Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00304/2012

THE IMMIGRATION ACTS

Heard at Nottingham Magistrates Court	**Determination Promulgated**
On 25th June 2013	**On 28th June 2013**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR HAYDAR YALDIZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Professor W M Rees (instructed by Fortis Rose, solicitors)

For the Respondent: Mr K Norton (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant, born on 13th May 1982 is a citizen of Turkey and of Kurdish ethnicity. He came to the UK with his mother and siblings in February 1997 when he was aged 14. His mother claimed asylum which was originally refused but then allowed on appeal in May 1999. Following that she and the children were granted refugee status in September 2000.

2. The basis upon which the Appellant's mother claimed asylum was that her husband, his father, was a member of the PKK and was wanted by the police. She herself had supported the PKK by supplying them with food and she had been detained by the authorities and raped on two occasions as a result. She was also suffering from poor health and indeed suffered a seizure at the hearing. The Tribunal accepted that this was as a result of the ill-treatment she had received.

3. On 26th November 2010 the Appellant was convicted of permitting premises to be used for the supply of class B drugs and sentenced to 3 years imprisonment. As a result of that conviction the Secretary of State made a decision to deport him under the automatic deportation provisions of the UK Borders Act 2007. The Secretary of State also made a decision to cancel his refugee status under the provisions of article 1C(5) of the Refugee Convention.

4. The Appellant appealed and his appeal came before the First-tier Tribunal (Judge Wiseman and Mr B Yeats) on 25th September 2012. The First-tier Tribunal dismissed the appeal in a determination promulgated on 10th October 2012.

5. The Appellant sought and was granted permission to appeal to the Upper Tribunal and after several false starts the matter came before Upper Tribunal Judge McGeachy on 7th January 2013. In a Decision and Directions dated 17th January 2013 Judge McGeachy found the First-tier Tribunal to have made errors of law. That decision has been provided to the parties. At paragraph 29 of his decision he found that there were material errors of law in the determination. He considered that the First-tier Tribunal had not properly engaged with the relevant issues in the case which was the application of Article 1 of the Refugee Convention. He found the First-tier Tribunal did not appear to accept that the burden of proof lay with the Respondent to show that the Appellant was no longer entitled to refugee status and failed to deal with the detail of the arguments being put forward by UNHCR, including the documentary evidence mentioned therein. Judge McGeachy commented that he was unclear as to exactly what documentary evidence the Secretary of State submitted by way of reports on the up-to-date situation in Turkey to discharge the burden of proof upon her.

6. Judge McGeachy also noted that the Tribunal did not particularise in any way the evidence which led them to conclude that the Appellant could be returned to Turkey in safety. He therefore decided that the appeal must be reheard to deal with the issue of whether or not the Appellant's entitlement to refugee status is no longer warranted on the basis that there has been a fundamental and durable change in circumstances in Turkey.

7. Judge McGeachy also noted at paragraph 32 that he had raised the issue that the Tribunal did not appear to have dealt with the issue of the section 72 certificate, namely- whether or not the Appellant, because of his criminal activity was entitled to the benefits of the Refugee Convention. He referred

to a letter dated 31st October 2011 which indicated that a decision on whether or not the Appellant had rebutted the presumption under section 72 of the Nationality, Immigration and Asylum Act 2002 had yet to be finalised. He noted that although neither representative demurred from his comment that the Tribunal should have dealt with the issue of s.72 and Article 33(2) of the Refugee Convention it appeared that the issue remained unresolved. He therefore stated that if the Secretary of State wished to argue that there was a live issue under s.72 before the Tribunal she should make that clear to both the Tribunal and the Appellant's representatives immediately.

8. Judge McGeachy then stated at paragraph 33 that the grounds of appeal against the determination of the First-tier Tribunal only challenged the issue of its approach to Article 1C of the Refugee Convention. The grounds did not challenge its conclusions relating to the Article 8 rights of the Appellant or whether the Appellant benefited from the provisions of the Ankara agreement as he had worked in the UK. At paragraph 34 Judge McGeachy concluded that the conclusions of the First-tier Tribunal regarding the rights of the Appellant under the Ankara agreement were, albeit brief, open to it and moreover there was nothing to indicate that the issue was argued in any way before the First-tier Tribunal and it was not a ground of appeal originally before it. Judge McGeachy also concluded that the First-tier Tribunal's conclusions with regard to Article 8 were properly reasoned and detailed and did not consider there was any basis on which that issue should be relitigated.

9. In conclusion he stated that he set aside the decision of the First-tier Tribunal with regard to issues relating to Article 1C the Refugee Convention and directed the appeal on that issue be decided afresh.

10. There was then a case management review hearing on 5th April 2013 when the Respondent was represented by Mr Melvin and the Appellant by Mr Esen from Fortis Rose, solicitors. In advance of the hearing Mr Norton, who has charge of this case on behalf of the Secretary of State, submitted a lengthy submission in which he pointed out that the refusal letter of the 11th May 2012 made clear that the Secretary of State had applied section 72. The matter had also been referred to in a letter of 13th May 2011. Both parties were thus aware from then that s.72 was in issue. In any event case law makes clear that even if the Secretary of State does not issue a s.72 certificate, if the facts fit, the Judge is bound to deal with it in any event (Mugwagwa (s.72 – applying statutory presumptions) Zimbabwe [2011] UKUT 00338 (IAC)).

