



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003436
UI-2023-003438

FtT Nos: HU/55222/2022;
IA/07684/2022
RP/50054/2022; LR/00018/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 28 November 2024**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL TRIBNAL JUDGE DAVEY**

Between

The Secretary of State for the Home Department

Appellant

and

**HG
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr T Bobb, solicitor from Aylish Alexander Solicitors

Heard at Field House on 9 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

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.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against the decision of the Secretary of State to cease his refugee status and

refusing him leave to remain on human rights grounds. The claimant is subject to a deportation order.

2. The Secretary of State had been given permission on only one ground. Before us Mr Melvin applied to rely on both grounds. Mr Melvin was extremely aware that the application ought to have been made earlier. It was not his fault that that had not been done. We felt that the ground had merit. It did seem to us arguable that there was no proper proportionality exercise carried out. Mr Bobb opposed the application but could not satisfy us it was unfair to allow it. Whilst we appreciate the need for procedural rigour, Rules do not exist for the sake of discipline but for the proper management of cases. Had it been necessary to give Mr Bobb further time and adjourn to another occasion, having allowed the application it would have done but Mr Bobb took the view that he could prepare the case satisfactorily by being given more time in the morning. We are sure that is right. He was entirely aware of the arguments, having conducted the case below and although it was annoying to have to face an additional hurdle on the morning of the hearing, we did not find it was unfair. It follows therefore that both grounds could be argued before us.
3. Mr Melvin outlined his case. The Secretary of State said that the claimant had not been involved in sur place activities. He was not engaged with any kind of Kurdish human rights organisation and he had gone back to Turkey on at least eight occasions getting a Turkish passport for the purpose after he had been granted refugee status and he took part in a public marriage ceremony involving a religious ceremony followed by a party.
4. The claimant entered the United Kingdom in May 1988 and claimed asylum. Notwithstanding his asylum claim he was removed to Turkey four days after arrival but then returned in July 1991 so that his asylum claim could be considered. His claim was refused in March 1993 but he was given exceptional leave and following an appeal he was given refugee status.
5. In June 1997 he was given indefinite leave to remain as a refugee.
6. He committed criminal offences. On 22 October 2004 he was convicted of conspiracy to supply a controlled drug, namely heroin, and was sentenced to sixteen years' imprisonment. However, the Secretary of State decided not to deport him and detailed reasons were given on 20 May 2011.
7. On 8 April 2013 he was released on parole but then arrested and recalled to prison. The possibility of deportation was reconsidered. He was given an "intention to deport" letter on 18 September 2013 and on 24 January 2014 he was told of an intention to cease his refugee status.
8. In May 2014 he was released on parole. In March 2015 Notices to Deport and to Cease Refugee Status were served on the claimant and then fresh notices served on 23 February 2017. His refugee status ceased on 7 September 2021. The claimant asked for leave on human rights grounds but this was rejected on 8 August 2022 and appealed the decision on 15 August 2022 and it is the appeal against that decision that was allowed in a Decision and Reasons dated 18 July 2023 and which decision was subject to a further appeal before us.
9. The First-tier Tribunal Judge summarised the Reasons for Refusal Letter dated 8 August 2022. The judge said that the Secretary of State had decided to cease refugee status and to report the claimant because of his criminal history and because his presence was not conducive to the public good.
10. The sentence of sixteen years' imprisonment was sufficient to raise the presumption that the claimant had committed a serious crime and was a danger to the community. The UNHCR had made submissions supportive of the claimant

but the Secretary of State decided that his refugee status should be revoked. It was considered that the claimant did not need protection. His profile was not sufficiently prominent to create a risk of persecution.

11. The claimant had a Turkish passport issued in 1996 and had travelled to Turkey on a number of occasions, which was thought to indicate strongly that he had no well-founded fear of persecution.
12. The offence that led to sixteen years' imprisonment involved the supply of heroin and was regarded as serious.
13. The claimant was suspected to be a member of an organised Turkish criminal network and there was no evidence about how he had supported himself legitimately in the United Kingdom.
14. The claimant is married but it was decided that his wife could accompany him to Turkey if that is what she chose to do. The claimant had not established that there are very significant obstacles in the way of integration to Turkey and, although the claimant had a medical condition, it was not accepted that there would be a serious, rapid or irreversible decline in his health associated with his removal.
15. The judge then set out the claimant's case.
16. The claimant was born in Turkey in 1954. At the time of the appeal, he lived in London. It was his case that he is a Turkish national in need of protection because he had been persecuted by the Turkish state because he is an Alevi Kurd. Since arriving in the United Kingdom in 1992 he has lived there and established a family there. His wife and children are British citizens.
17. He said he was persecuted because of his support of the People's Democratic Party (HDP). He had not been politically active in the United Kingdom but would be compelled to be active if he were returned to Turkey. He had returned to Turkey on a few occasions after being given refugee status. He said he had asked the Secretary of State if that was permissible to return to Turkey and also asked his solicitors, who indicated that he should apply for a passport, which is what he did.
18. Paragraph 33 of the decision and reasons is particularly detailed and we set out it below:

