Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00253/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 November 2017, 31 January 2018,	**On 20 June 2019**
22 May 2018 and by way of written	
submissions up to and including	
19 November 2018	

Before

THE HONOURABLE MR JUSTICE MORRIS
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant:	Jonathan Hall QC and David Blundell, instructed by the Government Legal Department
For the Respondent:	Declan O'Callaghan, and, subsequently, David Jones instructed by Irving & Co, Solicitors

DECISION AND REASONS

Introduction

1. By decision promulgated on 18 September 2017 ("the UT Decision") we allowed an appeal by the Secretary of State for the Home Department ("the Secretary of State") against the decision of the First Tier Tribunal ("the FTT") promulgated on 7 July 2016 ("the FTT Decision") and set it aside, pursuant to s.12(2)(a) Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"). We further indicated that we intended, pursuant to our power under s.12(2)(b)(ii) of the 2007 Act, to re-make the decision.

2. This is our decision on re-making. Our decision comprises this decision ("the Main Decision") and a second, confidential, decision ("the Confidential Decision"). The former is to be read in conjunction with the latter.

3. For ease of reference, we attach hereto as "Annex A" a copy of the UT Decision and as "Annex B" a copy of the FTT Decision. References to the UT Decision are to "UT §" and to the FTT Decision to "FTT §". In these Decisions, the terminology and abbreviations in the UT Decision are adopted. The anonymity direction made at UT §1 remains in place. For the purposes of these Decisions, and to reflect the position before the FTT, we refer to A as the Appellant, with the Secretary of State as the Respondent.

4. In accordance with UT §106, and following further directions made by order dated 20 October 2017, we received, in the period up to 20 November 2017, further written and oral submissions in relation to the re-making decision.

5. For the reasons given in this Main Decision and in the Confidential Decision, the Appellant's appeal against the Secretary of State's decision to remove him, dated 16 June 2015, is dismissed.

Summary of the case

6. On 16 June 2015 the Secretary of State decided to make a deportation order against the Appellant on the grounds that he was the head of the A Organised Crime Group ("the OCG"). The deportation order and the appeal to the FTT are summarised at UT §§3 to 6. The background facts of the case are at UT §9 to 17. The relevant people involved are identified at UT §9, 10 and 12.

7. The FTT Decision itself is summarised at UT §7 and explained in greater detail at UT §§18 to 41. (The conclusions of the FTT themselves are at FTT §§144 to 154.)

8. The basis of the appeal to this Tribunal is summarised at UT §8 and the parties' submissions at the error of law hearing are at UT §§42 to 57. Our conclusions on

error of law are at UT §104, referring back to the earlier paragraphs there identified. In summary, we found that the FTT erred:

(1) in relation to specific issues, requiring proof to a higher standard than that of the balance of probabilities;

(2) in failing to take account of material evidence and/or findings of fact on material matters;

(3) in not resolving an issue of fact in relation to a material matter;

(4) in making inconsistent findings.

9. In particular, the FTT erred in its approach to the first two "Abi" conversations in March 2014, the "dream" conversation, the Z Road shooting, the Appellant's association with B, events relating to D, the evidence of AS and the Appellant's hidden wealth.

10. The issue on the appeal, both before the FTT and now before us, is whether the Appellant is the head of the A OCG or was in the past the head of the A OCG and has the ability to revive the OCG. That involves two questions: (1) whether the OCG continued to exist at the relevant time and (2) the Appellant's involvement in the OCG.

The approach to re-making

11. Section 12(4) of the 2007 Act provides that, in re-making the decision, we may make any decision which the FTT could make if the FTT were re-making the decision and may make such findings of fact that we consider appropriate.

12. We have before us the documentary evidence that was before the FTT. We have not heard further oral evidence. With one exception (to which we refer to in paragraph 16 below), the evidence before us is the same as the evidence that was before the FTT. The record of the oral evidence before the FTT is available to us, although in fact neither party seeks to rely upon it.

13. It is common ground that whilst we are not bound by the findings of fact made by the FTT, where, as here, the FTT has heard the oral evidence and reached conclusions, we can and should accept those findings, unless there is good reason not to do so. Nevertheless we are entitled to look at the entirety of the evidence before us, even if not expressly referred to in the FTT Decision. In fact, at various points each party invites us in some instances to adopt the FTT's findings and in others to disagree with, or to add to, the FTT's findings.

14. In general our approach on this re-making is, in principle and ultimately, to make our own findings. Nevertheless we will adopt the FTT's findings – particularly

findings of primary fact – unless there is good reason not to do so. Of course, since we have already concluded that the FTT erred in law in certain important respects, and in particular in relation to its ultimate findings of fact, we make our own findings, both on those matters, and in relation to matters relevant to those findings.

The course of the re-making

15. At an oral hearing on 20 November 2017 the parties put forward their respective cases on the re-making of the FTT Decision.

16. Prior to the hearing the Appellant had applied to adduce further evidence. In the result, we admitted into evidence a determination of the First Tier Tribunal (Tax Chamber) concerning tax assessments made against the Appellant's wife ("The Tax Chamber judgment"). This is addressed in paragraphs 59 to 62 below. As regards a further undated witness statement from the Appellant himself, whilst we did not admit this into evidence, we accept that UT §17 wrongly stated that at the trial in January 2015 the jury did not reach a verdict in respect of the Appellant and that, in fact, the Appellant was acquitted by a majority. Further by order of 20 October 2017, we had refused to admit the Appellant's further evidence concerning the meeting on 29 January 2014 (to which we refer at paragraph 26 below), pointing out that the question of who had organised that meeting was not relevant and had never been in issue in the proceedings.

