Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00479/2012

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Determination Promulgated**
On 1 July 2013	**On 16 July 2013**
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Before

UPPER TRIBUNAL JUDGE KING TD

Between

MURAT AYHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Turkey, born on 15 August 1984. He entered the United Kingdom on 27 February 1997, with his parents, at the age of 12. He was granted indefinite leave to remain on 24 February 1998. He made an application for naturalisation as a British citizen on 10 March

2003 but that application was refused on 15 September 2004, on character grounds.

2. The appellant is a 27 year old man who is divorced and has a child with his ex-wife.

3. The appellant was convicted of a number of offences, the key offence for the purposes of this appeal being that committed on 21 April 2011 when he was convicted of assault occasioning actual bodily harm, assault by beating, destroying and damaging property and threats to kill for which he received a sentence of twenty two months' imprisonment.

4. On 20 September 2011 he was served with a notice informing him of his liability to deportation. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Parker, sitting with Mrs J Holt, Non-Legal Member, on 14 January 2013.

5. The appeal against deportation was dismissed as was his appeal in respect of human rights.

6. The appellant sought to appeal against that decision, essentially on the basis that the court should have considered and applied the decision of the European Court on Human Rights in **Maslov v Austria 1638/03 [2008] ECHR 546 (23 June 2008)**. Further it is contended that there were insufficient findings relating to family life.

7. Initially the permission to appeal was refused but was renewed before the Upper Tier Tribunal. Leave to argue the **Maslov** test was granted on 18 March 2013.

8. Thus the matter comes before me in pursuance of that grant.

9. The appellant appeared unrepresented from immigration detention. His solicitors had not notified the Tribunal that they were no longer acting and were contacted by my clerk. They indicated that they were not attending because they were without instructions. Subsequently a letter by facsimile was dispatched from Crystal Partners Solicitors confirming that they did not have any specific instructions from the appellant in relation to the matter in court and therefore were unable to provide him with representation.

10. The letter went on to indicate that if the appellant wished to provide further instructions to Crystal Partners Solicitors they would request an adjournment for five weeks in order for them to meet him in prison to take his instructions.

11. It is to be noted that the date of the hearing was notified both to the appellant at Pentonville Prison and to his solicitors on 5 June 2013. There had been adequate time for representation to be clarified and any

instructions taken. The appellant indicated that he had last met the solicitors at a bail application and was not very pleased with the service which they had provided to him.

12. It is to be noted that the appellant was represented by that firm as at the date of the original hearing and they had been instrumental in preparing the grounds of the appeal. Given that the grounds essentially sought to raise a matter of law rather than expand further on the facts of the case, it is difficult to understand what would be gained by any further consultation with the appellant at this stage. This is particularly so given that the appellant expressed his dissatisfaction with their services in any event.

13. The appellant himself did not make any request for an adjournment. I have considered the matter whether it would be in the interests of the appellant to adjourn the matter for further representation to be obtained. I have come to the conclusion that it would not be in the interests of justice for a further delay to be made in respect of this matter. The issue at large is clearly identified in the grounds of appeal and submissions made upon it.

14. Recognising as I did the practical difficulties facing an appellant to address the court in relation to an error of law, being unrepresented I invited Mr Wilding, the Home Office Presenting Officer to outline his submissions, thereby giving the appellant some opportunity of responding to them.

15. Mr Wilding first of all submitted that the appellant's case could be distinguished from that of **Maslov**. In **Maslov** there were a number of particular factors which were found to be of significance. The first being that the appellant in that case came to Austria at the age of 6 years and had therefore spent the vast majority of his youth in that country. By contrast the appellant had come when he was 12 years old, having spent therefore much of his childhood in Turkey.

16. Secondly, the offences to be held against **Maslov** were committed essentially when he was a juvenile whereas the key offences in the case of the appellant in the present appeal were committed when he was an adult.

17. It is also considered by the Court in **Maslov** that the appellant had little connection with his home country and was not able to speak the language. By contrast, it was the finding of the Tribunal in the case of the appellant that he had continuing connections in Turkey and spoke fluently the Turkish language. Indeed although the appellant indicated he could speak English, he did ask for the legal submissions of Mr Wilding to be interpreted to him in the Turkish language which was done.