"[The claimant] went to visit Turkey on eight occasions between 2001 and 2003, because his mother and father were very unwell. His father was elderly and in due course died. His mother still lives there. He has siblings but has not been in close touch with them for many years. He only went to see his parents because they were ill, and he did not see them for many years whilst his asylum claim was processed. He did not engage in any political activity whilst he was there, neither did he see anyone other than his family. He went secretly and did fear that he might be discovered by the state authorities. He now keeps in touch with his mother by phone only. He has not seen her since 2003."
19. The claimant said that his wife does have a maternal aunt and uncle and sister in Turkey but has more relatives in the United Kingdom.
20. The claimant lived with his wife, his daughter Y and his grandson H. He had another daughter, HA, who lived in London and often visited. His daughter HA is divorced. His daughter Y is not married and "has significant health problems".
21. He had not been involved in political activity in the United Kingdom but he had been involved in Turkish community activities.

22. At paragraph 37 of the Decision and Reasons the judge explained that the claimant “had an affair” with a Turkish woman in Turkey in 2001 and 2002. The claimant took part in a traditional wedding ceremony to preserve her family honour but said it was not a serious relationship. His wife in the United Kingdom discovered the marriage in Turkey at his criminal trial but claimed to have forgiven him and they clearly resumed cohabitation on his release from prison.
23. There had been tragedy in his family life. A son died at the age of 2 months and a second son, Y, was killed in a road traffic accident in 2014. Y and his wife had a son, “Ha”. His mother had returned to Turkey when he was a baby. The claimant and his wife had cared for Ha for all his life.
24. His late son Y had formed another relationship and the child of the relationship, D, played a significant part in his life.
25. It is the claimant’s case that he had accepted full responsibility for his crime but he was not the controller of a criminal gang, as was alleged. He was rehabilitated in prison and had always been remorseful. Although he was twice recalled to prison because he faced further charges he was acquitted in each case.
26. The claimant had made a formal complaint but the police who did not accept that he was a reformed character. It was the claimant’s belief that he was deliberately targeted with a campaign of misinformation and he had kept out of trouble since he had left prison.
27. The claimant believed that the authorities in Turkey would know about his conviction in the United Kingdom.
28. The claimant was unwell and claimed Personal Independence Payment. He had self-harmed on several occasions and in 2017 had been admitted to hospital for treatment for his mental health after he tried to kill himself.
29. He was asked about media attention and particularly an article that was in one of the bundles. The claimant said that, contrary to the article, he had never owned a café in London or anywhere else in the United Kingdom. He did not control 90% of the heroin in the United Kingdom as alleged. He denied giving the police information relating to other people involved in the drug trade. He said the police had visited him in prison and he had said he would help them if he could but he did not hear anything further and did not provide any specific information. He had never made a deal with the police in an attempt to avoid deportation and no longer had any connections with the drug trade in the United Kingdom.
30. He said that the allegations in articles in the appeal bundle would he, thought, be damaging to him in the United Kingdom and in Turkey. His original conviction was well-publicised and his face had been slashed in an attack. He believed he would have enemies in Turkey.
31. Another article suggested that the claimant was motivated in his criminal activities to help fund the PKK. The claimant said he would never give money to the PKK and had no connection with the organisation. He just did not know if co-defendants had such connections.
32. He denied ever being the leader of a criminal gang called Agu and did not know why his name appeared in the article. The content shocked him and the contents were false.
33. The claimant said he had neither savings nor money to fund his return to Turkey and he had no assets in Turkey. He did not expect to get work in Turkey and he would lose contact with his family in the United Kingdom. He said he had a good

relationship with D's mother and D was a memory of his son and he had a very close relationship with Ha because he had always lived with him.

34. In cross-examination, he confirmed that he had indeed visited Turkey after he had been granted asylum but never for more than "one or two months" and he had gone to visit his parents. He described his religious marriage to a woman in Turkey as "a great mistake on his part" but he did not think he was putting himself at risk because he had not been involved in any political activity. The religious ceremony was followed by a party in a local restaurant where he was not known. He did not think he had done anything to attract the attention of the authorities.
35. He insisted that he had always accepted the seriousness of his criminality and had been motivated by financial gain and had not gained. He paid the penalty for doing wrong and had not been involved in crime since.
36. In the United Kingdom he had worked in a factory and as a waiter. His employment opportunities were limited because he had not learnt English quickly. He had been educated in Turkey and had run an off-licence business but said it was "burnt down" because the political situation.
37. His grandsons had never been to Turkey. His wife had gone recently after her father's death.
38. He said he took medication because of his mental health and also stomach problems and had been seeing a psychiatrist for some time. His relatives in Turkey have families with children and they would not be able to offer him financial help.
39. The claimant's wife, HG, gave evidence. She was born in 1961 and had been married to the claimant for 42 years and they had four children but, sadly, two of them had died, one as a baby and one in a road accident. She was "shocked" by her husband's affair in Turkey but decided to stand by him when he was in prison and they had put their incident behind them. The claimant supported the family since his release from prison. By this the claimant's wife meant emotional rather than financial support.
40. HG said that, notwithstanding the strength of her marriage, she would not be able to go with the claimant to Turkey because of her responsibilities in the United Kingdom. She had two daughters and two grandchildren there, who were based firmly in the United Kingdom. The daughter Y needed her support. She was poorly and she could not afford to go and see the claimant often enough to preserve the meaningful relationship.
41. The claimant had tried to kill himself, partly because he blamed himself for not setting a better example to their son.
42. HG explained that one of their daughters was born in the United Kingdom and the other began living in the United Kingdom when she was only 7 years old. She had problems and lived with her parents (HG and the claimant) and the grandson Ha had always lived with the claimant and his wife because his mother had abandoned them as a baby. Ha had never visited Turkey and is British. Ha was working and had a close bond with the claimant. The other grandson D was only 10 years old and visited every weekend.
43. HG was concerned for her husband in the event of his return to Turkey. He is an Alevi Kurd and that would put him at risk. He is also at risk of his mental health collapsing and might do himself harm. She remembered her husband's delight on receiving the letter in 2011 informing him that he was not going to be