17. Two days after the conclusion of the oral hearing, a further matter was drawn to our attention. This matter is the subject of the Confidential Decision. This Main Decision addresses the issues considered at the oral hearing on 20 November 2017.

The Parties' submissions

18. In general, the Appellant relies upon his skeleton argument for the hearing, and his closing written submissions, before the FTT dated April and June 2016 respectively. He submits in summary, that we are not bound by the FTT findings of fact; and other passages in the FTT Decision require careful scrutiny. The Secretary of State must establish that the Appellant was *the head* of the OCG, yet in three years of surveillance material there is no one saying that he was. Cumulatively, the evidence cannot support the conclusion that the Appellant occupied such a high position in the OCG.

19. The Secretary of State relies upon his outline closing submission from the FTT hearing in June 2016 and a further skeleton for the re-making dated 15 November 2017. He submits that having regard to the FTT's findings of fact and their true significance, and in the continuing absence of any alternative explanation, the Secretary of State has made out his case on the balance of probability. There is a A OCG of which the Appellant is currently the head, or at the least that was the position in the past and the Appellant has the ability to revive the OCG.

Relevant legal principles

20. The legal background is summarised at UT §58. Regulation 21, and in particular regulation 21(5) and (6) of the EEA Regulations is set out at FTT §156.

21. Expanding on this summary, we have been referred in particular to the following case authority: Case 30/77 *R v Bouchereau* [1977] 2 CMLR 800; *R (Lumsdon) v Legal Services Board* [2015] UKSC 41 at §63; *Secretary of State for the Home Department v Robinson (Jamaica)* [2018] EWCA Civ 85 [2018] 4 WLR 81 at §§68 to 86; Joined Cases C-331/16 and C-366/16 *K v Staatssecretaris van Veiligheid en Justitie* [2018] 3 CMLR 26 §§61 to 64 and *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53 [2018] 1 WLR 5273. We draw the following propositions from these authorities:

    (1) The decision to deport or remove must be based exclusively on the personal conduct of the person concerned and must be founded upon "the existence of a genuine, present and sufficiently serious threat" to the requirements of public policy or public security: *K* at §§48 and 49.

    (2) A propensity to act in the same way in the future is usually implicit in such a finding.

    (3) However past conduct alone may constitute such a threat and may be sufficient to justify removal on these grounds. In an extreme case the threat might be evidenced by past conduct which has caused deep public revulsion and/or which is repugnant to the public: see *Bouchereau, K* at §56 and *Robinson.*

    (4) The possible exceptional gravity of the acts in question might be such as to require, even after a relatively long period of time since the commission of the acts in question, that the genuine, present and sufficiently serious threat to be classified as persistent: *K* at §58.

    (5) However, a measure which restricts the right of freedom of movement must comply with the principle of proportionality; the threat that the personal conduct of the individual concerned represents to the fundamental interests of the host society must be weighed against the rights of Union citizens and their family members: *K* at §§61 to 63. In particular it is necessary to determine whether it is possible to adopt other measures which are less prejudicial to freedom of movement and residence but are equally effective to ensure the protection of the fundamental interests (of public policy or public security): *K* at §64. But it is not necessary for the Member State to prove that no other conceivable, less restrictive measure could have been used to achieve the same objective: *Lumsdon* at §63.

    (6) Proportionality is a matter to be determined by the court itself, and is not limited to a review of the decision of the public authority: *Lumsdon* §§29 and 101.

(7) If and in so far as relevant to the facts of the present case, as regards the balance between the best interests of the child and the gravity of the conduct of the person to be removed or deported, in the case of deportation of a foreign criminal under s.117C of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act"), the question whether it would be unduly harsh on the child if the parent were deported is to be determined without regard to the criminality of the parent's offences. However the "unduly harsh" test is a high hurdle; what must be established is a degree of harshness going beyond what would normally be involved for any child faced with deportation of a parent. *KO (Nigeria)* has not affected the assessment of the impact upon the child of the deportation and the test that needs to be applied.

Discussion and Analysis

22. We consider first the issue of the existence of the OCG, and then secondly the Appellant's involvement in the OCG. In the latter section, we consider the various strands of relevant evidence, broadly, under the headings adopted by the FTT at §§41 to 143. However we have ordered these strands to follow a broadly chronological sequence, as adopted by the Secretary of State in his submissions on the re-making.

(1) The existence of the OCG

23. This is addressed at UT §§20 to 21, 75 to 78. As Mr O'Callaghan accepted in argument, the issue for us is the question of "risk" to public policy and public security at the time that we re-make the decision and that risk will be present, not only if the Appellant is head of the OCG as it exists, but also if he has the ability to revive it. As we concluded at UT §76, we agree with the FTT, and we find, that in order to determine the issue on the appeal it is not necessary to make a clear finding one way or the other as to whether, at the time of the FTT Decision or this decision, the OCG existed or exists. It is sufficient that the Appellant has the capability to revive the OCG. An express finding, one way or the other, about the continued existence of the OCG is not necessary. In circumstances of its past existence, and assuming that the Appellant was head of that organisation, the ability to revive the OCG is, in our judgment, sufficient to create a genuine, present and sufficiently serious threat to public policy and/or public security.

24. We find on the facts that the OCG clearly existed in the past. The Appellant accepted this. On the facts (and in the light of our findings below as to the Appellant's position as head of the OCG in the past) we find that the Appellant has the ability to revive the OCG and that is sufficient. Whilst in some cases, events might have moved on in the course of an appeal process, there is nothing in the evidence before us to suggest that, in the period since the most recent evidence of its existence, the risk arising from the Appellant's involvement in the OCG has now dissipated.

