Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05372/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 March 2020	**On 30 April 2020**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

R G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J. Dhanji, Counsel, instructed by OTS Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Turkey. His date of birth is 20 November 1983. For the reasons given in the error of law decision promulgated on 29 November 2019, the Appellant is anonymised. There is no reason to interfere with that order.

2. The Secretary of State made a deportation order against the Appellant on 22 January 2016 pursuant to Section 32(5) of the UK Borders Act 2007 because the Appellant is a foreign criminal.

The Appellant's Immigration History

3. The Appellant came to the UK on 8 July 1988 at the age of 4 years and 8 months. He came to the UK with his mother and siblings in order to join his father who was at that time granted ILR. The Appellant was granted LTR until May 1990. This was subsequently extended to a date in 1993. On 10 May 1996 the Appellant was granted ILR. The Appellant married a British citizen on 12 March 2014. They have a daughter, B, who was born on 4 July 2014. The Appellant's marriage came to an end in 2016. Various applications were made by the Appellant, culminating in the Respondent's decision on 10 April 2018 refusing an application on protection grounds and under Article 8. The Appellant's appeal against this decision on human rights grounds was dismissed. The Upper Tribunal set aside that decision.

The Appellant's Criminality

4. The Appellant has amassed a total of eighteen convictions for 33 offences between 1997 and 7 September 2015. These include two offences against the person, five offences of theft and related offences, eleven offences relating to police, courts and prisons, five drug offences and ten miscellaneous offences for which the Appellant received fines, detention and training orders, community orders and curfew requirements. On 11 May 2015 the Appellant was convicted at Snaresbrook Crown Court causing serious injury by dangerous driving. On 17 July 2015 he was sentenced to eighteen months' imprisonment. He was disqualified from driving for a period of 33 months and ordered to pay compensation and a victim surcharge. This was the trigger offence for deportation. On 22 May 2015 the Appellant was sentenced to three months' imprisonment for breach of a non-molestation order.

5. When sentencing the Appellant, the judge at Snaresbrook Crown Court said as follows:-

> "It's my duty now to sentence you for the offence of dangerous driving causing serious injury, an offence which the jury who tried you found you guilty of … danger did occur because this lady crossed from the side of the road, across the middle of the road and you, despite I accept, a late effort to avoid collision, collided with her. She suffered really grievous injuries and indeed she continues to suffer since then. In a statement that was made on 13 January 2014, she described the horrendous and lifechanging injuries of the left side of her body, her left leg was broken in a number of places and an operation was necessary to insert a metal retained. Her pelvis was broken in three places and she suffered a collapsed left lung. Her left shoulder was also broken."

The Error of Law Decision

6. Following a hearing on 19 November 2019 the Honourable Lord Matthews and Upper Tribunal Judge McWilliam found that First-tier Tribunal Judge

Cockrill made an error of law. The decision of Judge Cockrill was set aside for the following reasons:-

"*Error of Law*

21. We cannot be satisfied that a proper reading of the decision discloses that the judge approached the question of very significant obstacles correctly. We cannot exclude that when he conducted an assessment of very significant obstacles, he did not take into account the Appellant's family life here and the public interest; neither matter is material.

22. We consider that there is substance in ground 2. We find that the judge did not adequately engage with the expert evidence in this case. While certain conclusions reached by the Respondent in the Reasons for Refusal Letter were drawn to our attention, there was evidence before the judge which is arguably capable of undermining those conclusions. Whilst the judge was entitled to reject the expert evidence; it was incumbent on him to engage with it and to give reasoned findings. It is not entirely clear from his decision what he made of it beyond his recognition that there may be some discrimination shown to the Appellant. However, Dr Bayir's evidence was more far- reaching than that (particularly when considered in the context of the medical evidence). We are concerned that the judge did not make adequate findings in relation to the evidence of Dr Salter about the Appellant's mental health and the consequences for him should he return to Turkey. We are satisfied that this evidence was not properly engaged with when assessing specifically very significant obstacles and when assessing proportionality generally under Article 8.

23. Mr Melvin drew our attention to the case of UT (Sri Lanka) [2019] EWCA Civ 1095. We are mindful of what was said by Baroness Hale in the judgment of the House of Lords in Secretary of State for the Home Department v AH (Sudan) [2007] UKHL 49 at paragraph 30 and we approach this appeal with the appropriate degree of caution. However, the inevitable conclusion on a proper reading of paras. 53 and 54, is that the judge applied the wrong test, took into account immaterial matters and did not engage with material evidence. We cannot say with certainty that had these errors not been made it would have made no difference to the outcome in this case.