deported and how hard they found the later decision showing that the Secretary of State had changed her mind and had subsequently resolved to deport him.

44. The claimant's daughter Y gave written evidence. She was a graduate from Middlesex University. She was aged 5 or 6 years when her father was sent to prison and she remembered visiting him and talking to him on the telephone but found it difficult. She was 15 years old when he was released and she was pleased that they established a normal relationship but he was then rearrested. She explained her own health problems in more detail. There is no need to set them out here. She has seriously malfunctioning kidneys. She could not contemplate life in Turkey. She needed medical attention in the United Kingdom.
45. The claimant's grandson, Ha, gave oral evidence. He was then 19 years old. He confirmed that he had always lived in the United Kingdom and was raised by his grandmother and his aunts. He said he had a close relationship with his grandfather and he had never been outside the United Kingdom.
46. The judge then noted the Secretary of State's submissions.
47. Clearly there is a statutory presumption that the claimant was a danger to the community. He had visited Turkey on eight occasions after being granted asylum. Whatever the reasons for and nature of his marriage it was not a secret event and he had requested a passport from the state of Turkey. This conduct did not indicate that the claimant had a genuine fear of living in Turkey.
48. The suggestion that the claimant would be perceived as a police informant and at risk as a consequence was pure speculation. There are no proper reasons to allow his appeal on human rights grounds. The claimant could go and live in Turkey and preserve relationships with his family in the United Kingdom.
49. The judge then reviewed the claimant's submissions. The claimant was then represented by Mr Bobb as he was before us. Essentially, it was Mr Bobb's contention that the claimant was not a danger to the community, notwithstanding his having been convicted of a particularly serious crime.
50. Mr Bobb also relied particularly on the letter from the UNCHR dated 23 March 2018, which we consider in more detail below.
51. He said that the claimant had been told he was not going to be deported. He had not committed further offences and was almost 70 years old and had a medical condition.
52. When considering revoking the claimant's refugee status the Secretary of State had to consider Article 1C of the 1951 Convention, which meant in effect that the Secretary of State had to demonstrate there had been a "fundamental, stable and durable change in the situation in the country of origin". There was background evidence to show that Kurdish people with a political profile were still persecuted in Turkey and the Secretary of State had not engaged with the letter from the UNHCR. The Secretary of State does not assess the risk on return in accordance with her own country information.
53. Responding to the contention that the claimant had re-availed himself of the protection of Turkey by travelling there on a number of occasions, it was emphasised that the visits were short and for the important reason of visiting elderly parents. The claimant did not engage in political activity during those visits and had maintained a low profile.
54. The claimant had told the respondent that he was intending to apply for a passport to visit Turkey.

55. Mr Bobb then dealt with the perception created by the media that the claimant was a police informer and major criminal and that his conviction had led to other people's convictions. This was not true. The claimant was attacked by a person with a knife in 2019 and was at risk from people who saw him as an enemy. He would not get effective protection in Turkey.
56. Mr Bobb accepted that he had to show "very compelling circumstances" and said that there were such circumstances here. The claimant had a partner. They had lived together for many years. She was a British citizen and had health problems. Compelling circumstances did not have to be extraordinary but a departure from the general rule. He stated that it was relevant that there had been a decision not to deport and there was a delay. The claimant had lived in the United Kingdom for 31 years.
57. He had been in the United Kingdom for 23 years with a strong private life apart from his family life. The family life had not been broken by imprisonment.
58. The claimant did have significant mental health problems and they had been made worse by the threat of deportation.
59. The judge considered the evidence.
60. It is the Secretary of State's case that the claimant had been convicted and that he was a major player in a big conspiracy. Drugs related offences cause "society misery" and the claimant had just not produced the evidence to show that he was not a danger to the community.
61. Mr Bobb relied again on a letter from UNHR which argued that the "danger to the community" exception should be interpreted restrictively and proportionally.
62. The claimant was an Alevi Kurd and had produced an expert report showing things had not changed materially since he had been granted asylum. That is well-known in cases of people returned to Turkey. He would have to register and that would draw attention to his presence in Turkey. The mere fact of a criminal record did not of itself establish that the claimant was a danger to the community. The Secretary of State must show present and future risk. It is important to remember that although the claimant had been rearrested after leaving prison he was found not guilty of all additional charges and had not been involved in any further trouble that was drawn to the attention of the Tribunal for a period of ten years. There was no evidence that he was still a danger to anyone.
63. Further, it was argued that the Secretary of State must have concluded in 2011 that the claimant was not a danger to the community. If that were not the case he would not have been told he was not going to be deported.
64. The judge saw notes from the Secretary of State's officers concerning deportation. Paragraph 127 of the Decision and Reasons is important and there the judge said:

"These started from November 2010 and showed the considerations made at that time as to whether the [claimant] should be deported. It was recorded that a decision was made in December 2010 that '*neither cancelation nor cessation*' apply to the [claimant], but that it had been decided that his refugee status should be revoked. At that time, based on prison records, the [claimant] was assessed as being a low risk of inflicting harm and of conviction in the future. It was recorded that he had '*no adjudications, good wing reports, ... no warnings*' and that he had completed '*a drug trafficking course ... a drug misuse course ... and a social awareness course*'. In addition, he had completed a City & Guilds entry

level course in writing and numeracy. The conclusion at that time was that there was *'no evidence ... to show that he currently poses a danger to others'* and that the prison had provided *'credible evidence that there is little likelihood that he will be a threat to others in the future'*. As a result, it was accepted that both parts of the s.72 test were not met and *'consequently the basis for applying both paragraph 339A(x) of the Rules and s.76 had 'fallen away''*. It was then recorded that a letter had been sent to the [claimant] informing him that he would not be deported in May 2011."

65. The judge recorded that the note showed that the claimant had been released on 19 January 2012 and then recalled to prison on 9 April 2013 accused of assault occasioning grievous bodily harm but he was acquitted and again released on licence. Trips to Turkey were noted. He was then returned to prison a second time following arrest for assault occasioning actual bodily harm in 2014 and this was when the involvement of "Operation Nexus was noted."
66. In 2017 the claimant was self-harming and admitted to hospital after a suicide attempt.
67. There was reference to a pending prosecution attempted murder or conspiracy to murder but no action was taken.
68. It was then decided that the claimant would be deported. This was after a decision to refuse his human rights claim and to revoke his deportation status and after a decision of the First-tier Tribunal in December 2016.
69. At paragraph 131 of the Decision and Reasons the judge considered the Home Office notes further. On 17 July 2019 it was recorded that a Police National Computer check showed only a conviction in 2004, which was the matter leading to the sixteen years' imprisonment. However, the following note contained a detailed summary of the background of the case including the decisions in 2011 not to deport and not to revoke refugee status.
70. In 2013 the appellant came to the attention of Operation Nexus and this caused the Secretary of State to readdress the situation and a UNHCR response was sought. The note recorded the claimant had not been convicted of any further offences and said:

"I believe that deportation action cannot be pursued against him'. And that 'whilst there is a significant amount of evidence that [he] associates with disreputable persons ... as he has not received a conviction in 14 years, I believe that revocation (of refugee status) on grounds of criminality would stand little chance of succeeding at appeal'."
71. Although revocation of refugee status could be reviewed because of the trips to Turkey after being granted asylum, there had been none since 2003 or 2004 and certainly nothing since the warning letter of March 2011 and it was felt there was no real justification for removing the refugee status.
72. The judge regarded these comments as relevant because the Secretary of State had clearly considered whether the claimant fell into the category of people who would be deported and had concluded that the claimant was not a danger to the community. There had been no up-to-date assessment. The Secretary of State relied on the fact of the conviction in 2004 and the sentencing remarks made at the time. There was no basis for concluding that any different decision was required now. It was emphasised that the claimant had been acquitted on each of the two occasions he had been recalled to prison to face charges of violent behaviour and on the other occasion the murder related offences were dropped. No police statement had been produced although there was reference to it. The judge took the view there was no evidence that the claimant had pursued

criminal activities after completing his sentence, but rather there was evidence that he had endeavoured to lead a settled life.