(2) The Appellant's involvement in the OCG

Security conscious behaviour

25. The Secretary of State relies upon evidence which he believes shows the Appellant exhibiting security-conscious behaviour consistent with involvement in and/or being head of an OCG. This was addressed at FTT §§78 to 82, as summarised at UT §30. Of particular relevance is the recorded conversation between the Appellant and B on 27 January 2014 discussing the possibility of a listening device having been installed in the latter's car. As to this, we note that the FTT heard and rejected the Appellant's own evidence explaining this conversation. We agree with the FTT's finding (§81) that in the conversation "B was hypothesising about there being a listening device which the police had installed" in his vehicle and that this part of the conversation was concerned with a different car from the Audi that they went on to discuss. Mr O'Callaghan accepted this in argument. Whilst we accept his further submissions that that conversation did not amount to an in-depth discussion about their fear of surveillance, nevertheless neither B nor the Appellant exhibited any surprise that the police might have wanted to put a listening device in B's car. This is highly significant. Whilst this may not be direct and clear evidence of the Appellant operating as the head of an OCG, the fact that they were discussing such a listening device, and that that came as no surprise to them, are further facts which are consistent with, and supportive of, such a conclusion. The fact that the conversation concerned other matters too does not detract from such a conclusion.

D

26. The background relating to D is set out at UT §§12-15 and FTT §83. Two aspects of events concerning D are of potential relevance: first the transcript of a meeting on 29 January 2014 where the Appellant, in the presence of B, amongst others, gave D a "severe roasting" (see FTT §§51, 83, 85); secondly, the Appellant's involvement and purpose in efforts to find D after he fled on 4 March 2014 (FTT §§85 to 89). See further UT §§31 and 32.

27. As to the first aspect, it is common ground that the lengthy transcript of that meeting constituted a "severe roasting" and we concur in the FTT's finding that the Appellant was "venting his spleen …" (UT §14, FTT §51) and "using highly offensive, demeaning and provocative language over a very lengthy period" (FTT §85).

28. The Appellant contends that the full content of the argument shows that it was merely a business related argument, diverging off at tangents, but confirming that the bottom line was that he did not want to be considered a wheeler and dealer. It was not a crime boss holding court with a victim.

29. However the significance of this transcript is not limited to those general descriptions of the tone of the meeting. The Appellant tells D that he had sent "messages to all including the Iranians and the Albanians and asked them not to touch him". Even

though D is present at the time, we are satisfied that in the context of that part of the transcript "him" is a reference to D, himself. Whilst the mere reference to Iranians and Albanians is not of itself a reference to criminality, in our judgment on any view the Appellant is giving instructions to others, including persons abroad or of foreign nationality, not to harm D. Secondly, in that part of the transcript and in later passages the Appellant refers to himself, and refers to others referring to him, as "Abi". The first and other passages demonstrate the power of the Appellant to give instructions to harm, or not to harm, D. This is supportive of the conclusion that the Appellant is a man with considerable power over others and, whilst not of itself conclusive as to his position, is consistent with him being the head of the OCG and exercising his power as such over D.

30. As to the second aspect, we agree with the FTT in its finding (at §88), on the correct standard of proof, that the Appellant was seeking to trace D and find a way to "encounter him" and that his intentions went beyond having an ordinary business meeting. In the light of the extremely intimidatory approach taken at the 29 January 2014, we find that, on the balance of probabilities, the Appellant's intentions towards D, once found, were nefarious, and were to give him, at the least, a very severely intimidatory warning – in line with what he had said at the 29 January meeting - thereby indicating that the Appellant would, at least, have the power to exercise some form of punitive power. The steps taken to trace D, in the context of the extreme verbal intimidation and the enlisting of the support of unsavoury characters, including B (who had no connection with the drinks business) supports a finding that the Appellant was a man with very substantial power, and is consistent with him acting as the head of the OCG.

AS

31. AS is the Appellant's sister in law. The Secretary of State relies upon a recorded conversation between her and B on 12 February 2014. The background is set out UT §36 and in further detail at FTT §§133-137. We agree with the FTT's conclusion that AS believed that the Appellant was involved in criminal activities, and for the reasons stated at §§136 and 137. We found at UT §102 that the FTT erred in failing to go on to consider what those criminal activities were, or might have been.

32. We accept that the mere fact that AS believed that the Appellant had been involved in criminal activities does not establish the fact of those activities having taken place. Nevertheless, AS in that conversation referred, without distinction, to the activities of the Appellant and of AB3. AB3 had been heavily involved in organised crime and was, before his arrest, the head of the OCG: FTT §33 to 34, and accepted by Mr O'Callaghan in argument. At the time, AB3 was serving a very long sentence for drugs and money laundering and had been found to be near to the top of the supply chain (FTT §17). AB3 was AS's husband. We conclude that, on the balance of probabilities, AS was by that time aware of the nature of AB3's criminal activities and it is therefore to be inferred that the Appellant's criminal activities, that AS believed he had been involved in, were of the same kind as those of her husband;

and that those were connected with organised crime and the OCG and that they arose from his position as the head of the OCG. This is a further finding which, taken with others, is supportive of the conclusion that the Appellant was at the time, and after AB3 had been imprisoned, the head of the OCG.