24. For the above reasons the decision of Judge Cockrill is set aside."

7. There was no further evidence produced by the Appellant. The panel on the last occasion stated that the matter would proceed on the basis of oral submissions.

The Issues

8. The Appellant relies on private life grounds. His case is that he meets the requirements of paragraph 399A of the Rules mirrored in s.117C (4) of the Nationality, Immigration and Asylum Act 2002. His case is that deportation breaches his rights under Article 8. It was accepted that he did not have family life with his ex-wife and daughter. It was accepted

that the Appellant had been here lawfully most of his life. The FtT found that he was socially and culturally integrated. The issue is whether there are very significant obstacles to integration. If so his appeal succeeds under Article 8. If not, I will consider whether despite this, deportation nonetheless breaches his rights under Article 8.

The Legislative Framework

9. The deportation order was made on 22 January 2016 pursuant to Section 32(5) of the UKBA 2007. The Appellant is a foreign criminal as defined by Section 32(1) of the UKBA 2007. Under Section 32(4) his deportation is conducive to the public good for the purposes of Section 3(5) (a) of the Immigration Act 1971. The Secretary of State must make a deportation order in respect of a foreign criminal under Section 32(5) of UKBA 2007.

10. The relevant Immigration Rules are paragraphs A398 and 399A which are now encapsulated in primary legislation at Section 117C of the 2002 Act. The provisions are set out below and the potentially relevant parts for the purposes of this appeal are emphasised.

> "A398. These rules apply where:
>
> (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention.
>
> (b) a foreign criminal applies for a deportation order made against him to be revoked.
>
> 398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and
>
> (a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;
>
> **(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or**
>
> **(c)** the deportation of the person from the UK is conducive to the public good and in the public interest 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, **the Secretary of**

State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

(a) the person has been lawfully resident in the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) **there would be very significant obstacles to his integration into the country to which it is proposed he is deported.**

Section 117C Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.**]**

Case Law

11. In KO (Nigeria) v SSHD [2008] UKSC 53 the Supreme Court addressed the construction of Section 117C and specifically whether the Rules contained therein "allow any further room for balancing of the relative seriousness of the offence, beyond the difference between the two categories" (see paragraph 21). In respect of the provision in Section 117C(4) which is relevant in this appeal, the Supreme Court was clear:-

> "… Exception 1 seems to leave no room for further balancing. It is precisely defined by reference to three factual issues: lawful residence in the UK for most of C's life, social and cultural integration into the UK and 'very significant obstacles' to integration into the country of proposed deportation. None of these turns on the seriousness of the offence …"

12. It is the Respondent's case that there are no very significant obstacles to integration. In respect of this aspect of Section 117C(4) in the case of the Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 the Court of Appeal said as follows:-

> "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 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."

13. The Court of Appeal considered very significant obstacles in the case of CI (Nigeria) v SSHD [2019] EWCA Civ 2027 and in terms of the assumed knowledge of culture relating to the country of origin said as follows at paragraph 86:-

> "86. An inference that an immigrant who has no memory of his country of origin (having left it as an infant) must nevertheless have acquired some knowledge of its culture and traditions through his upbringing might in some cases be a reasonable one to draw. But on the evidence before the Upper Tribunal there was no

reasonable basis for drawing such an inference in this case. The judge referred to the fact that CI's mother was abusive towards him but considered that that fact 'does not demonstrate that he lacked familiarity with his mother's cultural way of life.' This appears wrongly to have put the onus on CI to prove that he was not familiar with Nigerian culture rather than requiring some factual basis for finding that he was. More importantly, it paid no regard to the evidence about the nature and extent of the delinquency of CI's mother as a parent. It is not only the evidence of her abusive treatment of her children but also the evidence of her severe neglect of them that is relevant in this context. As Dr Rachel Thomas, another psychologist who gave expert evidence, observed in her report, the information about CI's mother indicates that she was 'not the sort of responsible parent who will have spent the time to teach her children about their cultural origins.' There was, moreover, positive evidence to which the Upper Tribunal judge did not refer that CI and his siblings had indeed been brought up by their mother ignorant of Nigeria and its culture. CI's older sister explained the matter graphically when she wrote:

> 'Nigeria is as foreign to us as China. We don't know it and we don't know anyone there.'