11. It is also of note that the case had originally been listed for hearing in January 2013 but on that occasion was adjourned because the Appellant's representatives indicated they were expecting to receive, imminently, further evidence from UNHCR. That in the event did not arrive.

12. This case should have been listed before Upper Tribunal Judge McGeachy who was seized of the matter, having dealt with the error of law and adjourned for a resumed hearing. However, the Appellant having been moved to an immigration detention centre in the area of Nottingham, it was not practical for Judge McGeachy to hear the case and so the Principal Resident Judge signed a Transfer Order permitting me to deal with it.

13. Thus the matter came before me.

14. In compliance with directions both parties had filed significant bundles, each comprising two lever arch files. Contrary to the directions, the Appellant's representative provided a skeleton argument on the morning of the hearing and the Respondent failed to do so at all.

15. At the commencement of the hearing the issues to be dealt with were discussed and it was agreed that the starting point was the s.72 certificate and whether the Appellant could rebut the presumption that he had committed a particularly serious crime and represented a danger to the community. If he could not rebut that presumption then the next issue to be decided was whether he would be at risk on return to Turkey of treatment that would breach either Articles 2 or 3 of the ECHR. If he could rebut the presumption then the next issue to be decided was whether the situation in Turkey had changed such as to justify the cancellation of his refugee status under Article 1C of the Refugee Convention.

16. If the Appellant is unable to rebut the presumption then the burden of proof remains with him to show that he will be at risk on return and the Article 1C issue falls away. If he is able to rebut the presumption then the burden is on the Secretary of State to show that circumstances in Turkey have improved to the appropriate level.

17. Professor Rees also indicated that Article 8 would still be relevant in relation to matters since the First-tier Tribunal's determination. He indicated he would not be relying on family life but private life.

18. Those matters agreed, we then moved on to hear oral evidence. In addition to the bundle I also had an up-to-date statement from the Appellant which he adopted and signed during the hearing.

19. The dock at Nottingham Magistrates Court is a secure dock where the Appellant is behind glass which has gaps in it to allow conversation to be heard. Professor Rees requested that the Appellant be permitted to leave the dock for the purpose of giving his evidence. The security guards, who are outwith the control of the Tribunal, were not content for this to happen. While clearly it is not ideal for Appellants to give evidence from the secure dock I did not find that he would be prejudiced in any way by so doing. Professor Rees asked me to record his objection and his argument that the Appellant was disadvantaged by my decision. However, the only disadvantage he could identify was that I would be unable to see his facial

expression and demeanour. Even if his facial expression and demeanour were relevant to my deliberations, which they are not, I was able to see the Appellant perfectly clearly. My view of him was unhindered by the glass.

20. I first heard evidence from two witnesses called by the Secretary of State. I heard them first at Professor Rees's request so the Appellant would have an opportunity in his evidence to comment on theirs.

21. The first witness was Detective Constable Madden who is assigned to "Operation Terminus" which is a partnership operation with UKBA with the aim of tackling the most harmful individuals in society who do not have UK citizenship. He had provided a 14 page witness statement attached to which as annexes were CRIS documents running to 1258 pages in total relating to 26 incidents referred to in his statement. The statement is a summary of the totality of the Appellant's convictions, non-convictions, non-guilty disposals and reprimands/warnings and cautions. It gives summaries of each of the 26 incidents for which the CRIS documents had been attached.

22. Professor Rees indicated that the Appellant accepted his criminal record which is as follows:-

    a. In April 2002 the Appellant pleaded guilty to having an article with a blade in a public place for which he received a six-month conditional discharge.
    b. In September 2002 he was convicted of using threatening, abusive or insulting words or behaviour and a breach of the conditional discharge imposed earlier for which he received a 12 month conditional discharge and a fine.
    c. In April 2004 he pleaded guilty to robbery for which he received 18 months imprisonment. The circumstances of that offence were that at 4:05 am the victim was walking home talking to a friend on his mobile phone. He was attacked by three people, one of whom was the Appellant. He was pushed to the ground and his phone snatched. When he refused to give up his wallet one of the men told another to "get out the knife". He was then held down while his jacket was searched and was kicked and punched while trying to keep hold of his wallet. The Appellant, when interviewed by the police, made a no comment interview despite the victim's property being found on his person.
    d. In June 2006 the Appellant pleaded guilty to criminal damage for which he received a fine. In July 2005 he pleaded guilty to failing to surrender to bail for which he received one day's detention.
    e. In August 2006 he pleaded guilty to driving while disqualified and using a vehicle while uninsured for which he received a community order and disqualification from driving.
    f. In September 2006 he pleaded guilty to using threatening/abusive/insulting words or behaviour and failing to surrender to custody for which he was fined and imprisoned for one day.

g. In January 2008 he pleaded guilty to possession of cannabis for which he received a 12 month community order.
h. In April 2008 he pleaded guilty to possession of cannabis for which he was given one day's detention.

23. His next conviction was the offence which led to the deportation order.

24. As indicated above DC Madden also included in his statement summaries of numerous other matters which did not lead to charges or convictions but which were occasions when the Appellant had come to the attention of the police. He also provided a list of persons who in his view were known associates of the Appellant.