The Appellant's place in the hierarchy

33. On this issue, a number of strands of evidence fall to be considered.

Conversation between E and B: 13 February 2014

34. On 13 February 2014 there was a recorded conversation between B and E, discussing what might happen if "AB" "came back": see UT §§25, and 79-84, and FTT §§52 to 57. At §57, the FTT found (and it is not now disputed) that the reference to "AB" was a reference to AB1, the Appellant's older brother and a former head of the OCG. For the reasons given at UT §80, we concluded that the FTT had found that that conversation supported the conclusion that the Appellant was head of the OCG. We went on to find ourselves (UT §82) that the FTT's findings were clear and important findings of a connection between the Appellant and the OCG and, at the least, highly relevant evidence of the Appellant's *leading position* in the OCG. However, the FTT had erred in failing to take into account that evidence, and its own findings thereon, in reaching its final conclusions regarding the Appellant's position in the OCG: UT §84.

35. We agree and accept the FTT's findings at FTT §57 and repeat our findings at UT §82. The conversation demonstrates, first, that the Appellant and B were united in an enterprise of some description; secondly, B's description of the Appellant in that conversation demonstrates that the Appellant was a superior to B; thirdly that the Appellant and AB1 (who had been the head of the OCG) were being discussed in one and the same context of a power struggle; fourthly, the Appellant has no answer to the significance of this conversation.

36. Mr O'Callaghan submitted that it was difficult to understand why AB1 should have been returning from Holland. However, first, this point was expressly dealt with by the FTT at §54; and secondly, regardless of that fact, the Appellant conceded at the re-making hearing that the conversation was referring to AB1. Mr O'Callaghan further submitted that B was prone to grandiose hyperbole and that this one assertion by B cannot properly be relied upon to fill a gap in the evidence. However what cannot be doubted is that AB1 and the Appellant are being discussed in the same terms - it is clear *evidence* supporting a link between the Appellant and the OCG – and, even if an exaggeration, no reason is given for B having said this untruthfully.

37. In considering the overall question as to whether, on the balance of probabilities, the Appellant was the head of the OCG (or has the ability to revive it), this finding provides the strongest support that the Appellant was head of the OCG. It is, at the very least, more likely than not that in this conversation B is referring to the

Appellant and AB1 as alternative heads of the OCG and that he, B, recognises and will continue to recognise the Appellant as the head. Indeed no alternative explanation for the content of the conversation has been put forward.

"Centralisation" 18 February 2014

38. On 18 February 2014 there was a recorded conversation between the Appellant and B, in which the Appellant talks about the "centralisation" saying that he has managed or tried to distance himself from "centralisation", indicating that he lets others take initiatives and "if such a set up can be established, you would become immortal": see UT §§23, 26, FTT §§58 to 61. At §§59 and 60, the FTT rejected the Appellant's explanations in evidence for this conversation, finding it, at §61, unsatisfactory. However at §61 the FTT declined to find that the conversation supported the case that the Appellant was head of the OCG because it was not sufficiently clear that no other interpretations were possible. In the UT Decision, we considered that this was an example of an erroneous application for the standard of proof: UT §§44 and 73 to 74.

39. Mr O'Callaghan nevertheless sought to uphold the FTT's conclusion at FTT §61; even on the balance of probabilities, it did not show the Appellant giving orders as to how the OCG should be arranged so as to ensure nothing that happened was attributable to him. Moreover centralisation does not establish that he was head of an OCG.

40. We do not accept these submissions. Applying the correct standard of proof, and taken in conjunction with the FTT's finding at §42 about how an OCG is likely to be run, we conclude that it is more likely than not that in this conversation, the Appellant was explaining his approach to running an organisation, how he directed others and that amongst those others he was directing was B and how, in line with that likely approach, he distanced himself to avoid detection.

First "Abi" conversation between B and C: 7 March 2014

41. On 7 March 2014 there was a recorded conversation between B and C in B's car in which the two men appear to be talking about the remuneration they receive from someone called "Abi". The Appellant accepted in evidence that they might have been talking about him. Whilst the FTT did not accept the Appellant's explanation of why they were talking about how much they received from the Appellant or what they were talking about, ultimately the FTT was not able to come to a firm conclusion about whether the two were discussing their relationship with the Appellant. It could not be said that there were no other possible interpretations of the conversations: UT §§24, FTT §§43 to 46.

42. In the UT Decision, we considered that the FTT erred in its approach to and conclusions in relation to, this conversation: see UT §§96, and 44 and 73 to 74.

43. Mr O'Callaghan submitted that, nevertheless, the conclusions at FTT §§45 and 46 should stand. First any reference to "Abi" (a term of respect for numerous people) is not necessarily a reference to the Appellant. Secondly, the payments are the same for both B and for C and, if there was a hierarchy, they would not be.

44. We consider that the FTT's reliance (§§45 and 46) upon the fact that the Appellant is not named in the extract is undermined by the Appellant's own admission in his own evidence that they might have been talking about him. The fact that B was "not exclusively paid by Abi" does not rule out or exclude the fact that "Abi" is the Appellant and in part they were paid by Abi. The evidence was that whilst B may have had other sources of income, he never worked for anyone other than the Appellant. We find on the balance of probabilities that in this conversation B and C were talking about the Appellant and referring to him as "Abi". We agree that whilst it is not necessary to make detailed findings about what pay, and by and to whom, was being discussed and it is not possible to do so, nevertheless this conversation provides further support for the existence of an "organisation" and, given the Appellant's own evidence, one in which the Appellant is high in the hierarchy. If it is right that there was an organisation, the Appellant was unable to say who else, other than him, would have been paying B. There is clearly a reference to B being paid money.