The judge gave no reasons for rejecting this and other evidence to similar effect and I can see no reason to do so."

14. The Court of Appeal in Secretary of State v Olarewaju [2018] EWCA Civ 557 reminded us at paragraph 26 that a "very real culture shock" on return does not constitute a very significant obstacle to integration.

15. When assessing very compelling circumstances in the context of Section 117C(6) the Court of Appeal in the case of NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 Jackson LJ gave significant guidance. This Appellant is what is described as a "medium offender". The following paragraphs of NA are of assistance:-

> "29. In our view, the reasoning of the Court of Appeal in *JZ (Zambia)* applies to those provisions. The phrase used in section 117C(6), in para. 398 of the 2014 rules and which we have held is to be read into section 117C(3) does not mean that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that 'there are very compelling circumstances, over and above those described in Exceptions 1 and 2'. As we have indicated above, a foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paras. 399 or 399A of the 2014 rules), or features falling outside the circumstances described in those Exceptions and those paragraphs, which made his claim based on Article 8 especially strong.
>
> 32. Similarly, in the case of a medium offender, if all he could advance in support of his Article 8 claim was a 'near miss' case in which he fell short of bringing himself within either Exception 1 or

> Exception 2, it would not be possible to say that he had shown that there were 'very compelling circumstances, over and above those described in Exceptions 1 and 2'. He would need to have a far stronger case than that by reference to the interests protected by Article 8 to bring himself within that fall back protection. But again, in principle there may be cases in which such an offender can say that features of his case of a kind described in Exceptions 1 and 2 have such great force for Article 8 purposes that they do constitute such very compelling circumstances, whether taken by themselves or in conjunction with other factors relevant to Article 8 but not falling within the factors described in Exceptions 1 and 2. The decision maker, be it the Secretary of State or a tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation.
>
> 33. Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.
>
> 36. In relation to a medium offender, first see whether he falls within Exception 1 or Exception 2. If he does, then the Article 8 claim succeeds. If he does not, then the next stage is to consider whether there are 'sufficiently compelling circumstances, over and above those described in Exceptions 1 and 2'. If there are, then the Article 8 claim succeeds. If there are not, then the Article 8 claim fails. As was the case under the 2012 rules (as explained in *MF (Nigeria)*), there is no room for a general Article 8 evaluation outside the 2014 rules, read with sections 117A-117D of the 2002 Act."

16. In the case of Akinyemi v Secretary of State for the Home Department [2019] EWCA Civ 2098 the Senior President of Tribunals giving the leading judgment said in respect of the public interest as follows at paragraph 45:-

> "45. Dealing first with the legislation. There is on the face of section 117C NIAA 2002 a flexible or moveable quality to the public interest in deportation that is described albeit that the interest must have a minimally fixed quality. It is minimally fixed because at section 117C(1) the public interest as described can never be other than in favour of deportation. It is flexible because at section 117C(2) the additional consideration described is as follows: ' The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal'."

The Appellant's Evidence

17. The Appellant's evidence is contained in his undated and unsigned witness statement (B1, Appellant's bundle). His evidence can be summarised. He came here with his parents and siblings at the age of 4. His father had to

leave Turkey as a result of his political and religious views. He has lived here since then. He attended school here.

18. In the UK the Appellant has access to medical treatment and support for his medical condition. He has no connections with Turkey. He is not familiar with the lifestyle there. He will suffer serious emotional and psychological harm should he be expected to return to Turkey having lived here for more than 30 years. The Appellant is fragile as a result of various upheavals throughout his life including a volatile marriage and difficult divorce. The Appellant has a daughter here; however, his ex-wife has prevented him from having contact with her.

19. The Appellant's entire family live in the UK. He needs their support to function. The majority of family members are British citizens. His family is strong, close and loving. It was difficult when serving a sentence because he was separated from his family. He does not want to be separated again from them.

20. The Appellant has been seeing North Hackney Community Mental Health Team since 2002. He needs support as a result of mental health problems. He receives care and supervision. There is no-one in Turkey who would be able to provide this support.

21. The Appellant is making positive changes to his life. He sends money to his daughter. He attends the local community centre where he explains to young people his past experiences so that they do not follow his path. He attends the gym regularly and he is on a drug programme.