25. In short, it is the Respondent's case that the Appellant is a member of the "Hackney Turks" gang. This is one of the three main Turkish crime gangs operating in the London area and the persons in charge of that gang are the Appellants cousins, Kemel Armagan and Erdal Armagan. The police say that the Turkish gangs which as well as the "Hackney Turks" includes "Sarhinler/Halkevi Boys/Falcons" and the "Tottenham Boys", are a very powerful organised criminal network and are responsible for importing most of the heroin into the UK. The gangs run their criminal empires by using extreme violence and intimidation, which includes such crimes as torture, arson, blackmail and extortion and over the last 10 years the three gangs have been responsible for a number of fatal and non-fatal shootings, serious GBHs and arson attacks throughout London and the south-east.

26. This evidence is put forward by the Secretary of State to argue that the Appellant does indeed represent a threat to the community and that the s.72 certificate was appropriately applied and the Appellant is thus excluded from the protection of the Refugee Convention as he was excluded by Article 33 (2).

27. In addition to the evidence of DC Madden I heard evidence from PC Flatt who works for the Haringey Gangs Unit in London. Between February 2010 and May 2012 he was employed to work as a Turkish field intelligence officer within the Haringey Borough Intelligence Unit and was throughout that time the dedicated central point of contact within the Metropolitan Police Service focusing on Turkish/Kurdish crime and community related issues. It was his view that the Appellant was a key member of the Hackney Turks.

28. PC Flatt, in his statement said that the "Hackney Turks" are run by the Armagan family including Kemel and Erdal (cousins of the Appellant) and the "Tottenham Boys" by key members of the Eren family. It was his view that the Appellant had been and remained a gang member. Attached to his statement is a copy of what is called an "Osman" letter. This is a letter to the Appellant given to him on 4th May 2013 by PC Flatt and other officers indicating that they had reason to believe that his life was in danger and offering police protection. It is recorded that the Appellant indicated he

understood but did not need police protection. The Police evidence was that this arose because they had information to indicate that his life was being threatened by the Tottenham Boys gang in reprisal for the murder of one of their number.

29. I then heard evidence from the Appellant. He said that he had not seen or gone through the statement of DC Madden with those representing him and as a result he was taken through each of the incidents by Mr Norton and asked for his comments. In relation to several of the incidents which involved his being arrested but not charged he said he could not remember the occasions. I will deal specifically with those in my findings. He was then taken through the list of associates. Some he said that he knew and others that he did not.

30. The essence of the Appellant's evidence was that he is not now and never has been a member of the gang. He had been continually persecuted and harassed by the police and he was not guilty of the offence leading to deportation. He specifically said in his evidence "I had nothing to do with it". The police had fabricated the case against him. It is also his case that he would be removing himself from the reach of the gangs by living in Luton and he would not commit further offences because he realised the distress it was putting his family to, particularly his mother.

31. The Appellant was asked why he would be at risk in Turkey. He said that the Turkish government would target him because his father had been in the PKK and that if he goes back he will either be tortured, put in prison or murdered. He said that Turkey has never changed and in fact is getting worse. He confirmed when asked if there was any other reason other than his father's activities with the PKK that would put him at risk, that he goes to the Kurdish Community Centre all the time in London and that is the PKK. Also he has been on protests all over London.

32. I then heard submissions from Mr Norton who relied on the evidence of the police officers as well as the Appellant's criminal convictions to argue that the Appellant could not rebut the presumption that he is a serious criminal who represents a danger and argued that the "Osman" letter was evidence of involvement with the gang recently. The police took the action they did because they were obliged by law to do so and they genuinely believed his life was at risk.

33. As regards his risk in Turkey he referred to the UNHCR report and submitted that although it appeared to be a personalised report it was taken from generic information only and not specifically customised to the Appellant's situation and the attendance note supplied from the representatives only indicated that personal letters could not be written. He argued that in relation the Appellant's father's situation in Turkey, those events took place over 16 years ago and there was no evidence to show that there was any specific risk of him being targeted for being the son of a member/ suspected member of the PKK so many years ago. The Appellant would not be at risk

as an Alevi Kurd as although he may encounter harassment, that would not cross the level of severity as to amount to inhuman or degrading treatment. He submitted there was no credible risk of persecution

34. With regard to Article 8 Mr Norton submitted that the findings of the First-tier Tribunal had been preserved and nothing meaningful had taken place since then that could alter the decision. He relied on SS (Nigeria) [2013] EWCA Civ 550 and in particular paragraphs 54 and 55 in relation to how serious criminality should affect the issue and assessment of proportionality.

35. On the Appellant's behalf Professor Rees submitted that the Appellant had successfully rebutted the presumption. He accepted that the Appellant had been involved in a series of crimes but that the thrust of the argument at the hearing on behalf of the Secretary of State was reliance on the various CRIS reports and incidents that had not led to criminal convictions. The Appellant's evidence was that he had been harassed by the police for years and because he is related to members of the "Hackney Turk" gang he had been wrongly linked to them. With regard to the "Osman" letter, the Appellant's evidence was that he had nothing to fear and thus had not needed protection because he was not at risk. With regard to his knowing a lot of the people referred to in the police evidence, it was his case that he was bound to do so having grown up with them.