Second "Abi" conversation between B and C 10 March 2014

45. On 10 March 2014 there was a second recorded conversation between B and C in B's car in which the two men talk about a previous conversation between B and D in relation to the drinks business. In that conversation B had told D that only "Abi" could tell him, B, to get involved in a business. Again the Appellant accepted in evidence that B could have been referring to him. The FTT concluded that the extract might be read as showing B acting subserviently towards the Appellant, but that was not the only interpretation possible and it did not go very far in establishing the Appellant as the head of an OCG: UT §§24, FTT §§47 to 51.

46. In the UT Decision, again we considered that the FTT erred in its approach, and conclusions, in relation to this conversation: see UT §§96, and 44 and 73 to 74. It was not necessary for the Secretary of State to show that no other interpretation of the conversation was *possible.*

47. Mr O'Callaghan first relied upon his June 2016 submissions, in which it was accepted that this part of the conversation was a reference to the Appellant, but all that B was doing was suggesting he should check with the Appellant as one of the other partners in the drinks business. The conversation did not indicate that B would only act on a command from the Appellant. Mr O'Callaghan then submitted, somewhat inconsistently, that it was not clear that "Abi" referred to the Appellant, because at other points in the recording, "Abi" referred to someone else. "Abi" in the passage relied upon by the Secretary of State could be one of a number of others in the drinks

business and moreover it was not clear what business was being referred to. He accepted however that, in the relevant passage, "Abi" could not be a reference to D.

48. We consider, first, that the relevant passage in the recording amounts to something more than B "seeking advice" from "Abi". It is clear evidence of B taking instruction from "Abi" and acknowledging that "Abi" is his superior. As to the identity of "Abi" in that passage, given the Appellant's own evidence and indeed his case before the FTT, we find, on the balance of probabilities, that in that passage B's reference to "Abi" was a reference to the Appellant. Indeed the FTT itself appeared to accept this. (In this regard we refer to the earlier reference *to the Appellant* as "Abi" in the recorded conversation of B on 7 January 2014: see paragraph 69 below.)

49. Accordingly we find that this is evidence of the Appellant being superior to B in the hierarchy.

The Z Road shooting

50. In two recorded conversations between B and the Appellant, in B's armoured car, on 23 and 24 May 2014, B passed on news of the Z Road shooting to the Appellant. XY's interpretation of the conversation was that the Appellant had given B permission for retaliatory action to be taken against those who had attacked the shop. The FTT however concluded that the conversations did not clearly establish that the Appellant had issued instructions to retaliate and that this evidence did not support the depiction of the Appellant as head of a ruthless OCG: UT §§28 and 29 and 40, FTT §§67 to 77 and 152.

51. In the UT Decision, we found that, in relation to this evidence, the FTT made inconsistent findings (at §§74 and 77) as to the significance of the absence of any retaliation in fact taking place; and secondly that the FTT had mischaracterised the Secretary of State's case as to what was the import of those conversations – confusing the issuing of an instruction and the giving of permission: UT §§85 to 90.

52. The Secretary of State submitted that the significance of these conversations is wider and more general than whether or not the Appellant was giving an order to retaliate. The context and content of the conversation as a whole shows that the Appellant is head of a violent OCG.

53. Mr O'Callaghan submitted that the FTT was wrong, at §74, not to draw an inference, in the Appellant's favour, from the absence of any retaliation in fact. The inference that should be drawn is that there was no order to retaliate and thus that there was no A OCG. He also relied upon the fact that the "order" was not given until the following day.

54. We do not accept this submission. The FTT's conclusion at §74 was correct. The Secretary of State's case was not that there was "an order" to retaliate, but rather that the Appellant gave permission to do so. The fact that there was no retaliation might

have been for a number of reasons: G was in custody; the person to whom permission was granted decided not to retaliate. Moreover, the fact that it was permission, and not an order, that the Appellant gave does not, of itself, indicate that the Appellant could not have been acting as head of an OCG.

55. Secondly, the entirety of the conversations and their context (in time and place) establish that the Appellant was someone familiar with weapons, familiar with people who carry weapons and was giving advice about what should be done with weapons. The conversations were taking place immediately following, and concerning, a shooting in a public place, in the armoured car of a known violent man, B. Information about the shooting was relayed by B to the Appellant in the car. See FTT §§68, 70 and 71. At §77, the FTT found that it was "curious" that this happened. However we are satisfied and find that the passing on of this information was more than casual conversation; it was *deliberate.* That this was done in these circumstances is evidence supporting the Appellant's position as the head of an OCG.

Hidden Wealth

56. The FTT concluded that it was not satisfied that the Appellant enjoyed a lifestyle consistent with his being the head of an OCG, nor that he had been hiding his wealth: FTT §§153, and 110 and 115; UT §§97 and 98 (and 33 to 35). However, we found that this was inconsistent with specific findings of the FTT relating to mortgage payments, his business dealings and A Cars. The Appellant had hidden his wealth from the FTT and it was a fair inference that he had hidden it more generally: UT §§99 and 100 referring to findings at FTT §§104, 112, 114, 127, 128 and 130. We found that in this regard the FTT had erred in law. Moreover the FTT had not explored further the only explanation given by the Appellant – notoriety and connections within the community and operating on the fringes of legality.

57. As the FTT had found (FTT §§110, 130, 153), despite there being a money laundering investigation into the affairs of the Appellant and his wife, there had been no prosecution. However, we took the view that this conclusion was not determinative of the question whether wealth had been hidden: UT §101.

