse credibility findings, saying that AM was not of any interest to the authorities in Belarus. On 29 June 2001 AM was deported to Belarus. Belarus refused him entry after (according to the findings of fact made subsequently by a Judge of the First-tier Tribunal ("FTT")) AM lied to the Belarus authorities about who he was, so that the Belarus authorities were not able to trace him. It appears that he told the officials in Belarus that he was not a citizen of Belarus. He was returned by the authorities to the UK the following day and has been in the UK since that date.
26. After his return to the UK, AM made a further asylum claim on a basis which it is now common ground was false. AM gave a different name from the name used in his first asylum claim, claimed that he had left Belarus in 1986 (which was before the breakup of the Soviet Union and would have meant that AM would not have been recognised as a citizen of Belarus) and gave other biographical details that were inconsistent with his first asylum claim. This asylum claim was refused and AM appealed. In

February 2002, AM admitted that this second asylum claim was false.

27. In November 2001, the British Embassy in Belarus informed the Secretary of State that the book-binding factory ID was a forgery. On 14 June 2002, AM's second appeal hearing took place. The adjudicator found that AM had lied to immigration officials, both in Belarus and in the UK. There was no evidence to show that AM had any fear of persecution in Belarus. On 31 October 2002 and 1 January 2003 the British Embassy informed the Secretary of State that the schools AM claimed to have attended in Belarus had no record of him.
28. In February 2003, the Secretary of State arranged for AM to attend the Belarusian Embassy with a travel application form and three photographs, together with biometric information. The Belarusian Embassy later informed the Secretary of State that AM had categorically denied being a Belarusian citizen and said he was giving the officials false details and that it was "all a game". AM disputed this account of the meeting with the Belarusian authorities.
29. It became apparent that AM was not likely to be removed in the foreseeable future, and on 2 December 2003 AM was released from immigration detention on temporary admission. AM made further submissions against removal. The Secretary of State refused those submissions. AM brought a claim for judicial review of that refusal and permission to apply was refused on 6 December 2004.
30. It seems that on 23 March 2005 AM was convicted of possessing a class C drug and having an offensive weapon in a public place, and was sentenced to a conditional discharge. On 10 February 2008, AM was arrested for possession of a false Lithuanian identity document. It also appears that on 1 May 2008 AM was convicted of persistently making use of a public communication network to cause annoyance, inconvenience or anxiety and was sentenced to 3 months imprisonment. On 23 July 2008, AM was convicted of possession of a false instrument and sentenced to 10 months imprisonment. On 26 August 2008 (it seems on the expiry of his terms of imprisonment), AM was detained again under immigration powers. On 21 September 2009 AM was released on immigration bail.
31. On 15 September 2010, AM filed a claim for judicial review of the continuing failure to provide him with leave to remain or permission to work. Permission to apply for judicial review was granted on 17 May 2011. In September 2011, the Secretary of State agreed to reconsider AM's further submissions as a fresh application for asylum and the claim for judicial review was stayed.
32. The Secretary of State refused that further application for asylum and AM appealed to the FTT. AM's appeal was heard on 16 March 2012. In a determination dated 30 March 2012 the FTT Judge dismissed AM's appeal. The FTT Judge found that the refusal of the Belarus authorities to recognise AM as a citizen or issue him with a

travel document was not based on his political opposition but was because he had failed to provide accurate information to enable the Belarus authorities to trace him.