36. Professor Rees argued that the police evidence was nothing more than a slur on the Appellant's character and apart from the conviction for robbery they were not particularly serious crimes and he is not a danger to the community. He argued that there was no evidence, that crossed the threshold of a balance of probabilities that pointed to his being a gang member or a strong associate of the gang. He had had no contact whatsoever with the gang since the last conviction. He referred to the Judge's sentencing remarks which made no mention of it being a gang operation.

37. Professor Rees criticised PC Flatt's evidence as being distinctly unimpressive as he did not seem to be aware of precisely what was in his statement (a reference to the witness referring to the statement when answering questions) and further that his statement was not supported by evidence. He submitted I should attach no weight to his evidence.

38. Professor Rees said that clearly the Appellant's cousins are gang members but the major players were not people that the Appellant had anything to do with and now he has removed himself from the area where the gang operates and is going to be "going straight" running an off-licence with his father. He was, it was argued, a reformed character. Professor Rees said that he recognised that he was in the "last chance saloon" but should be given a last chance. He had no family in Turkey and had not been there since he was 14.

39. Professor Rees pointed to the Appellant's response to the various incidents relied upon by the police and the fact that he had no recollection of many of them. While he had clearly grown up with a number of highly undesirable people, that did not mean he was a gang member and the Secretary of State was "pumping up" her case by guilt by association.

40. He argued that the risk of the Appellant offending in future is extremely low.

41. Having argued, he said successfully, that the Appellant had rebutted the presumption in s.72; the next issue is whether the Secretary of State had shown that the Appellant's refugee status could properly be terminated on the basis of Article 1C. He referred to the UNHCR letter and the two attendance notes provided by the Appellant's representatives. He argued the position was perfectly clear. UNHCR are required to comment on each case and have done so in this case. He argued that the attendance notes together with the UNHCR letter make clear that UNHCR was addressing the Appellant's situation and state that he cannot be safe in Turkey and thus the Secretary of State ought not to remove his status as a refugee.

42. With regard to risk on return Professor Rees also submitted that it is not simply the situation with his father that puts the Appellant at risk but also the fact that he is an Alevi Kurd who has had involvement in protests and with the PKK in the UK. He also referred me to various parts of the Respondent's Operational Guidance Note of May 2013. I will deal with those later in my deliberations.

43. With regard to Article 8 he referred to the fact that the Appellant has been continuously resident in the UK for 16 years, has spent his formative years and all his adult life in the UK and no longer has any ties to Turkey and should therefore succeed on Article 8 grounds also.

Findings

44. Article 33(1) of the Refugee Convention provides that no contracting state shall expel or return a refugee to the frontiers of a territory where his life or freedom might be threatened on account of a Refugee Convention reason. Article 33(2) provides that the benefit of Article 33(1): "May not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

45. S. 72 (1) of the Nationality, Immigration and Asylum Act 2002 provides as follows:-

72 Serious criminal

> (1)This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).
>
> (2)A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is—
>
> (a) convicted in the United Kingdom of an offence, and
> (b) sentenced to a period of imprisonment of at least two years.

46. In EN (Serbia) v SSHD [2009] EWCA Civ 630 the Court of Appeal said that so far as danger to the community was concerned, the danger had to be real and could be demonstrated by a particularly serious crime and the risk of its reoccurrence or of reoccurrence of a similar offence. However, the wording of Article 33(2) did not require a causal connection between the two requirements.

In IH (s.72; 'Particularly Serious Crime') Eritrea [2009] UKAIT 00012 the Tribunal said that the presumptions in s.72 of the Nationality, Immigration and Asylum Act 2002 that in the circumstances specified a person has been convicted by a final judgment of a "particularly serious crime" for the purposes of Art 33(2) of the Refugee Convention if read as irrebuttable are inconsistent with Art 21.2 of the EU Qualification Directive (Council Directive 2004/83/EC) which gives effect to the autonomous international meaning of Art 33(2) as part of EU law. As a consequence, the presumptions in s.72 must be read as being rebuttable.

47. Firstly with regard to whether the Appellant has been convicted of a particularly serious crime, I find that he has despite arguments to the contrary from Professor Rees. The offence attracted a three-year prison term, significantly over the threshold provided in section 72. The Judge in his sentencing remarks stated that he had conducted the trial over six weeks and was in a good position to form an assessment of the Appellant's part in the enterprise. He had been convicted of permitting cannabis to be supplied from premises of which he was the occupier but acquitted of conspiracy to supply cannabis. The premises in question were small ground floor retail premises in a predominantly residential area and the Appellant was lessee of the premises. The Judge accepted on the basis of the jury's verdict that he did not take out the lease for the purpose of using the premises for supplying cannabis nor that the subletting was for that purpose. However, he noted the operation relating to the conspiracy was brazen and sophisticated. The premises were kitted out ostensibly as a shop selling DVDs and CDs however the only business was selling cannabis. The Judge noted that to that end considerable work went into developing the security of the premises. Off the front room there was a small enclosed area with a hatch obscured by a curtain from behind which cannabis was supplied. CCTV cameras were installed so that customers could be viewed

before they entered the premises and there was a monitor behind the hatch area.

48. The Judge noted that an air-lock system was incorporated with a street door and then an interior door and these were fitted with electronic locks operated from behind the hatch area. The Judge found that it was clear from the Appellant's evidence that he always entered the premises from the back and so would was not shown by the video surveillance. The Judge noted that when the police stopped customers leaving, 13 out of 15 were found to be in possession of cannabis. The Judge noted that the average number of customers was over 17 an hour and that it was plain that anyone in the back of the premises must have known what was going on.