58. The Secretary of State maintains his contention that we should make a finding of hidden wealth and that provides strong support that the Appellant was head of the OCG. The reference to notoriety and connections within the community chimes with the FTT's further finding (FTT §111) as to the basis upon which the Appellant was able to obtain credit.

The Tax Chamber judgment

59. The FTT had also referred to the fact that the Appellant's wife had been served by the NCA with a notice of assessment to tax and that, at that time, the matter was yet to be resolved: FTT §§107 and 108. That matter has now been resolved and is the subject of Tax Chamber judgment.

60. At the re-making hearing, Mr O'Callaghan relied upon the absence of prosecution and went on to rely, further, upon the Tax Chamber judgment. He submitted that the high point of the case in relation to financial matters was the case put before the Tax Chamber and yet nothing substantial was found. The Tax Chamber's conclusions were not consistent with there being organised crime. Mr Hall submitted that there were findings in the judgment consistent with the Secretary of State's case, and that in any event the judgment addressed only the position of the Appellant's wife.

61. The issue before the Tax Chamber was whether the Appellant's wife had received income chargeable to tax for years within the period 2004 to 2009 and whether that income had arisen or accrued as a result of her, or another person's, criminal conduct. The Tax Chamber concluded that there had been no loss of tax. Whilst there were unexplained sums, those sums had not been derived from trade.

62. In the course of the judgment, the Tax Chamber found that the NCA did have reasonable suspicions that the wife's income arose from criminal conduct, namely money laundering relating to the affairs of A Cars. Amongst its findings, the Tax Chamber declined to accept the Appellant's evidence, at least in part (§§51, 59); found that the Appellant had control of A Cars and that the evidence was indicative of low level motor vehicle transactions *and* possible money laundering in the 2007 and 2008 accounts of A Cars (§§84 to 86); that the Appellant had income from rents from a factory in Istanbul and rents from [the property at 52], and director's remuneration and a dividend from A Cars (§§108 and 109); and found that there was one transaction, in an amount of £20,000, which was unexplained and suspicious (even if it had not produced taxable income for the wife) (§§228, 231 and 96, 97, 111). Finally, the Tax Chamber found that the Appellant and his wife were able to meet the mortgage payments, because they received money "from a number of sources", concluding that the Appellant "may well have been in receipt of other funds that could have been given to [his wife] to fund the expenses" (§§231 and 232).

Conclusion on hidden wealth

63. We consider that the Tax Chamber judgment does not take matters much further, one way or the other; although it does provide further support for the conclusion that A Cars was involved in money laundering (see FTT §130). There remain contradictions and unanswered questions about the *Appellant's* financial position. We uphold the FTT's findings that the Appellant has not adequately explained his business dealings or the position of A Cars. On the other hand, there is evidence of legitimate income. We are not therefore satisfied, on the balance of probabilities, that the Appellant has hidden his wealth. Nevertheless the Appellant's lack of transparency with the Tribunal and his inability to explain things does provide some, albeit, limited support for the Secretary of State's case that he was the head of the OCG.

64. However, as set out below, we consider that the other findings of fact do establish that he was head of the OCG, and the evidence and findings relating to his financial position do not undermine or contradict those findings.

The Appellant's relationship with B

65. The Appellant's relationship with B is addressed at FTT §§149 to 152 and then at UT §§91 to 96. The FTT concluded that B was not acting as the Appellant's "subordinate". We found (§91) that this was a crucial step in the FTT reaching its conclusion that the Appellant was *not* proven to be the head of the OCG. We then pointed out (at UT §92) that, nevertheless, the FTT had made a number of specific and detailed findings in relation to B and his relationship with the Appellant, including that B acted "subserviently" to the Appellant and that the close association was "troubling".

66. We went on to find (UT §§93 to 96) that the FTT had made a series of errors of law, in its analysis of the evidence: it had failed to resolve an issue of fact (as to how the association between the two men did arise); it had failed to aggregate those specific individual findings; it had failed to have regard to the Appellant's own admissions about the term "Abi" and failed to make a finding as to who was being referred to by that term; and it applied the wrong standard of proof in relation to those conversations.

67. Mr O'Callaghan made no additional submissions directed specifically to the overall relationship between the Appellant and B. Nor did he seek to dispute the FTT's findings, which we summarised at UT §92.

68. In reaching its final conclusion at §152, the FTT put forward four reasons. As regards the first reason, we do not consider that the fact that the Appellant was not prosecuted in relation to the kidnap plot takes the matter much further; that related to one particular incident only. As regards the third reason, we have addressed the fact that the Appellant had not given an *order* to retaliate for the shooting in paragraph 54 above. As to the final reason – the limited number of examples, within the probe material, of orders being given – this is not a basis for not taking into account those passages which are contained within the probe material which do demonstrate or support a finding that the Appellant was the head of the OCG.

Drugs

69. The FTT's second reason for concluding that B was not the Appellant's subordinate was that it was reasonably clear that B recognised that the Appellant did not approve of drugs dealing. This was based on the transcript of the conversation of 7 January 2014 where B said that he did not say anything to "Abi" in relation to that type of business; the Appellant did not even want to hear about it. Partly in reliance upon this evidence, the FTT held that after the imprisonment of the Appellant's brothers, the A OCG probably ceased to engage in the drugs trade: FTT §146. The fact that the

Tax Chamber Judgment recorded (at §15) that in 2013 the NCA conducted an investigation into Class A drug trafficking by the A OCG is not necessarily inconsistent with that finding by the FTT, nor does it establish that the Appellant cannot have been head of the OCG.