33. On 8 May 2012 AM was convicted of criminal damage of property valued at £5,000 or less and was given a conditional discharge for 12 months.
34. AM was granted permission to appeal to UTIAC, but the appeal was dismissed on 23 April 2013. AM obtained permission to appeal to the Court of Appeal. In *AM (Belarus) v Secretary of State for the Home Department* [2014] EWCA Civ 1506, the Court rejected AM's submission that the FTT Judge had made an error of law about relevant guidelines. The Court considered AM's submissions under article 8 of the ECHR and concluded that AM might be granted entry to Belarus if he told the truth to the authorities there.
35. On 25 February 2015, AM applied again to the Belarusian embassy. There was a negative response. On 11 October 2015 AM provided further information to the embassy.
36. On 1 December 2015 Dove J made an order in judicial review proceedings. AM agreed to cooperate and participate fully in the process of obtaining travel documentation for his removal to Belarus. The Secretary of State stated that she would liaise with the Belarus embassy to obtain travel documents. In the event that there was no decision from the Belarusian authorities or the Belarusian authorities refused to issue documentation, the Secretary of State agreed to make a decision as to the appropriateness of the continued use of temporary admission.
37. On 19 January 2016 the Secretary of State sent another travel document application to the Belarusian authorities. A year later, the Secretary of State informed AM that the Belarusian authorities were requesting a version of that application in Russian. It then appears that the Secretary of State arranged a telephone interview between AM and Belarusian officials. Nothing came of this. The Secretary of State did not decide to grant AM any form of status and maintained AM on temporary admission.
38. On 9 February 2017, AM applied for leave to remain in the UK as a stateless person. By letter dated 17 July 2017 leave to remain was refused. Reference was made to lies told by AM to the Belarus authorities. It was stated "it is considered entirely reasonable to deem that you are not a national of Belarus as you claim" but the letter went on to state that AM had deliberately concealed his true identity to stay in the UK and that he was not stateless. On 19 July 2017 a team member of the Statelessness Determination Team at the Home Office wrote to AM's solicitors recording that AM had provided information that he was at "immediate risk of committing suicide/seriously self harming or attempting suicide". The letter asked the legal representatives to encourage their client to seek assistance regarding their health and wellbeing where appropriate.
39. On 30 November 2017 AM was convicted of possessing a knife in a public place and sentenced to 16 weeks imprisonment, suspended for 12 months. On 7 December 2017 AM was accused of two further counts of possession of a knife in a public place.

40. On 8 March 2018 a GP reported that AM had been taken to Accident and Emergency following an alleged assault and kidnapping. AM reported that he was punched and hit multiple times. AM was x-rayed and a facial wound was dressed. The GP reported that AM was reporting psychotic symptoms, and concluded "I think a delay in the Home Office reaching a decision may have an impact on his mental health". The Wellbeing Hub at Nottingham Recovery Network reported on 9 March 2018 that AM was reported to be suffering "new onset cognitive problems", but a CT scan had revealed no brain injury. An earlier letter from the Wellbeing Hub had referred to a diagnosis of functional psychotic disorder. That letter referred to past drug abuse by AM.
41. On 9 May 2018 the Home Office wrote to AM's solicitors stating that AM had provided information that he had been diagnosed demonstrating psychotic symptoms (both visual and aural hallucinations) and depression. It appeared that he had made several suicide attempts whilst previously in detention. A Home Office decision, refusing AM's application, was enclosed. The letter went on to advise the solicitors that "given the mental health issues involved, service at a face to face meeting may help to mitigate any distress the decision could cause this vulnerable person".
42. On 13 July 2018, AM applied to reinstate the judicial review proceedings which had been stayed after permission to apply had been given, and to add a second ground challenging the refusal to grant him leave to remain as a stateless person. On 31 July 2018, both applications were granted and the claim transferred to the UTIAC, with the ground relating to statelessness to be considered on a rolled up basis.
43. On 11 September 2018, AM was sentenced to an aggregate sentence of 42 weeks' imprisonment being 26 weeks for two counts of possession of an offensive weapon on 7 December 2017 and activation of the 16 week suspended sentence imposed on 30 November 2017.
44. By a letter dated 27 November 2019, AM's application for leave to remain as a stateless person was refused by the Secretary of State. The Secretary of State concluded that AM had provided no substantive proof that the name he used was his real name. If it had been, the Belarusian authorities would be able to provide a trace of AM's schooling, work or healthcare, even if his birth was not registered in Belarus. The Secretary of State concluded that the Belarusian authorities were correct in stating that AM had been dishonest about his true identity. The Secretary of State therefore concluded AM was not stateless, and he had "adopted a wilful strategy of lies, obfuscation and deceit to confuse and obstruct endeavours to confirm" his identity. The Secretary of State also found that AM failed on suitability grounds, because of his conviction on 11 September 2018 and because of his conduct, which included his convictions, character or associations.
45. In June 2020 Dr Felah, consultant neurologist, noted that AM was under the psychiatric team for drugs misuse, was on methadone, olanzapine and mirtazapine, and had a head injury and left frontal

bone osteoma (a benign bone forming tumour) following an assault in 2018. AM had suffered attacks suggestive of generalised seizures following that attack, which were considered to be strongly suggestive of epileptic seizures.