49. The Judge did not accept the Appellant was simply turning a blind eye. In the Judge's view he knew the cannabis was being retailed from the premises and did nothing to stop the operation. The schedules produced by the prosecution indicated retail sales of cannabis to the tune of £90,000 per month. The Judge said that he was not simply turning a blind eye and that the continued availability of the premises was essential to the operation of the retailing of cannabis.

50. It is quite clear that the Appellant had sought to minimise his involvement in the offence, a fact not accepted by the Judge. The sale of drugs is a very serious matter, affecting the lives in such a harmful way as it does of both the users and their families. The offence for which the Appellant received three years imprisonment was I find a particularly serious crime.

51. I then turn to the question of whether the Appellant constitutes a danger to the community of the United Kingdom.

52. It was argued on his behalf that he does not. The only evidence put forward to rebut the presumption by the Appellant was his oral evidence that he has learned the error of his ways, will be living in Luton away from his previous associates and will be working for his father and keeping on the "straight and narrow". However there is overwhelming evidence put forward by the Secretary of State that the Appellant's convictions, serious as they are, including a conviction for robbery, are only the tip of the iceberg in terms of his conduct. His conduct indicates that he is a person who does represent a danger to the community. The case of Bah (EO (Turkey)-liability to deport) [2012] UKUT 00196 (IAC) looked at, police evidence with regard to the conduct of a person said to be involved in gangs. At paragraph 5 the Upper Tribunal noted that in support of the contention that the Appellant was associated with a violent criminal gang the Secretary of State relied, inter-alia, upon incidents involving the Appellant which had not resulted in any charges being brought or criminal convictions; statements of evidence from police officers describing "Operation Swale", "Operation Alliance" and "Operation Bite" and the results of checks made with the criminal intelligence system under the Appellant's name and his street name as "MO". Twelve reports were identified and relied on, five of which linked the

Appellant directly to the “Anti-Showermen” gang, although the reports themselves were not disclosed in evidence or (the Tribunal was informed) to the Secretary of State in the proceedings.

53. The witnesses before the Upper Tribunal included three police officers who described how intelligence was gathered and assessed and confirmed that on the basis of such intelligence, including evidence obtained from police indices (namely "CRIS" reports, Crimint, and the Police National Computer), the Appellant was a clear and present danger to the community. They described allegations of crimes that had been committed by the Appellant. On occasions he was charged and convicted. On other occasions charges were brought but not pursued. At other times he was not charged at all. The police witnesses were cross examined extensively on the Appellant’s behalf but when asked to reveal their sources, refused to do so, on the grounds that it was necessary to protect their sources. In a similar way to in this case the Appellant in Bah suggested that the police had invented allegations against him and that he was a victim of police victimisation and had no knowledge of some of the individuals with whom he was seen, had only met some of the individuals in the isolated cases recorded by the police and/or did not know certain individuals were members of a gang. Those claims have a distinct similarity to those made by the present Appellant.

54. At paragraph 46 onwards the Upper Tribunal looked at the allegations of conduct made which fell short of criminal convictions and whether the Secretary of State was entitled to rely upon allegations of that nature even if that involved the admission of hearsay evidence and the unnamed undisclosed sources or anonymous sources.

55. The Upper Tribunal found at paragraph 49 that the strict rules of evidence which apply in civil and criminal courts do not apply in proceedings before the Tribunal and the only criteria for the admissibility of evidence is whether it is relevant. They noted that it is also a well established principle of law that the police and other authorities charged with investigating crime and protecting the public or sections of it, are not required to disclose the identity of an informant. The Upper Tribunal referred to a High Court decision (V v Asylum and Immigration Tribunal [2009] EWHC 1902 (Admin) where Higginbotham J concluded that it was open to the Secretary of State to rely upon evidence showing that the claimant, even if he did not commit the murder, was associated with those who did and that it was not an abuse for the Secretary of State to rely on evidence of anonymous witnesses and from official intelligence although he did say that evidence from anonymous sources inevitably lost considerable weight by being anonymous and, in part, hearsay, thus preventing any direct challenge to the relevant witnesses. However he did not go so far to say that the evidence must inevitably be given no weight.

56. The ultimate conclusion the Upper Tribunal reached in Bah was that such evidence was admissible and its nature, being from undisclosed or anonymous sources went to the weight to be attached to it.

57. In this case the evidence of DC Madden does contain an enormous amount of supporting evidence in the form of 50 CRIS documents. PC Flatt's evidence is not sourced but when that is set alongside that of DC Madden I find that weight is to be attached to it.

58. As indicated above a total of 26 incidents are recorded where the Appellant was involved. I will describe some of the more serious.

59. Incident No 5 is an allegation of possession of a firearm. In that incident a member of the public had reported that she had witnessed a male fire two shots with a black handgun before allegedly passing it over to one of three friends who put it down his trousers. The police saw a male fitting the description of the male who had allegedly fired the handgun and he was stopped by armed officers along with two other males. A further male, the Appellant, was stopped by armed officers in a nearby alleyway. All four were arrested for possessing a loaded firearm in a public place. Although all were interviewed all four denied the offence and as the witness was unable to say that she would recognise any of the suspects, no further action was taken.