70. Mr O'Callaghan's further argument was that this evidence demonstrated that B was involved in other criminal activity other than as a subordinate to the Appellant, and that because there was invariably a hierarchy of supply in the drugs trade, B was also working for others, and thus could not be the Appellant's subordinate.

71. We do not accept this reasoning. As Mr Hall submitted, the drugs trade will involve a supply chain, but not necessarily a hierarchy. As the FTT found (FTT §§48, 60) there was no suggestion that B had a second or other "boss". The fact that he kept his drugs involvement from the Appellant does not undermine a finding that he was acting as the Appellant's subordinate. Indeed, the passage in question is a yet further reference to the Appellant as "Abi", and the fact that he goes out of the way to say that he withholds certain information from "Abi" implies that otherwise there is an expectation that he would tell him about other types of business.

Conclusion on the Appellant's relationship with B

72. In our judgment, the detailed factual findings of the FTT, summarised at UT §92, are strong evidence that not only did B act subserviently to the Appellant in his "troubling" and "close" association with him, but further that B was indeed the Appellant's subordinate within an OCG. These findings call for a response. However, not only did Mr O'Callaghan not make any additional submissions in response, but the Appellant had not put forward any alternative explanation for his close association and involvement with B.

73. We find that B, a violent career criminal and drug dealer, was the Appellant's subordinate. This supports the conclusion that the Appellant was head of the OCG.

Prison visits

74. The FTT found that during the time that the Appellant was remanded in custody at HMP Belmarsh, he was visited by a substantial number of individuals, many of whom have criminal records. Some of the offences of the visitors were very serious. The FTT found that the implication of this was that the Appellant has a large number of associates who commit, in some cases, very serious crime: see FTT §142. However at §143 the FTT could not infer from those visits that the Appellant was running the OCG "from inside HMP Belmarsh". The FTT went on to find that it could not say that this took the matter very far in terms of establishing that the Appellant was head of the OCG.

75. Nevertheless, and leaving to one side the question of whether, at the time, he was running the OCG from prison, we consider that this is, at the least, further evidence

of the Appellant having close associations with a substantial number of people with criminal records, some of whom had been involved in very serious crime (see FTT §149). Whilst not of itself conclusive evidence of the Appellant's position as head of the OCG, it is entirely consistent with the other strands of evidence which support that conclusion.

Conclusions on serious grounds of public policy or public security

76. We find as follows:

(1) The A OCG existed in the past, at least up to and including 2014.

(2) The Appellant was head of the A OCG.

(3) Even if the OCG is no longer operative now (or was not operative at the time of the decision to deport) the Appellant had, as at the time of the deportation decision, and continues to have, the capacity to revive the A OCG. There is no evidence to suggest to the contrary.

77. The finding at (2) above is based on our findings, taken together and cumulatively, in relation to the following matters:

(1) The Appellant's security conscious behaviour (paragraph 25 above);

(2) The Appellant's behaviour and the content of the conversation at the meeting with D on 29 January 2014 (paragraph 29 above);

(3) The steps taken to trace D in March 2014 (paragraph 30 above);

(4) AS's belief that the Appellant was involved in criminal activities of the same kind as those of AB3, who had been involved in organised crime, probably as head of the OCG (paragraph 32 above);

(5) B referring to the Appellant the head of the OCG in his conversation with E of 13 February 2014 (paragraphs 35 to 37 above);

(6) The conversation between the Appellant and B about centralisation (paragraph 40 above);

(7) The references by B in conversations in March 2014 (and in January 2014) to the Appellant as "Abi" (paragraphs 44, 48, 49 and 69 above);

(8) The content of, and context for, the Appellant's conversations with B about the Z Road shooting on 23 and 24 March 2014 (paragraph 55 above);

(9) The fact that B , a violent career criminal and drug dealer, was the Appellant's subordinate. (paragraph 73 above).

78. Further, our findings in relation to hidden wealth and prison visits (paragraphs 63 and 75 above), whilst not, of themselves, providing direct evidence of the Appellant being head of the OCG, are consistent with such a finding.

79. Accordingly, the Appellant's position as head of the OCG represents a genuine, present and sufficiently serious threat to the requirements of public policy or public security within the meaning of Regulation 19(3) and 21(3).

Regulation 21 and Article 8: justification and proportionality

80. FTT §159 records that the Appellant accepted that no separate issue arose in relation to the protections offered by Regulation 21(5) and (6) nor in relation to consideration of family life and best interests of the child. Following the re-making hearing on 20 November 2017, the Appellant raised, afresh, matters arising under this rubric. These are addressed in the Confidential Decision. For reasons there given, we conclude that removal is justified and proportionate.

Notice of Decision

The Appellant's appeal against the Secretary of State's decision to remove him, dated 16 June 2015, is dismissed.

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 his family. This direction applies to the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

The Honourable Mr Justice Morris 20 June 2019

TO THE SECRETARY OF STATE
FEE AWARD

We have dismissed the appeal and therefore there can be no fee award. We note too that no fee was paid.

Signed	Date
The Honourable Mr Justice Morris	20 June 2019

ANNEX A

IAC-AH- -V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00253/2015

THE IMMIGRATION ACTS

Heard at Field House
On 7 and 14 March 2017

Decision & Reasons Promulgated

……

Before

THE HONOURABLE MR JUSTICE MORRIS
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Jonathan Hall QC and David Blundell, instructed by the Government Legal Department
For the Respondent: Declan O'Callaghan, instructed by Irving & Co, Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department ("the Secretary of State") against the decision of the First Tier Tribunal ("the FTT") promulgated on 7 July 2016 ("the Decision"). By the Decision, the FTT allowed the appeal of A against the decision of the Secretary of State dated 16 June 2015 to make a deportation order against him ("the Deportation Order") pursuant to section 5(1) of the Immigration Act 1971. Whilst A is the respondent to this appeal, for ease, we refer to him as "the Appellant", as he was before the FTT. On the Appellant's application and the basis of submissions made, we have granted anonymity with a view to protecting the interests of the Appellant's son.