46. On 21 July 2020 the UTIAC gave AM permission to amend his grounds of challenge in the judicial review proceedings in order to challenge the decision of 27 November 2019.
 47. The evidence before the UTIAC showed that AM suffered from Hepatitis C and extensive plaque psoriasis. He had abused drugs and alcohol and been treated with methadone. He had suffered low mood and hallucinations. He had been living on the margins of society. There was evidence which suggested that AM's mental health had been adversely affected by delays in resolving his case and by his lack of status.
- 25.** By contrast, in this appeal, it is not disputed that the appellant is a citizen of Iran who has given his accurate name and date of birth. The appellant was granted exceptional leave to remain for although his claim for international protection failed it was the case at the relevant time that it was not possible to return a failed asylum seeker, or a person subject to an enforced removal, to Iran as the Iranian authorities would not cooperate in facilitating the same. That situation has now changed and as Miss Young submitted at the hearing, it is now known that interviews for Emergency Travel Documents are facilitated by the Iranian Embassy in the UK permitting removals to occur. Although Ms Khan submitted on behalf of the appellant that such interviews were limited in number, that does not take away the fact that the facility exists, that it was not shown the appellant would not be able to benefit from such an interview, or that the Iranian authorities would not be willing to enable him to return to Iran. This is a case therefore in which the Secretary of State had good reason to believe that the appellant will be re-admitted to Iran.
 - 26.** It is also the case that there is nothing legally preventing the appellant from returning voluntarily to Iran, rather than being subject to enforced removal, if he can obtain the necessary travel documents.
 - 27.** I do not find it has been made out, whatever may have been in the position in the past with regard to difficulties in removing the appellant to Iran, that return to Iran is not feasible or possible at the date of this appeal hearing.
 - 28.** The argument in the skeleton argument that as the appellant is currently on section 3C leave, as he made an in-time application to extend his leave, he is in a 'prospective limbo state', is noted, but even if he has been in a 'limbo state' from 24 December 2007 to 20 January 2013 I do not find, for the reasons set out above, that he is at the current time or that there is any merit in the prospective limbo state argument. As he can be returned to Iran he is not in limbo.
 - 29.** The Stage II argument relied upon is that it is still the case that there are no prospects of the appellant being returned to Iran but the recent changes reflected above undermine this submission. I do not find

there is merit in the submission that there are no realistic prospects of the appellant being returned to Iran.

- 30.** The argument that if the appellant's appeal is refused it will be place him in a state of actual limbo is not accepted in light of the changes recorded above in relation to interviews being available for the purposes of securing an emergency travel document and those issued with documents being able to return to Iran.
- 31.** I accept that the case is not pleaded solely on the basis of limbo but also the appellant's own personal circumstances. I note the appellant has been in the United Kingdom since 18 January 2007, with leave since 20 January 2013, and that there is no evidence he has not cooperated with the Secretary of State throughout his time in the UK. I accept there is no evidence he has worked illegally and that his employment has been lawful since he was granted leave. The appellant has no family in the United Kingdom and so the protected right pursuant to Article 8 ECHR he seeks to preserve is his private life.
- 32.** There is evidence of the appellant's medical situation and a psychiatric report prepared by Dr Nimmagadda, a Consultant Forensic Psychiatrist, dated 12 August 2021. Having reviewed the documentary evidence and having conducted an interview with the appellant Dr Nimmagadda writes:

16. Opinion and Recommendations

16.1 I note that [DM] was able to recall various aspects of his background history during the course of the interview, however he complained of experiencing problems with his memory on various occasions. He needed reassurance from time to time and he was encouraged to talk about his difficulties during the course of my interview. He was vague and unsure in terms of the timeframes and various aspects of his presentation during the course of the interview. He was not agitated in his presentation. He was pleasant and co-operative throughout the interview.