18. In **Maslov** no further offences were committed after 2000 and when assessing his conduct since the commission of the offences, the Chamber attached weight to the period of good conduct after his release. That was

not the case of the appellant who has continued to commit offences over a considerable period of time.

19. Mr Wilding submitted that the court in **Maslov** were concerned to express a number of factors which should be borne in mind in the application of expulsion. Those included:-

    (1) the nature and seriousness of the offence committed by the appellant;

    (2) the length of the appellant's stay in the country from which he or she is to be expelled;

    (3) the time that has elapsed since the offence was committed and the appellant's conduct during that period;

    (4) the solidarity of social, cultural and family ties with the host country and with the country of destination.

20. Mr Wilding submits that the offences committed by the appellant were all serious of nature, particularly so the key offences. He invited me to find that the Tribunal had borne clearly in mind in the determination when it was that he had come and how long he had been in the United Kingdom. The Tribunal bore in mind the nature of the offences and the appellant's conduct as well as his social and cultural ties, both in the host country and in Turkey.

21. I was invited to find therefore that the practical application of **Maslov** had been incorporated into the determination even though the case itself had not been named as such.

22. The burden of course of **Maslov** was to the effect that for a settled migrant who has lawfully spent all or a major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion.

23. So far as the very serious reasons are concerned, Mr Wilding invited me to find that that was uppermost in the mind of the Tribunal with regard to the nature of the offence. The remarks of the sentencing Judge were set out in detail at paragraph 15 of the determination. It was a sustained attack by the appellant upon his former wife at about midnight in the presence of her friend, and indeed his son. She obtained a broken nose and required medical treatment. The applicant also assaulted Miss Iyam who was the friend, who sought to try and protect his former wife. An aggravating feature as specifically noted by the Judge in his sentencing remarks was that the child of the appellant was present and witnessed the whole matter. It was significant in the mind of the Tribunal that the appellant has consistently denied that that was the case.

24. In terms of the serious nature of the matter my attention was drawn indeed to the recent decision of the Court of Appeal in **SS (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 550**. In that case, Lord Justice Laws considered the balance between public interest and private right. It is recognised at paragraph 48 of the judgment that insufficient attention has been paid to the weight to be attached to the policy of deporting foreign criminals, given its endorsement in primary legislation. The more serious the offending, the stronger is the case for deportation and this applies readily to a case where the appellant is subject to automatic deportation. The pressing nature of the public interest is vividly informed by the fact by Parliament's express declaration that the public interest is injured if the criminal's deportation is not effected. This is particularly so in matters of automatic deportations. Comments in paragraphs 53 and 54 of that judgment are particularly relied upon in that connection.

25. The appellant's offence was not only of extreme violence and seriousness but one in which the Tribunal was in no doubt that the appellant continued to pose a high risk of similar offending and harm to his ex-partner and future partners and his son who witnessed the violence. There is a medium risk of harm to those who might intervene. The Tribunal had in paragraph 48 considered the issue as to whether or not there was an indication that the appellant's behaviour would modify so as to change the risk. The Tribunal concluded that there was not. The OASys assessment was considered in paragraph 49. That had been conducted on 11 June 2012, shortly before the appellant's release, he was assessed as being high risk to children and known adults in the community and medium risk to members of the community in public.

26. Thus, Mr Wilding submits that on any view there were serious reasons which justified expulsion.

27. I invited any comments from the appellant at the conclusion of the submissions by Mr Wilding. He said that currently he was on speaking terms with his wife and son. His wife was ready to provide him a second chance and so he wished to stay within the jurisdiction to prove it.

28. It is significant that similar comments were made at the original hearing. Both the appellant and indeed his former wife had given evidence at the hearing, concerning his close relationship with his son and resumed contact with him. This was somewhat surprising in the light of the restraining order that had been made by the sentencing court, preventing the appellant from contacting his explanation-wife or her friend or having any contact with his child.