The Evidence of HG

22. HG is the Appellant's mother. Her evidence is contained in her witness statement which is unsigned and undated (B6, Appellant's bundle). Her evidence can be summarised. The Appellant came here at the age of 4. He can have access to medical support here in the UK for his medical condition. He has no connections with Turkey. He will suffer serious emotional and psychological harm should he be required to live there. He had a difficult marriage and unpleasant divorce. He has connections here in the UK. All the family reside here the majority of whom are British citizens. She has a strong, loving and close relationship with her son. The family cannot understate the loss if the Appellant is deported. The Appellant's mental health problem has affected him. He would not be properly treated in Turkey. The Appellant needs his family's care and support. He is making positive changes in his life to address his problems.

The Evidence of MG

23. MG's evidence is contained in his witness statement which is unsigned and undated (B11, Appellant's bundle). MG is the Appellant's father. His evidence is in very similar terms to that of the Appellant and the

Appellant's mother. He also has a good relationship with his son. He fears that his son would be placed "at serious risk to himself" on return to Turkey. He is accustomed to the British way of life having spent the majority of his life here. His mental health is getting better in the UK but there will be no support for him in Turkey. The Appellant needs his family's care, love and support.

The Evidence of EG

24. EG is the Appellant's brother. His evidence is contained in his undated and unsigned witness statement (B15, Appellant's bundle). The Appellant's brother's evidence is in similar terms to that of the Appellant and his parents.

25. He says that the Appellant struggled at school and had mental health difficulties and was involved with drugs. His convictions do not accurately portray his true character. The Appellant has been through a difficult time. It is hopeful he will be reunited with his daughter one day. He plays an active role in the lives of all his family members. Including siblings and their children. He has a close relationship with his nephews and nieces. Family members are all concerned for the Appellant's welfare should he be deported. He speaks very limited Turkish and would struggle to find employment or access basic services. His mental health is likely to deteriorate. He relies on family here for emotional support and encouragement to take his medication and to make sure that he is coping with life.

26. The Appellant was forced to leave Turkey when he was a child because of the risk of persecution. Being a solitary Kurd with no support, no income and weak language skills and mental health problems there would be a significant risk to his safety.

The Evidence of LG

27. LG is the Appellant's sister. Her evidence is in her unsigned and undated witness statement (B21, Appellant's bundle). Her evidence is similar to that of her siblings. She talks about the relationship that the Appellant has with her daughters and says that he is an "incredibly sensitive individual" who relies heavily on his family for emotional and financial support. He would not be able to cope should he return to Turkey.

The Evidence of ZH

28. ZH is the Appellant's niece. Her evidence is contained in her witness statement which is unsigned and undated. Her evidence can be summarised. The Appellant is a "massive part" of her life and he has always been someone to whom she can turn to for support. She has her own mental health issues which she has been able to discuss with the

Appellant who was understanding and supportive. He would not be able to integrate into life in Turkey.

The Evidence of RH

29. RH is the Appellant's niece. Her evidence is contained in her undated and unsigned witness statement. Her evidence can be summarised. The Appellant has been an important part of her life whilst growing up. He is something of a mentor to his nieces and nephews.

The Evidence of OG

30. OG is the Appellant's sister. Her evidence is contained in her undated and unsigned witness statement (B28, Appellant's bundle). Her evidence can be summarised. The family care deeply for the Appellant who will always be their "little boy". The family is concerned for the Appellant's welfare should he return to Turkey where he would struggle to integrate.

The Evidence of NG

31. NG's evidence is contained in her undated and unsigned witness statement (B30, Appellant's bundle). Her evidence can be summarised. She has a close relationship with the Appellant as do her adult children. She suffers from depression and the Appellant has been very supportive to her. He is doing his best to reform and to make good progress.

Other Evidence

32. There is evidence from friends of the Appellant in the form of letters (B34–B38, Appellant's bundle).

The Medical Evidence

33. Dr Mark Salter is a treating consultant liaison psychiatrist. His psychiatric report concerning the Appellant is dated 18 October 2018. His evidence can be summarised.