16.2 I note that [DM] appeared to have a reasonably happy childhood and did not suffer from any abuse during his childhood years. [DM] gave an account of sharing a very good relationship with his parents. He was unable to recall much about his early childhood years, particularly his schooling in detail, except that he was bullied on occasions. He gave an account of suffering from emotional abuse as a result of nasty comments about his appearance from fellow pupils during his schooling years but this did not appear to have any significant impact in terms of his self-esteem or self-confidence during his formative years. [DM] denied having any problems with reading and writing. I did not get an impression that [DM] has any significant problems in terms of his cognitive functioning in the past. I did not get an impression that [DM] suffers from any learning difficulties or any other cognitive deficits in the past.

16.3 [DM] gave an account of undertaking various jobs, both whilst in Iran and also after he came to the United Kingdom for a period of

time. He said that he was unable to pursue any further employment as a result of his visa status.

16.4 In my opinion, [DM] did not present with any symptoms suggestive of any psychotic disorder. It appears that [DM] has used illicit substances like cannabis as a mal-adaptive coping strategy in the past. However, he said that he has been predominantly spending his time praying and listening to the Koran over the last few years as a way of coping with his feelings of frustration and stress on occasions. It appears that he has enjoyed playing football and this enabled him to socialise with others and it appears that this is a significant mal-adaptive coping strategy over the years. I did not get an impression that [DM] has any significant problems with illicit drug use or any alcohol use at the current time.

33. In relation to actual diagnosis it is written:

16.9 I understand from [DM] statement and account that he has had mental health problems since 2016 as a result of various stressors including worrying about his family, his situation in Iran and not having any long-term job prospects. He gave an account of feeling lonely and unsettled in his presentation. It appears that he has been suffering from symptoms of low mood, loneliness and anxiety and this increased in severity over a period of time.

16.10 In my opinion, [DM] is currently experiencing a depressive episode episode, mild (International Classification of Disorders 10 (ICD10: F31) at the current time. It appears that he has been suffering from depressive illness over the last 18 months. [DM] main symptoms of depression over the past 18 months included depressed mood, decreased energy levels, loss of interest and enjoyment. Other features included disturbed sleep, reduced concentration, and poor attention span on many occasions. [DM] experienced feelings of worthlessness, hopelessness and bleak and pessimistic views about the future. His self-esteem and self-confidence were also affected. [DM] gave an account of having problems with his memory on occasions since 2018. This is likely to be as a result of poor concentration and unable to register information secondary to depression.

16.11 [DM]'s symptoms of depression fluctuated over the last 12-18 months. [DM] was commenced on Sertraline medication in January 2020 and it appears that this was subsequently changed to Mirtazapine medication. His presentation has improved gradually after he was commenced on Mirtazapine (antidepressant medication). His medication dosage was gradually increased over a period of time. I note that [DM] is currently on Mirtazapine medication 45 mg and he finds this to be beneficial.

16.12 I note that [DM] gave an account of experiencing problems with his memory. It is not uncommon for health difficulties to have problems remembering or recalling various events that occurred in the past. In addition, given the distressing nature of his memories, it is likely that [DM] might have been using various defence mechanisms to suppress some of the difficult emotions in order to prevent any further distress in terms of his presentation. In addition, [DM] might also be suppressing some of the emotions

and memories subconsciously. This could have had an effect in terms of him being unable to remember some of the events that occurred in the past.

16.13 [DM] is extremely anxious about returning back to Iran as he believes that he will be caught by the authorities, i.e., Army or the police, and he will be sentenced to death. He has maintained that he does not have anyone in Iran and he wishes to continue to remain in the United Kingdom.