60. The incident recorded as Incident No 6 took place in January 2004 and again related to firearms. On that occasion the police observed a blue Peugeot van driving into a car park and stopping in a corner. The police approached the vehicle and spoke to the driver. Males were seen to be ducking down in the rear of the van. Officers noticed a black bag in the van which was moved by one of the occupants. All of them were removed from the vehicle, one being the Appellant. A search of the vehicle revealed weapons in a black bin liner in the rear, namely a firearm and a machete. All the men were arrested and interviewed. Due to the number of suspects and lack of forensic evidence no further action was taken in the matter.

61. Incident No 7 in March 2004, refers to an assault occasioning grievous bodily harm. Police were called to assist two males who had been assaulted near a public house. When the police arrived the victims were being given first aid by the ambulance service. The victims told the police that they had been to a local Turkish club but when they entered another person pushed one of them refusing him entry and picked up a chair to swing at him. A fight then ensued with a large group of males inside the club who attacked the two victims with chains and bottles and the fight spilled out into the street. Persons identified as being involved in the assault and subsequently arrested included the Appellant. The Appellant admitted being at the venue but denied the assault. No further action was taken due to inconsistencies in the accounts.

62. Incident No 10 was an incident in June 2005 and related to alleged blackmail and criminal damage. It describes the police attending a road junction after reports of theft of a VW Golf stolen by means of blackmail. The police spoke to Mr Gull who said that over the previous month there had been several incidents with his ex-partner's father. He been told to go to a restaurant to

meet someone and on arrival was met by four or five Turkish males who told him that they had been sent by his ex-partner's father who wanted a car or a photograph of him hurt and they would beat him up and put him in a coma. Fearing for his safety, he handed over the car keys and then went to call the police. The police then located the vehicle and when it failed to stop there was a short pursuit with the driver eventually decamping from the vehicle and attempting to hide. He was found and arrested. Three other suspects remained in the vehicle and one of those was the Appellant. The victim ultimately withdrew his statement, which the police believed to have been as a result of duress. However, without the victim's assistance matters did not proceed.

63. The recorded incidents continue in a similar vein. When questioned about these at the hearing the Appellant denied any memory of some. With regard to the blackmail incident he denied that that was a result of blackmail claiming the car was handed over voluntarily. At other times he seemed to be simply challenging the evidence simply on the basis that there were no charges or a conviction, suggesting they were irrelevant because of that. It is in connection with his responses to those incidents that I also refer to the fact that at the hearing the Appellant also denied his guilt of the events leading to the deportation order; this despite his guilty plea. His claim that he knew nothing about the goings on at his premises and was innocent does not sit well with the Judge's findings having observed him throughout the trial. It seems that then, as now he was trying to minimise his involvement.

64. I accept of course that where the Appellant was not charged or convicted he cannot be said to be guilty of the offences. The fact remains however that he has had a considerable involvement with the police and was present when offences were committed and was in the company of known criminals. That does not fit his description of himself as belonging to the wrong family and as a result persecuted (his words) by the police.

65. The associates listed in DC Madden's statement were all put to the Appellant. Quite a few he said he did not know and others he said he knew because he had grown up with them or they were members of his family. The first named, Ali Armagan, the Appellant did admit to knowing and hanging around with. He was his cousin. He was fatally shot in February 2012. Another cousin Kemel Armagan is currently wanted for two murders and has 13 convictions for serious offences. This gentleman the Appellant claimed not to associate with.

66. Incident No 5, the possession of firearms allegation referred to above, involved not only the Appellant but Umit Simsik who appears on the list of associates as someone who has 12 convictions for possessing an offensive weapon in a public place, possession of cannabis and various other offences. The Appellant however claimed that he knew him only because he knew his brother Malik with whom he had grown up. A third person involved in that incident was Ozgur Olkun. He has 22 previous convictions including attempted robbery, assault and various other offences including an arson

offence which resulted in a 32 month prison sentence. The Appellant at the hearing denied knowing him at all; yet he was in their company and they were all arrested together in November 2003.

67. With regard to the second firearm offence (Incident No 6) the Appellant was in the back of the van with others. One was Umit Simsik referred to above.

68. The other persons involved in the robbery which led to the Appellant's conviction in 2004 included Melik Tezcan who has some 14 convictions including violent disorder robbery and burglary and numerous other offences. He is the person that the Appellant said he knew because he grew up with him. The allegation at Incident No 10 of blackmail included in addition to the Appellant, Melik Tezcan again and Ozgur Olkun.

69. The above represents only a small sample of the police evidence but is enough for me to find on a balance of probabilities that the Appellant was involved with a Turkish gang in London namely the "Hackney Turks", a gang in which the main players are his cousins. There seems no doubt on the basis of the evidence that that gang is in what seems to be open warfare with another gang, the "Tottenham Boys" and there were shootings, murders and reprisal attacks going on between the two gangs. As a result one of the Appellant's cousins was shot dead and another cousin is wanted for two murders. One of the leading lights in the "Tottenham Boys" gang has been shot and it is that which resulted in the police warning to the Appellant that his life was at risk. I do not accept that this is all guilt by association or that the police have invented this evidence to besmirch his character. If the Appellant had never had anything to do with the gang, as he claimed, there is no reason why the "Tottenham Boys" would have wanted to kill him. Indeed as well as the "Osman" letter there is another recorded incident when the Appellant himself reported having been shot at by the "Tottenham Boys". Similarly, for someone never involved with the gang he seemed to be encountered by the police rather often in their company. The Appellant accepted in his evidence that the various personalities are known to each other and it is known who belongs to which gang and which vehicle belongs to which gang because they have all lived in the same area for years. It seems to me highly likely that the reason that the Appellant's life was at risk was the threat of a reprisal attack.