34. The Appellant first came into contact with psychiatric services in March 2004 when he was brought to hospital by the police under Section 136 of the Mental Health Act. He was noted to be expressing suicidal intent. He had had little sleep, was self-neglected with disorganised thinking, overvalued persecutory ideas and possible hallucinations. He was diagnosed with drug-induced psychosis. He defaulted from care but was subsequently returned to hospital some days later when he engaged more substantially with psychiatric care over the following months and then years. He complied with antipsychotic medication which he found helpful and has continued with this. He has good insight into his illness. He has

distanced himself from his former peers and has made substantial reductions in his use of drugs.

35. The Appellant had difficulties with sustained concentration and impulsive behaviour at school. He underachieved academically and began to socialise with a more deviant peer group by his mid-teens.

36. Dr Salter last saw the Appellant in a psychiatric out-patient clinic at the Homerton Hospital on 19 September 2018. He presented in a state of acute crisis, characterised by tearfulness, agitation, depression with severe insomnia and tearfulness which have worsened as his immigration hearing draws near. The Appellant is distressed at the prospect of having to return to Turkey.

37. The Appellant fears the prospect of being deported to a country that he has never known and in which he has few contacts. Deportation would lead to separation with his family who provide him with valuable support, and it would prevent him from ever making contact with his daughter. He presented with anxiety and depression. There is no evidence that this has led to a return to his more challenging early behaviours and there are aspects of his mental state and recent conduct which suggests he is committed to making a better life for himself.

38. Dr Salter states as follows:-

> "I have no doubt whatsoever that compulsory removal from the UK would exert a highly adverse effect upon [RG's] mental health and behaviour. In the short term, it is highly likely he would become acutely distressed with an agitation, impulsive self-harming behaviour and an increased risk of resort to substance misuse. Way to return to street drugs at his former levels, he would almost certainly undergo a psychotic relapse.
>
> In my opinion is highly unlikely that he would be capable, without support, of making contact with local psychiatric services, and thus maintaining compliance with antipsychotic medication he has taken regularly for many years in the UK, with good result. Such discontinuation would place him an increased risk for his physical safety and wellbeing.
>
> Deportation would also effectively sever regular contact with the entire family, whose unstinting support and encouragement for him to adopt more mature ways of coping with his difficulties, have played a significant role in his progress over recent years. Such severance would, therefore, further compromise his mental health.
>
> Were he to be allowed to remain in the UK, on the same terms as his family, his positive long-term prognosis would be maintained. I am reasonably confident that this would lead to him enacting the plans that are currently muted with regard to employment. This would also lead to a sustained reduction in his risk of reoffending.

> Another important element of his progress thus far concerns his motivation to re-establish contact with his daughter, who I understand is now aged 5. On the basis of his present mental state and level of function, alongside the high level of support that he receives from his social network, I am confident that he would be capable of re-establishing a safe relationship with this child. I would advise that this was initiated on an indirect basis in the first instance, thereafter, progressing to actual contact, initially on a supervised basis. Further revisions to the conditions of contact could thereafter be made depending upon progress."

39. There is a letter from the Appellant's GP Dr Aggarwal of 3 December 2019. He says that the Appellant is suffering from paranoid schizophrenia which is managed by the local mental health services. He is currently taking Mirtazapine, Olanzapine and Kemadrin.

40. There is an update from Dr Salter of 11 December 2019. He reviewed the Appellant on 11 December at the request of his GP. He said that his mental state had deteriorated substantially. There was no suicidal ideation. However, the Appellant's thinking displayed psychotic features identical to those which led to his hospitalisation two decades ago during which time he was under Dr Salter's care. He has engaged with community support over the years and formed a good trusting relationship with a Turkish/Kurdish social worker. He agreed to engage with local drug rehabilitation services and made a good improvement. According to Dr Salter "the most significant factors in his substantial progress over the last decade have without doubt arisen more from psychological stability of his family and social environment and his moderation of substance misuse, as from simple antipsychotic medication." He also states that in his view to return him " alone , estranged from his family to live until aged in the country where he has never lived will prove detrimental to his mental state".

The Background Evidence

41. The Appellant relies on a report from Derya Bayir, a qualified lawyer affiliated to the Istanbul Bar Association. He has provided a report concerning mental health treatment in Turkey. His evidence can be summarised.

42. There is no systematic official reporting system showing the performance of mental health institutions in Turkey. Until recently Turkey did not have a general policy on mental health issues. An action plan was prepared in 2011 in line with international human rights standards and since then Turkey has taken some measures to increase the quality and capacity of services and institutions. However, very little has been achieved towards the realisation of the goals set out in the plan.