73. The judge then reminded himself of the terms of Article 1C of the Refugee Convention and accepted that it was arguable that the claimant had availed himself of the protection of the state of Turkey by applying for a Turkish passport and visiting the country on several occasions. However, it was the claimant's case that the Secretary of State still had to show whether there had been "such fundamental, stable and durable change in the country situation", and that had just not been done. It was for the Secretary of State to prove that there had been such a change. There was evidence that Kurdish people remained at risk of ill-treatment and racially motivated attacks and that the situation was deteriorating rather than improving. The claimant was an Alevi Kurd and he would be subjected to discrimination, which is why he claimed asylum in the first place. To the extent that he had availed himself of the protection of Turkey, it had to be understood in the context of short visits to see his parents and particularly his ill father.
74. It was then argued that the claimant was at risk because of incorrect information on social media suggesting he was a drugs baron or a police informer, which he always insisted that he was not. It was argued that this was enough to put him at risk in Turkey for other reasons. Again it was the claimant's case that although the Secretary of State was not bound by the decision of the UNCHR, the Secretary of State did not try to engage with the letter.
75. The judge accepted that the claimant had sought asylum on the basis of ill-treatment as an Alevi Kurd and that he was indeed granted refugee status as someone who had been persecuted. The judge did not accept that there was evidence of a dramatic change, certainly not for the better, and acknowledged guidance that members of the HDP were regarded in the same way as PKK activists. The judge looked at the guidance note relating to Turkish Alevis which indicated that Alevis were regarded by the Turkish state as an unorthodox Muslim sect. They were able to worship freely but they were not officially recognised. There had been a "small number of reports" of hate speech and societal discrimination but, by and large, Alevis coexisted peacefully with other groups.
76. However, in the immediate aftermath of the failed coupe attempt of 2016, incidents of threats to Alevis increased.
77. The judge then considered the claimant's own expert report that said things had not changed significantly and that Amnesty International supported the view that there was widespread arbitrary detention and the absence of proper process.
78. The judge then acknowledged a number of documents produced by the claimant that suggested he was a career criminal in the drugs trade and a possible informer. It was argued that this information put him at risk in Turkey.
79. The judge noted that the refusal letter offered no explanation for the Secretary of State's change of mind so that the claimant was told in 2013 that he would be deported after being told in 2011 that he would not be deported.
80. The judge found it clear in 2011 that the Secretary of State was fully aware of the matters leading to the claimant's imprisonment and so the decision not to deport him was made in the full knowledge of his having been sentenced to a substantial time in prison and the reasons for the sentence. The refusal letter made no comment on his acquittals. The judge said that the claimant had been released from prison in 2013 and had not reoffended. That is not necessarily right but is certainly the case that he had not been further convicted. The judge

said there was “no evidence” that the claimant had been in trouble with the police since 2013 except articles describing him as being involved in a major drug gang. The Secretary of State had not produced any further information to illuminate this. There was an implication in the papers that the police considered the claimant to be involved in criminal matters and evidence from the claimant that the police were, from his perspective, targeting him might add weight to that suspicion but there had been no further convictions. The judge noted it was the claimant’s case that he was not a danger to the community and had not been a danger to the community since he was released from prison.

81. It was the Secretary of State’s contention that the claimant had not done anything to rebut the presumption, but it was his case that he had. He cooperated in prison. He had undertaken courses regarding the harm done by drugs and he kept out of trouble for ten years by the date of the hearing.
82. At paragraph 158 of the Decision and Reasons the judge found unequivocally that the claimant had rebutted the presumption that he was a danger to the community. The judge particularly relied on his living for ten years out of prison without further conviction.
83. The judge then noted that although the claimant had clearly travelled back to Turkey on a number of occasions in the period 2001 to 2003, they were for short periods in which the claimant said, and the judge accepted, he had kept a relatively low profile. He had family reasons for making the visits and had not visited Turkey again for twenty years or so but the situation had not changed. The judge was not persuaded that Article 1C was satisfied and the respondent had not shown that it was justified in removing the refugee status.
84. The judge then looked at Article 8 as a separate matter. The judge was careful to remind himself that statute required very compelling circumstances over and above Exception 1 and Exception 2, before a person who had been sent to prison for at least four years could succeed on human rights grounds. The judge considered if Exception 1 or Exception 2 applied. Exception 1 clearly does not and it was not suggested otherwise (exception 1 relates to length of residence) and other qualifications.
85. However, it was the claimant’s case that Exception 2 did apply. The claimant’s wife was now a British citizen and had lived in the United Kingdom for 33 or 34 years. Further, she had said she could not leave because of responsibilities to her children and grandchildren. The judge reminded himself that the daughter Y had significant health problems and the child Ha was still young. The claimant’s wife had been significantly affected by the death of their son and was taking antidepressants. The dose had been increased. She had stood by the claimant throughout his imprisonment, had managed to care for the children and grandchildren and the judge found it “extremely hard” for her to continue without her husband. Healthcare was available in Turkey but was expensive and beyond her apparent means. The appellant’s wife has links with Turkey but most of her friends and family are in the United Kingdom. The judge accepted her evidence that she would not return to Turkey. He found the evidence clear and linked to the concern for their daughter and wellbeing of the grandson. She was in contact with her younger grandson and that was important to all of them after the death of his father.
86. The judge accepted that the claimant and his wife had a genuine and subsisting relationship. He also accepted that Y and HA remaining in the United Kingdom without the claimant would experience a sense of loss. The claimant had been sentenced to a long time in prison and had been locked up for over eight years but had taken advantage of the opportunities in prison. [Paragraph 177]. The

judge found that there was “no question that the [claimant’s] family and private life had strengthened in that ten-year period”. The judge found in the absence of contrary evidence that the claimant had not committed any offences in the ten-year period since his release and the judge believed the claimant’s evidence that it had weighed heavily on the appellant that he had put his family through such an ordeal. The judge noted that the daughter Y and the son Ha, who was then 19, were still living in the family home.