70. The unsourced evidence of PC Flatt is given added weight by the detailed evidence provided by DC Madden. Both are very experienced police officers working with gang crime and I do not accept that their evidence is "manufactured" as the Appellant claims. The overwhelming weight of evidence points to the Appellant being a member of this gang and that his conduct for many years has been reprehensible and has led to a number of serious convictions. I have no hesitation therefore in finding that he has been convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of the United Kingdom. As such he is not entitled to the protection of the Refugee Convention. Given his attempts to avoid culpability for the recent conviction and incredible evidence about

his relationships with gang members I attach no weight whatsoever to his claim that he will commit no future offences.

71. As I indicated above, that being the case it is wholly unnecessary to consider Article 1C as he is not entitled to refugee status in any event.

72. I then have to consider whether the Appellant would be at risk on return to Turkey. The UNHCR letter dated 6th March 2012 is contained in the Appellant's bundle and results from a reference to the UNHCR by the Secretary of State when she was considering to cease and revoke his refugee status under Article 1C(5). The first part of the letter recites the Appellant's history and the history of the proceedings. It then sets out the principles in relation to the application of Article 1C(5) and states that UNHCR wishes to highlight that UKBA bears the burden of proof to establish that the Appellant is no longer entitled to refugee status by virtue of changed circumstances in his country of origin. That is no doubt correct, but for the reasons I have given above is now irrelevant. However UNHCR's position is relevant in terms of the safety of the Appellant on return. While he would not be entitled to asylum he would be entitled to remain in the UK if to return him would put him at risk of inhuman or degrading treatment as protected by Article 3 of the ECHR. The letter indicates that in UNHCR's view Turkey has not undergone the fundamental and durable changes required under Article 1C(5) and quotes the European Commission Progress Report 2009 stating that:-

> "Overall, while the Turkish legal framework includes a comprehensive set of safeguards against torture and ill-treatment, efforts to implement it and fully apply the government's zero tolerance policy have been limited. Allegations of torture and ill-treatment, and impunity for perpetrators are still a cause for great concern, and need to become a priority area for remedial action by the Turkish authorities."

73. The letter goes on to state that the UNHCR would like to draw UKBA's attention to paragraph 3.6.11 of the Operational Guidance Note on Turkey published in August 2011 which states:-

> "The Turkish government has made changes to legislation and is committed to a policy of combating torture and ill-treatment. However while there has been a decrease in the number of reported instances of torture and other forms of cruel, inhuman or degrading treatment, instances of mistreatment still occur. Those who are accepted as being in leading roles, or otherwise significantly involved with Kurdish, left-wing or Islamic terrorist groups or political parties are likely to face prosecution for activities against the state and may also experience mistreatment by the security forces amounting to persecution or a breach of Article 3 of the ECHR".

74. The UNHCR is of the view that, given that the Appellant's father was a member of the PKK and wanted by the police, and his mother was also known to the authorities, having been raped and detained by them, it is very probable that the Appellant would come to the attention of the authorities if he were to be returned to Turkey.

75. With the greatest of respect to the UNHCR there is a huge leap between the evidence of the way the Turkish authorities behave to those accepted as being in leading roles or significantly involved with "Kurdish, left-wing or Islamic terrorist groups or political parties" and the way Kurds in general are treated. It was never the Appellant's or his mother's case that his father was a leading light in the PKK. It was their case that he was a member and it was his mother's case that she had been detained and raped because of it. However, that was 16 years ago. If the Appellant's father was not a leading light in the PKK, there is no reason whatsoever to consider the authorities would have the slightest interest in the Appellant so many years later, particularly as he was only 14 years of age when he left. It is significant that the Appellant was granted refugee status in line with his mother and not as a result of a claim by him to need it personally.

76. Later in its letter UNHCR stray into the matter of Article 33(2) and by inference Section 72 and also Article 8. Those are, I would suggest beyond its remit and in any event says nothing of import to the case.

77. Professor Rees relied upon the more up-to-date Operational Guidance Note (May 2013) in the Appellants bundle.

78. In particular he referred me to paragraph 2.2.9 which outlined the efforts Turkey has made to accord with the requirements for EU candidature but noted that fighting is still continuing. 2.2.10 refers to an Amnesty International report of 2012 indicating that clashes between the PKK and the armed forces increased and that in October 2011 a major military intervention was launched into northern Iraq targeting PKK bases displacing hundreds of civilians from their villages. This relates to events in Iraq but more importantly clashes between the PKK and the armed forces. This cannot have any bearing on the Appellant who is neither.

79. Professor Rees referred to paragraph 3.2.12 in which it is stated that the government did not commit politically motivated killings in 2012 however, hundreds of security personnel, members of the PKK and civilians were killed in the three decades of conflict with the PKK. However it also states that the number of civilian security personnel deaths decreased from 2011 while the number of alleged terrorists killed increased. It notes that some 711 citizens were killed in the conflict it being the most violent year for the country's PKK conflict. However, again that seems to refer to the PKK as opposed to the general population, of which this Appellant would be a part.