43. Domestic laws and legislation in Turkey are not compatible with international human rights conventions. There is no standalone mental

health law regulating involuntary hospitalisation or compulsory holding in mental institutions in Turkey. There is no authority or independent body to assess the compatibility of compulsory holding with domestic and international laws and standards. Involuntary hospitalisation and compulsory holding in mental institutions can be judicially reviewed. However, this is a lengthy procedure.

44. There is no case recorded where the courts rejected the involuntary hospitalisation demands of the hospital administration. Psychiatric patients are not usually informed of their right to refuse treatment since involuntary hospitalisation is considered as approval for any treatment. Solitary confinement and physical and chemical restraint practices are quite widespread.

45. Those with mental and psychological problems can easily be deprived of their legal capacity under the Turkish Civil Code. Mental health institutions are overcrowded, understaffed and inadequately resourced. There is a negative social attitude and mindset in regard to mental health patients.

46. Since the introduction of the action plan a community-based treatment approach has been adopted. The main purpose of which is to make sure that psychiatric patients receive the health service nearest to their home and those who are hospitalised stay only short-term in a psychiatric clinic and once the reasons for hospitalisation disappear the patient will be directed to the community-based mental health centre where psychiatrists and other professionals will work together to assist with rehabilitation. However, the existing system is far from adequate to cope with the demand. There are only eleven psychiatric hospitals in Turkey nine of which are run by the state. Demand exceeds supply. As a result, most people suffering from mental health problems in Turkey live with their family.

47. Instate-run hospitals patients are keep indoors all day and forced to spend their days watching TV and wandering the corridors. There is reported mistreatment of patients. There is no individualised treatment and very little interaction between staff and patients. The use of electroconvulsive or shock treatment is widely used. There is widespread stigmatisation and negative attitudes towards and prejudice against mentally ill patients. There is a general belief that mentally ill people are dangerous. As a result, individuals are reluctant to apply to psychiatric clinics or professionals for help.

48. At present the Appellant is prescribed olanzapine 10mg, procyclidine hydrochloride 5mg, kemadrin 5mg. These medications are not available in Turkey. However, there is a drug available, Zyprexa, which has the same active ingredients as olanzapine.

49. There is no free translation service available for those who do not speak Turkish save in court proceedings. It would be very difficult for the

Appellant to establish life in Turkey without language skills. English is not widely spoken by the general population. It would be difficult for him to establish life in Turkey where English is not widely spoken. The Appellant has no experience of living in Turkey or knowledge about how to navigate through public administration and the paperwork. He will find it difficult to live there. He will have problems integrating into the quite conservative general society as a single man. Without a job or family network it would be difficult for him to rent a place or as a single man develop relationships with other families without having a female partner. However perhaps the big cities where traditional social structures and relations are relatively weak it would be an easier place to live in this regard.

50. A low-income person upon verification of their situation can get free treatment and medication from state hospitals. There is a social benefit system in Turkey however the Appellant would have to go through an assessment process.

51. The production of cannabis is legal in nineteen provinces in Turkey under government control. It is a criminal offence to use, buy, receive or possess drugs for personal use. There is an alternative to a prison sentence for drug offences.

52. Kurdish people and their political organisations have faced oppression from the Turkish state. However, knowing that he does not have any political involvement it is unlikely that the Appellant's Kurdish background would put him at risk within the criminal justice system. However anti-Kurdish sentiment is on the rise and there have been many incidents in recent years of discrimination. The Appellant will find it difficult to adapt to the social relations which are sensitive regarding ethnic religious and political fault lines in the country.

Submissions

53. I was assisted by the representatives' skeleton argument/written submissions. At the start of the hearing, I queried paragraph 30 of Mr Melvin's written submissions. It was brought to his attention that the FtT made an unchallenged finding that the Appellant was culturally and socially integrated. He accepted this was the case and withdraw submissions on this issue.

54. Mr Melvin relied on his written submissions. In so far as Dr Bayer's evidence is concerned, Mr Melvin indicated that the Respondent did not accept that he is a recognised country expert. His evidence has not been tested in a court. Mental health treatment is available in Turkey, though understaffed and under resourced. The evidence before the FtT was that the family regularly visits Turkey where they have accommodation. Mr Bayir has not met the Appellant or any of his extended family here. It is not accepted that that there is an obligation on Alevi Kurd parents to care for their son. The Appellant is currently living with his brother and not his parents. The Respondent does not accept that there is widespread

discrimination against people with mental health difficulties or that the Appellant as a Kurd would suffer additional discrimination.