87. The judge had regard to evidence about the claimant’s mental health and accepted that the claimant was a poorly man.
88. At paragraph 187 of the Decision and Reasons, the judge considered the letter of 20 May 2011, which “had stated very clearly that his indefinite leave to remain as a refugee will not be revoked and that he was free to remain in the UK”, subject to his committing another offence when fresh consideration would be given. The judge described this as an “unambiguous statement” and concluded the appellant had not committed a further offence.
89. The letter raising his deportation in September 2013 referred to Operation Nexus. It referred to the claimant’s convictions but his character and associations but nothing had necessarily changed since 2011. The judge found the Secretary of State had “seemed to gloss over” the fact that the recall to prison had not led to convictions. He conducted a proportionality exercise giving particular weight to the claimant having lived in the United Kingdom for over 30 years, to his immediate family being British citizens and to their particular needs, to the fact that his wife would not feel able to go to Turkey in the event of his deportation and regard to the mental health and came to the conclusion that it was disproportionate. He allowed the appeal on Refugee Convention and human rights grounds.
90. The judge considered too the sentencing remarks of H H Judge Jones at the Crown Court sitting at Kingston upon Thames. Judge Jones described the claimant as “a very important player in this conspiracy” [page 59 line 15]. He had been described on various occasions as “the agar or boss”. The claimant and another defendant were described as “both major players in this conspiracy” and the sentencing judge described the claimant as “the most culpable of the four defendants” [page 59 line 20]. He also makes plain that the claimant was convicted after a trial. Nevertheless he was a man of previous good character. Before imposing a sentence of sixteen years’ imprisonment the judge then said that the claimant was “a major conspirator”. His was the longest sentence imposed on any of the defendants on the indictment.
91. We consider now the UNHCR letter of 23 March 2018 [247 in HO bundle]. Much of the letter is formal and none the worse for that because important things need to be considered in any case of a deprivation of refugee status, but the letter did flag up particular concern from the UNHCR that the Secretary of State had not considered separately if the claimant had committed a particularly serious crime which it seems clear he had and whether he was a danger to the community because that required a separate consideration. The UNHCR thought that the Secretary of State had not considered the case properly.
92. We consider now the grounds of appeal to the Upper Tribunal. As explained above, we permitted the Secretary of State to argue that Article 8 of the European Convention on Human Rights had not been considered properly.
93. The grounds complain first that the judge “failed to give adequate consideration to Article 1 of the Refugee Convention concerning those who choose to re-avail themselves of the protection of the country of their nationality”. This is

expanded. It is said it is not clear what the claimant meant when he travelled to Turkey “secretly”. He had obtained a Turkish passport, which according to the grounds, indicated that he “clearly felt that he had nothing to fear from the Turkish authorities and having obtained a passport the Turkish authorities would have been aware of his intention to travel”.

94. It is said that his getting married was not consistent with his keeping a low profile:
- “has failed to have regard to the fact that the [claimant] must demonstrate that he faces a personal risk, rather than noting the general circumstances. In light of the [claimant’s] eight visits to Turkey within eight years of having been granted asylum he has demonstrated that he faces no such personal risk.”
95. It was noted that it was the claimant’s case that in the event of his having to return to Turkey he would have “no choice” but to engage in political activity but it was said this was no more than a bare assertion and was inconsistent with the lack of political activity for nearly 30 years. The judge made no finding on that matter nor on his claim that he had Turkish enemies who were said to be responsible for slashing his face. He said that the conclusion that he faced a genuine risk of persecution was in law.
96. Concerning the Article 8 claim, he failed to consider all of Section 117B(3). This asserts or confirms that it is in the public interest that a person who seeks to enter or remain in the United Kingdom if financially independent and the finding that the claimant’s deportation will result in unduly harsh consequences or that there were very compelling circumstances over and above Exceptions 1 or 2, so as to outweigh the public interest is missing or explained inadequately.
97. The judge relied on an expert report that was generic rather than specific which said that the Alevi Kurds face some discrimination, which was not a dispute. It was no basis, argued Mr Melvin, to conclude that there was any risk of persecution to this appellant.
98. We intuitively understand the Secretary of State’s sense of grievance but that is not at all the same as saying that there is a material error of law. Mr Melvin is an experienced Presenting Officer and no doubt fully aware of the difference.
99. He particularly relied on paragraphs 3, 4, 5, 6 and 7 of the grounds, which argue that the cumulative errors amount to an error of law. Clearly the grounds have in mind Article 1C which provides:
- “This Convention shall cease to apply to any person falling under the terms of Section A if:
- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- [other disqualifying factors].”
100. It is very hard to see on the face of it how it can possibly be said that the claimant has not done exactly that. It seems clear that he has applied for a passport to travel back to Turkey and did on several occasions. It is very hard to see how a person travelling on a passport issued by the government of Turkey is not availing himself of the protection of that state. If the words of the Convention are to be given a strict meaning, it is clear that the judge is wrong.
101. The judge was clearly alert to the respondent’s claim because the judge said at paragraph 104 that:

“The respondent says that the [claimant] has re-availed himself of the protection of Turkey because he travelled back there on a number of occasions between August 2001 and 29 November 2003. However, these were short visits to see his elderly parents, he did not engage in any political activity and maintained a low profile. The respondent was aware that the [claimant] had applied for a passport and that he intended to visit Turkey.”