34. It is not made out the appellant would not be able to receive medical treatment in Iran if he required the same for his mild depressive illness or that there will not be suitable assistance available in the UK during the removal process if his symptoms were deemed to worsen as a result of any removal notice being served upon him. It is not made out that Article 3 is engaged in relation to medical issues by reference to the decision of the Supreme Court in AM (Zimbabwe).
35. In relation to contact with family, the appellant's case has always been that he has no contact with his family any longer. The First-tier Tribunal Judge, whose decision has been set aside, was criticised for expecting the appellant prove a negative namely that he has no contact with his family. Whilst the simple statement that he does not have contact with his family members may accurately reflect the situation, what was found to be missing on the previous occasion, and is still missing at this stage, is evidence of any effort made by the appellant to try and trace his family members. That was the point being made previously which is still applicable at the date of this hearing. It is not made out therefore that he could not re-establish contact with family members if he tried from the UK or on return.
36. In relation to the ability of the appellant to re-establish a life in Iran if he is returned, the appellant speaks the language, he was born on the 27 December 1983 and entered the United Kingdom on 18 January 2007 aged 24. The appellant would therefore have grown up in Iran throughout his formative years into his adulthood. His application for international protection was refused and dismissed on appeal as were his further submissions, which were deemed to be a repeat of his earlier false asylum claim. There is no evidence to show that the appellant would face a real risk on return to Iran for any reason.
37. The Supreme Court in Sanambar v Secretary of State for the Home Department [2021] UKSC 30 considered the correct approach to the test of "very significant obstacles to integration" in the receiving state in cases where an individual faced removal from the United Kingdom, in that case consequent upon criminal offending and Mr Sanambar being subject to deportation, but which is relevant as he had arrived in the United Kingdom as a child in that case on 24 February 2005, claimed no family ties in Iran, and a strong bond with his mother in the UK. Mr Sanambar's appeal was dismissed.
38. In Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813, Sales LJ considered the question of whether there were very

significant obstacles if the appellant was deported to Sierra Leone. At [14] it was found:

14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some up gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.
- 39.** The broad evaluative judgement can only be conducted on the basis of the evidence that has been made available. Notwithstanding the time DM has been in the United Kingdom it was not made out that he will not have retained enough knowledge of life in Iran to enable him to function within society there and be classed as enough of an insider to understand how society works and to carry on and participate within it. The appellant has not provided sufficient evidence to show he will not be able to operate on a day-to-day basis and rebuild his life within Iran, albeit I accept that due to the time he has been out of Iran in the United Kingdom this will be a daunting and possibly difficult task initially.
- 40.** It is also important to remember the important principle that Article 8 does not give a person the right to choose whether they wish to live.
- 41.** In relation to the private life the appellant has established in the United Kingdom, it is clear that it is extremely limited with no evidence of any depth of integration notwithstanding the time the appellant has been here. Significant social or cultural connections have not been shown to be established. Whilst period of residence in the United Kingdom, which is not sufficient to enable the appellant to remain under the Immigration Rules, is relevant it is not determinative as it is the ties that the appellant has formed within that period that make up his private life that count (or lack of).
- 42.** Having undertaken the necessary holistic exercise and balancing the points relied on by Ms Khan in the appellant's favour and the points relied upon by the Secretary of State in Miss Young submissions and in the refusal, and accepting that weight must be given to the Secretary of State's exercise of her discretionary power in relation to the assessment of an individual's conduct, by reference to the wider interests of UK society, I do not find it is made out that there is anything perverse, irrational, or unreasonable in the conclusion reached by the decision-maker that the appellant's offending in the production of illicit substances falls foul of S - LTR 1.6. I find

considerable weight must be given to the view of the Secretary of State of what is in the public good when illegal drugs are involved. There is a strong deterrent element to show that others who may think of being involved in such activities, who are not British citizens, may face a strong likelihood that they will be removed from the UK or refused permission to remain. It is not made out the decision should have been made differently on public law grounds or on the facts when considered as a whole.

- 43.** I find the Secretary of State has established that any interference in limited private life the appellant is formed within the United Kingdom is proportionate. Accordingly, I dismiss the appeal.

Decision

- 44. I dismiss the appeal.**

Anonymity.

- 45.** The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed.....
Upper Tribunal Judge Hanson

Dated 31 October 2022