55. Mr Melvin highlighted that Dr Salter's first report says that he is committed to making a better life for himself and does not suggest a return to more challenging behaviours. His updated evidence of 11 December 2019 says that his mental health has substantially deteriorated, and he was displaying psychotic features first displayed some 20 years ago, caused by the heavy use of marijuana. It is accepted by the Respondent that Dr Salter has known the Appellant for many years. It is the Respondent's position that the Appellant has fallen back into substance misuse because of the decision to remove him to Turkey. There is no recommendation by Dr Salter of a course of medication or counselling. He prescribes his appeal to be allowed to solve his mental health problems. He is not an expert on mental health in Turkey. The Respondent expresses concern about the nature of the support given to the Appellant by his family because they are unable to prevent him from offending and taking drugs. It is not accepted that removal to Turkey will have a significant impact on the Appellant's mental health.

56. The evidence does not establish very significant obstacles to integration. The high test is not met in this case. The Respondent does not accept that the Appellant will not be able to communicate in Turkey. The family members who attended and gave evidence at the hearing before the FtT did so through a Turkish interpreter. The Appellant can access support from the UK. The relationship that the Appellant has with his family here does not go beyond the normal emotional ties between adults. He would be able to access social services and benefits.

57. In respect of the wider proportionality assessment, the Appellant has a lengthy criminal record stretching over a significant period. Since the trigger offence, he has breached a non-molestation order.

58. Mr Dhanji relied on his skeleton argument in oral submissions. The Appellant has a history of mental health difficulties including psychosis, bipolar affective disorder, suicidal ideation and depression. He has been taking anti-psychotic drugs for many years. His health has deteriorated since the hearing before the FtT. Mental health care in Turkey is substandard. There is stigmatisation. In Dr Salter's opinion it is unlikely that without support the Appellant would be capable of making contact with psychiatric services in Turkey and thus maintaining compliance with antipsychotic medication that he had regularly taken for years in the UK with good results. Separation from his family would further compromise his mental health. Dr Salter's evidence is that the family support that he would get from his family in the UK if removed to Turkey would not be sufficient to provide stability for his psychotic condition. There would be very significant obstacles to integration on account of the Appellant's mental health, the treatment of those with mental health problems in Turkey and the Appellant has not lived in Turkey since he was four and has no knowledge of life there. He would not have the capacity to participate

in Turkish society. The Respondent's decision disproportionately interferes with the Appellant's family and private life. The Appellant has been here for 32 years and his family is settled here.

Findings and Reasons

59. The Appellant has not been to Turkey since he was aged four. I accept that he does not have relatives there and that he has a very close and supportive family here. I accept that his main language is English. However, I consider that there was a Turkish interpreter at the hearing before the FtT to assist three of the witnesses. It is reasonably likely that the Appellant has some grasp of the Turkish language.

60. I attach significance to the medical evidence. Dr Salter is well placed to give an opinion about the Appellant's mental health. Mr Dhanji in submissions stated that the Appellant did not seek to rely on Dr Salter's evidence in so far as it relates to Turkey and the provision of health care there. It was not challenged that the Appellant has mental health problems as identified by Dr Salter.

61. In respect of the evidence of Dr Bayir. His report is adequately sourced. The fact that there is nothing to say that he has been a witness in a court case, may impact on the weight to be attached to the evidence but does not render it unreliable.

62. Neither party draw my attention to the Country Background Note relating to Turkey (version 3.0 of September 2019) specifically section 7 under the heading "healthcare". I summarise the salient parts from this document which I assume the parties are aware of. Patients are obliged to make flat rate out of pocket payments when receiving medication and outpatient services in public hospitals which can inhibit access to health for the poor. A new law provides health care also to unemployed people if they match certain criteria. Slow progress was made on community-based mental health centres. In 2017, 14 new community-based mental health centres were set up, making a total of 163, and 350 family physicians were given mental health gap training. At 7.1.6 the report states as follows:-