102. However, the proper application of Article 1C(1), at least according to the UNCHR in their letter of 23 March 2018, is more nuanced. The letter of 23 March 2018 it states [page 250]:

“The re-availing of the protection of the country of nationality should lead to cessation where the refugee has acted voluntarily, has intended to re-avail himself/herself of the protection of the country of his/her nationality; and has actually obtained such protection. An individual who has voluntarily obtained a national passport, for example, intending to either avail himself/herself of the protection of his/her country of origin whilst staying outside that country, or in order to return to that country, may in some circumstances be considered to have re-availed himself/herself of the protection of his/her former home country and have lost his/her refugee status. Cases of this kind should, however, be judged on their individual merits. An individual assessment will include consideration regarding, for example, the intent or motive of the refugee in contacting the national authorities, whether s/he acted voluntarily or was constrained by circumstances beyond his/her control amongst others.”

103. The letter then considered the application in this case and said:

“UNHC considers the motives and circumstances in which a refugee is found to be in possession of his national passport to be critical in assessing whether or not the cessation clause should be applied. UNHCR notes that according to [the appellant’s solicitors in their letter dated 3 March 2017 to the HO, the HO was aware that the [claimant] had obtained a Turkish passport and had endorsed it. In addition, they stated that [the claimant] returned to Turkey in order to visit his elderly parents.”

104. There is then a reference to paragraph 125 of the handbook which at least contemplates visiting an old or sick parent is not necessarily falling foul of the definition of protection.
105. We do not accept that obtaining a national passport of itself *necessarily* in *all circumstances* meets the definition of availing self of protection. To say otherwise would be to make nonsense of the UNCHR submissions, which would be unlikely to be a correct approach. It is also quite clear that the judge had the general test in mind. He did accept that the claimant went back for a family visit.
106. This point is to some extent illustrated in the grounds of appeal. The judge had not given extensive reasons. However, it is important to remember that it is not the claimant’s case that he was going to be targeted particularly. It is not his case that he would be, for example, on a wanted list so that he would attract attention immediately on arrival. Against that background, his getting married or at least taking part in a ceremony of marriage, and having a party, would not necessarily be inconsistent with his claim to have been discrete. His point was that his visit was short and not political.
107. We have to ask ourselves in effect if the judge’s decision is so inadequately reasoned that it is unintelligible or if it is perverse. The judge noted it was the claimant’s case that he specifically asked the Home Office if he was permitted to

return to Turkey and checked the matter with his solicitors. It is hard to think that this is the conduct of someone who wanted to avail himself of the protection of the state of Turkey rather than being protected by the United Kingdom. It is the conduct of somebody who did not want to lose his refugee status.

108. The skeleton argument placed before the First-tier Tribunal at paragraph 48 deals particularly with “voluntary re-availment” and sets out matters to consider such as the length of the visit, the purpose of the visit, the lack of political activity, the timing of the visit [they were before the attempted coupe in 2015] and also makes the point that even if he had re-availed himself of the protection of the Turkey State, it was still possible that he needed protection now.
109. It is impossible to read the Decision and Reasons without concluding that these points were very much in the judge’s mind. Under the heading “Findings of Fact and Credibility” at paragraph 132, the judge said:

“The notes continued to say that, although revocation of refugee status could be reviewed because he had travelled to Turkey after being granted asylum, that, as he had not done this since 2003/2004, and because this had not occurred since he was issued with a warning letter on 29 March 2011, there may be no real justification for removing his refugee status.”
110. The judge noted that the Home Office did not seem to be of the view, at least at that stage, that his conduct in returning to Turkey had had the effect of depriving him of the protection of the Convention. Given the way the arguments were clearly set out, and given the conclusion reached, we find we have to say that the judge did not misdirect himself. The judge did not ignore the point. The judge reached a conclusion permissible on the evidence.
111. Paragraph 4 of the grounds maintains that the judge erred by “failing to consider that despite the Turkish authorities’ evident lack of interest in the [claimant], the [claimant] himself admits that there are areas in Turkey where he would be safe and to which he may relocate.”
112. This is, with respect, just wrong. What the claimant did admit is there were places he felt safe in Turkey for a short time. That is not at all the same as admitting that he was safe in Turkey. Further, although it is said that the judge’s claim had made a bare assertion about his political activity the judge is entitled to believe a bare assertion if that is what the judge wants to do. This is a man who has been in trouble because of political activity in the past. It does not follow that because he did not wish to take part in political activity in the United Kingdom he would not become active again if he saw Kurdish people being oppressed and ill-treated and marginalised in the way that the evidence says might happen.
113. Against this background really it does not matter whether the judge made clear or sustainable findings about the risk of being ill-treated because he was thought of as an informant.
114. We stop here at this point and reflect on all what has happened. We are extremely aware that the claimant is a man who has been sent to prison for sixteen years for drug offences. That is a very long sentence for a very serious crime. We note too some tension between the claimant’s acceptance of his guilt and the description given by the judge, who clearly saw him as a major player.
115. However, the Secretary of State made a considered decision not to deport him and not revoke his status when all these things were known. This much the Secretary of State made clear in a letter sent to the claimant.