29. At the hearing the appellant's stepfather and cousin also gave evidence about contact which the appellant had had with Kadir, his son. The Tribunal spent considerable time in the determination in assessing the

nature of the evidence which was given and of its quality. That can be seen from paragraphs 20 to paragraph 40 of the determination.

30. In essence, and for reasons that are carefully set out in the determination, the Tribunal came to the conclusion that what was said by the appellant and by his wife and other witnesses was not credible. There was a specific finding that the appellant had not been in contact with his son and had not seen his son for almost two years. There is also a finding at paragraph 39 of the determination in particular that the appellant was not remorseful nor had he taken any meaningful steps to address his offending. It was also the finding of the Tribunal that the appellant's son had indeed witnessed part of the attack. It was the finding of the Tribunal at paragraph 44 of the determination in particular that the appellant had fabricated a claim to have contact with his son so as to improve the prospects of his appeal. His explanation-wife and family members had attempted, unsuccessfully, to assist him in this endeavour. The Tribunal went on to say, "we believe that the appellant has attempted to use his child to help him in his efforts to remain here and we find that this undermines his claim that it is in the child's best interests for his father to remain".

31. It is to be noted significantly that the relationship as between the appellant's ex-wife and himself was a difficult one. The appellant has twice been convicted of offences arising out of such a relationship. Indeed, on 8 September 2009 the appellant was convicted of two counts of battery and of destroying and damaging property and made the subject of a community order with an unpaid work requirement.

32. Although the Tribunal recognised that prior to his conviction the appellant had had a relationship with his son, it was considered that, following his conviction and in the light of the restraining order that had been made, such contact had ceased for two years. It was the view of the Tribunal that it was in the best interests of Kadir that his father leave the jurisdiction. To reside in Turkey would still permit of some contact in the future, should that be permitted or desired.

33. The Tribunal noted at paragraph 48 that the appellant had completed a one-to-one domestic violence programme which had not led to any change of behaviour. The Tribunal considered that they were entitled to place weight on the sentencing remarks, pre-sentencing and OASys Reports.

34. The Tribunal at paragraph 51 considered the social, cultural and domestic ties with Turkey. They were noted. The Tribunal did not accept the contention that the appellant was without ties or support in Turkey.

35. Having considered the determination as a whole I find it to be a careful and well-considered determination.

36. Although the case of **Maslov** may not have been cited explicitly it is entirely clear that in coming to its findings the Tribunal had paid careful regard to the key factors which are set out in **Maslov**. It has borne in mind the connections that the appellant has with the United Kingdom and analysed carefully the nature of his private and family life. The Tribunal has considered his connections with Turkey. The panel considered the nature and seriousness of the offence and particularly noted that for the most part the offences were committed when he was an adult and not a juvenile. Indeed, it was the beginning of his offending in 2003 that had led to his application for being a British citizen to being rejected.

37. In essence, the appellant has committed a serious crime. Recognition of that serious crime should be given in relation to the provisions of automatic deportation. The appellant continues to pose a very "high risk of offending not only to members of his family but also to a more limited extent, to the wider public". It is clear that the Tribunal found there to be very serious reasons to justify deportation.

38. The second ground contends that there were insufficient findings relating to private life, bearing in mind the historical nature of the relationship. The Tribunal clearly had in mind that there had been a relationship but that that had ceased to all practical purposes as between the appellant and his former wife and, indeed, between the appellant and his son, for the reasons as set out in the determination and for the good reason of the violence offered in 2009 and 2011 and the restraining orders. The best interests of the child were considered and sustainable findings made as to family life.

39. I find that the Tribunal, in a careful determination, has considered all relevant factors and has given adequate reasons for their findings and has considered all relevant as both for, and against the appellant. I detect no material error of law in that determination.

40. In the circumstances therefore the appellant's appeal is dismissed. The decision therefore stands. His appeal against deportation is dismissed under the Immigration Rules. The appeal is dismissed on human rights grounds.

Signed Date

Upper Tribunal Judge King TD