> "The Australian Department for Foreign Affairs and Trade published a report in October 2018 which stated:
>
> > 'Turkey adopted a National Mental Health Policy in 2006, which shifted mental health services to a community-based system and integrated them into general health services. As of October 2015, 86 community mental health centres (CMHC) operated nationwide. Observers claim the CMHCs are inadequately funded, and that the number of psychiatrists and other mental health professionals per capita is well below European Union averages. Local groups report a lack of coordination between the government and NGOs working in the area, particularly in relation to reducing discrimination and stigma. Other complaints include that CMHC staff are often poorly trained and paid,

> leading to high turnover and poor service, and that patients must pay directly for their treatment, leading to a two-tiered system. The Ministry of Health reported in November 2017 that the number of applications filed to health institutions over psychological complaints increased by 27.7 per cent between 2011 and 2016.'"

63. The County Background Note supports Dr Bayer's conclusions in respect of stigma towards the mentally ill and the inadequacy of the system generally. I accept his evidence that the Appellant has no experience of living Turkey and would have difficulty accessing services. I accept that there may be difficulties arising from him being a single male without family. There is no good reason for me to reject the evidence of Dr Bayir. I accept that his evidence alone does not establish very significant obstacles to integration, but it establishes that the Appellant would experience significant difficulties. However, when considered together with the evidence of Dr Salter and the evidence generally, I conclude that there would be very significant obstacles to integration.

64. The Appellant has a very significant private life here. He is aged 36. He has spent 32 years of his life here. It was not open to the Respondent to argue that the Appellant was not socially of culturally integrated; however, had it been, I would have found in favour of the Appellant. He has been here since the age of 4. The Appellant has been educated her. He has strong family ties here. Before he started to offend, he had unarguably established significant cultural and social ties here. He had been here 9 years. He started to offend as a youth. Whilst there has been a significant pattern of offending over a period of time, I find that he was deeply integrated before then. If his offending and imprisonment broke integration, by the time I heard his appeal, on the evidence before me, they have been re-established. He has been out of trouble for at least three years. He has deep roots in this country. Not only has he been educated here, but he has worked here. However, as stated it is not open to the Respondent to challenge the finding of the FtT.

65. The Appellant has visited Turkey. My understanding is that members of his family travel there and have property there. However, he has not lived there since he was very young. Visiting a country is not the same as living there. While the Appellant has grown up in a Turkish family and will be familiar with some aspects of Turkish culture and language, he has never been to school or worked there. He is unlikely to remember much about living there because he left at such a young age. I accept that the Appellant's family here could financially help him. This kind of support would typically enable a person in the Appellant's position to build a private and/ or family life to enable some kind of meaningful integration. However, this case is unusual because the Appellant has serious mental health problems as identified by Dr Salter. I find that he is very dependent on his family. He is currently experiencing psychosis and has been on antipsychotic medication for some time. While in theory, a person would be able to access necessary drugs in Turkey, I conclude that an essential

ingredient to ensure that this Appellant is able to access medical services is the support and stability of his family. I attach significant weight to what Dr Salter says in his most recent report namely that "the most significant factors in his substantial progress over the last decade have without doubt arisen more from psychological stability of his family and social environment and his moderation of substance misuse, as from simple antipsychotic medication." His family could give him some support if he is to return to Turkey, for example, via social media and visits, but this is a poor substitute for the support they give him here.

66. I accept that the support of his family has not always kept the Appellant on the straight and narrow and he has not always complied with treatment; however, this is not the issue. I find that without their support, it is reasonably likely that his condition will significantly deteriorate in the light of the very real difficulties he will face in Turkey and his sense of isolation. I find that it is reasonably likely that he will be unable to access services without the necessary emotional support from which he benefits and receives from his extensive loving family here. I take into account that there is some stigma attached to those with mental health issues in Turkey. It is reasonably likely without support of his family; he will relapse into drug misuse. It is reasonably likely that his mental health issues and any further drug use will prevent him from being accepted in Turkey to any meaningful extent to enable him to build human relationships that will give substance to his family of private life. I find that without the level of emotional support and stability that his extensive family gives him here, the Appellant will remain an outsider. There are very significant obstacles to his integration in Turkey.

67. For the above reason Exception 1 applies. The appeal is allowed on Article 8 grounds. There is no reason for me to go on to consider proportionality and the public interest in deportation.

Notice of Decision

The appeal is allowed under Article 8.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Joanna McWilliam Date 16 March 2020

Upper Tribunal Judge McWilliam