116. We are not told very much about what happened to change this. Clearly the claimant was in further trouble because he was tried for two offences under the Offences Against the Person Act and there was a connection with murder. The fact of the acquittal does not mean he did not commit the crime but it is powerful evidence that the allegation could not be proved. If it is the Secretary of State's case that matters came to light that justified redetermination of the consideration of whether or not he should be deported, the Secretary of State needs to make out her case. This would involve at least an outline of the police evidence and an indication of what the matters were that showed the claimant was a man who, contrary to his protestations, had not kept out of trouble since his conviction. There is nothing conceptionally difficult about this. The fact that a person was acquitted by a jury where the high standard of proof is applicable, does not mean that a perfectly sustainable decision that they were probably at fault could not be made. However, what cannot be done is to determine from the fact that he was acquitted that there is some reason to conclude that he was in some way culpable. That really does not follow and the fact, if it be a fact, that the police think he was up to no good, will not do either. There is no evidence to justify the conclusion that the claimant had committed further crimes and there was evidence to justify the conclusion although we are not suggesting this was the only possible conclusion on the evidence that the claimant had not re-availed himself of protection and disqualified himself.
117. We do not find any of the points in ground 1 to be at all persuasive. We consider them individually. Paragraph 2 simply asserts that the appeal was allowed. Paragraph 3 asserts that by obtaining a Turkish passport and travelling to Turkey on eight occasions he had re-availed himself of the protection of the country of Turkey. The judge dealt with this in line with the skeleton argument and the criticism is not well-founded. Paragraph 4 complains that the claimant travelled to Turkey secretly and says it is not clear what is meant by that. That is no doubt right but it is right that the claimant said that he went for short periods, mainly for family visits, and did not engage in any political activity. This is a matter of judgment. We are far from saying that some judges might have thought the degree of prominence to his activity suggested somebody who was completely at ease in Turkey but the judge did not reach that conclusion and it was not perverse. Paragraph 5 complains that the judge should not have found that there was any personal risk based on his eight visits. Again, this is not an error of law. This is a point to be made in cross-examination in argument. The judge was persuaded by the evidence that there was a risk to Kurdish Alevis such as the claimant and he was entitled to reach that conclusion. Paragraph 6 is the "bare assertion point which we have considered above". It follows therefore that ground 1 is not made out and the appeal therefore, brought by the Secretary of State, has to be dismissed. Any error on Article 8 is immaterial.
118. Nevertheless we look at ground 2, because it is said there is a material misdirection of law. This is where there is a reference to Section 117B(3) which we do not understand. Paragraph 9 asserts that there is no finding that the claimant's deportation would result in unduly harsh consequences for those concerned or that there would be very compelling circumstances over and above Exception 1 or Exception 2. We find this surprising. The judge, as far as we can see, did not use the words "unduly harsh" but did refer to the significant impact that removal would have on the whole family. The test was in the judge's mind because it was spelled out in the papers. When permission was refused by the First-tier Tribunal it was noted that the correct test could be inferred. This is a weak spot in the decision but we find it just about scrapes through. Similarly the over and above test is met by the cumulative effect of the conditions. However, given our findings on the other grounds this is immaterial.

119. It follows therefore that we dismiss the appeal. Again, we stand back and reflect on what has happened here and remind ourselves of the extremely serious offence for which this man was convicted and the incongruity of a person in his circumstances going back to Turkey on a Turkish passport claiming that he feared persecution in Turkey. A feature of this case that will not go away is that the Secretary of State was aware of all these things when she decided not to deport the claimant. This was spelled out unequivocally in a letter. We assume, because the contrary has not been said, that the letter was written with a degree of competence and authority and it cannot be right that the Secretary of State is allowed to resile from that letter without referring to something that makes a difference. Little is there. There are hints about all kinds of activity, but they are not just made out and it really is a case where the Secretary of State needed to say that the earlier decision was wrong because of new information and outline that new information with sufficient detail to discharge the burden of proof that was on her to justify the decision, or to leave it alone. The judge decided that the appeal should be allowed and gave proper reasons. We do not accept there is any error of law and we dismiss the Secretary of State's appeal.

Notice of Decision

120. The Secretary of State's appeal is dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 November 2024