80. I ought at this stage to deal with the Appellant's claim that he is in fact a PKK supporter. That is a relatively new claim and one wholly unsupported by

evidence. He relied upon a letter contained in the bundle from the Kurdish Community Centre. However, that does not support his claim. That letter simply states that he is an active member of the Community Centre and regularly attends. He often goes in to visit for visits and social conventions and has regularly in the past used their advice service or support which they have provided him. The remainder of the letter repeats what the author has been told by the Appellant. The letter has various logos at the bottom indicating that the Community is a registered charity and funded by Haringey Council, London Councils, London Development Agency, Supporting People, Refugee Council, the Community Legal Service, OISC and two other organisations. I therefore entirely reject the Appellant's claim made at the hearing that it is the PKK.

81. The Appellant also claimed to have been at a number of protests but there is no evidence whatsoever of that or any evidence that the Kurdish Community Centre was in any way involved. I therefore reject the Appellant's claim to have done anything in support of the PKK while in the UK; it is a late, self-serving claim made to boost his weak claim to be at risk in Turkey.

82. I return to the OGN and Professor Rees's submissions. He referred me to paragraph 3.9.2 which states that:-

> "Citizens of Kurdish origin constitute a large ethnic and linguistic group in Turkey and that more than 15 million citizens identify themselves as such. Those who publicly or politically asserted their Kurdish identity or promoted using Kurdish in the public domain risked censure, harassment or prosecution, though significantly less so than in previous years"

Censure, harassment and prosecution do not amount to inhuman or degrading treatment.

83. I was then referred to paragraph 3.9.6 referring to the violence escalating once more between the PKK and security forces in 2011 with fatalities on both sides and significant civilian fatalities as a result of the attacks and upheaval within those communities particularly in the south-east of the country and near the Iraq border. This refers to persons regrettably caught up in the attacks and also to a particular geographical area of Turkey, none of which is the Appellant's home area. He comes from Kayseri which I was told was in the centre to eastern side and not near the border with Iraq.

84. I was referred to paragraph 3.9.10 which states that:-

> "Courts continue to use terrorism laws to prosecute hundreds of demonstrators deemed to be PKK supporters as if they were the group's armed militants and most spent long periods in pre-trial detention and those convicted received long prison sentences".

85. However, there is no reason whatsoever why this Appellant should come within a group of persons so prosecuted. He is not a PKK member or activist. I find he is an Alevi Kurd and although undoubtedly a serious criminal is not politically active in any way.

86. I was referred to paragraph 3.9.13 where it is concluded that:-

> "Although relatives of members or supporters of Kurdish, left-wing Islamic terrorist groups or political parties may face police harassment or discrimination there is no evidence to suggest that this, in general will reach the level of persecution. However, each case must be considered on its individual facts."

87. There is a vast difference between somebody in Turkey who has a family member now involved with the PKK and this Appellant whose father was a member 16 years ago There is no reason to suggest that he would be targeted or at risk.

88. Professor Rees referred to paragraphs 3.11.1 and 3.11.2 with regard to persons of the Alevi faith. It is said that there are between 15 and 20 million Alevis in Turkey. The government does not financially support them but there is no suggestion of particular difficulties. Paragraph 3.11.4 talks about UNHCR referring to Alevis suffering discrimination, societal abuse and not being generally accepted in Turkish society. This however falls a long way short of inhuman or degrading treatment.

89. Finally, Professor Rees argued that the Appellant may be perceived as a draft evader in relation to military service. Professor Rees referred me to paragraph 3.12 of the OGN in relation to that. However, there is no suggestion of any ill-treatment other than conscientious objectors who may not have their conscientious objection recognised. I do not accept that the Appellant would fall into that category. I cannot conceive that having left the country at the age of 14 it would be a thought that he left to evade military service. I find further that he is not a conscientious objector. That would be totally out of character for this Appellant.

90. It follows from the above that despite the letter from the UNHCR and the reason that I have given to place little weight on it and based on the Operational Guidance Note, I find that after so many years out of Turkey and having left as a child the Appellant would not be at risk on return. Turkey is a vast country and as a young, healthy, single man he can choose where in the country he wishes to live.

91. In summary therefore I find the Appellant to be a serious criminal who constitutes a danger to UK society due to his previous convictions for serious offences including robbery and allowing premises to be used for the sale of cannabis, his involvement with gangs in London and the extreme antisocial behaviour indulged in by them. He therefore is not entitled to the benefit of the Refugee Convention. In any event given my findings on risk on

return he has need of the benefit of the Refugee Convention or the protection of the ECHR.

92. With regard to Article 8 as Judge McGeachy made clear in his Decision and Directions, this was fully argued and decided before the First-tier Tribunal whose decision in that respect has been upheld. There has been no change of any significance since the First-tier Tribunal decided the case late in 2012 and there is no reason therefore for me to find removal disproportionate today when it was not then.

93. The decision of the First-tier Tribunal containing errors of law and having been set aside in certain respects I have made a fresh decision in relation to asylum and Articles 2 and 3 of the ECHR and I dismiss the appeal.

Signed Dated 28th June 2013

C J Martin
Judge of the Upper Tribunal