2. The Appellant is Kurdish and a Turkish national. Prior to his arrival in the UK in 1994, he had lived in Turkey. In 2002 he married a citizen of the Republic of Ireland and was thus a family member of an EEA national and had a residence card valid until June 2012. His application for naturalisation was ultimately withdrawn in July 2015. It is common ground that as a result of his marriage to an EEA national and his period of continuous residence, he has acquired a permanent right of residence under Regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations").

The Deportation Order

3. On 11 February 2015 the Secretary of State served the Appellant with notice of liability to deportation pursuant to the EEA Regulations. The reason was because of his "longstanding involvement and leadership role in organised crime". The Appellant made representations as to why he should not be deported.

4. On 16 June 2015 the Secretary of State made the Deportation Order with an accompanying decision letter ("the decision letter"). The basis of the Deportation Order was that the Appellant was the head of the A Organised Crime Group ("the OCG"); that he had been involved in serious organised crime since at least 1998 and that consequently his removal from the UK was justified on "serious grounds of public policy and public security" pursuant to regulations 19(3)(b) and 21 of the EEA Regulations. During the period of the Appellant's leadership, the OCG engaged in serious organised violence, blackmail and money-laundering. As such, the Appellant represented a genuine, present and sufficiently serious threat to the public to justify deportation. In particular, the Secretary of State relied upon the Appellant's relationship with A, believed to be the Appellant's "principal lieutenant" and a violent enforcer in relation to his organised crime activities and upon transcripts of aural probe recordings of conversations involving the Appellant and others. The decision letter went on to consider the Appellant's relationship with his wife and his son under the *Zambrano* principles and Article 8 ECHR and concluded that neither provided a reason not to make the Deportation Order.

The appeal to the FTT

5. The Appellant appealed to the FTT, under regulation 26 of the EEA Regulations, against the Deportation decision. The hearing extended over four days in April and June 2016. In addition to substantial documentary evidence running to 5 volumes, the FTT heard oral evidence. The Secretary of State called XY, an officer of the National Crime Agency ("NCA") who gave oral evidence and whose witness statement adduced the evidence of the transcripts of the probe recordings. Those recordings, which were at the heart of the Secretary of State's case, were the result of some three years' surveillance of the activities of the Appellant, B and others in the course of an NCA investigation of the OCG. XY's evidence, based on his extensive experience and knowledge of organised crime, including Turkish organised crime, and upon the probe evidence, was that he believed that the Appellant is now the head of the A OCG. The FTT also heard oral evidence from the Appellant himself, from his wife, AW and from his sister-in-law, AS who is married to one of the Appellant's brothers, AB3. The Appellant's case was not only that he was not the leader of the OCG, but that the OCG did not exist at all (§21).

6. By the time of closing submissions, it was common ground that the only issue in the appeal was the question of whether or not the Appellant was the head of the A OCG. The Appellant accepted that if, contrary to his case, the Secretary of State could establish that he is the head of the OCG, then his removal would be justified, regardless of any Article 8 and *Zambrano* considerations: see Decision §159.

The Decision in summary

7. The FTT allowed the Appellant's appeal. By the Decision, which runs to 166 paragraphs, the FTT concluded that it was not satisfied that it is more probable than not that the Appellant is the head of the A OCG (§154). In brief outline:

   (1) The FTT held that it was for the Secretary of State to establish the facts justifying deportation to the civil standard of proof of a balance of probabilities (§18).

   (2) The FTT considered, first, at §§21-37, the issue of whether the A OCG existed at all, concluding that it did, at least until 2011 or that "there has been a [A] OCG for many years" (§38). As to whether it had continued to exist, the FTT was less clear: see §§34, 37, 38,146, 147, 154**.**

   (3) Then the FTT considered the Appellant's involvement in the OCG. At §§38-143, the FTT considered in substantial detail, and made a number of findings of fact relating to, various strands of evidence, said to be relevant to that question.

   (4) At §§144-154, the FTT set out its conclusions on the Appellant's involvement in the OCG. At §149, it found that the Appellant had many close associations with people with criminal records, and particularly that he had a close association with B, who has very serious convictions and is a violent career criminal. As to

whether the Appellant was the head of the OCG, the FTT considered that the most troubling part of the evidence was that concerning the Appellant's close association with B. However, first, (§152) it was unable to find that B acted as the Appellant's "subordinate". Secondly, (§153), it had not been shown that the Appellant held significant assets and the FTT did not find it likely that the Appellant had hidden his wealth (as suggested by the Secretary of State). The FTT was not satisfied that the Appellant enjoyed the lifestyle which might be considered consistent with his being the head of an OCG. These were the two essential reasons for the FTT's ultimate conclusion at §154 (set out above).

This appeal

8. On 15 August 2016, the Secretary of State applied to this Tribunal for permission to appeal against the Decision, contending that the FTT erred in law on the basis of three grounds of appeal, namely:

   (1) applying the wrong standard of proof, thereby amounting to unfair procedure;

   (2) reaching inconsistent findings on key issues, thereby constituting irrationality;

   (3) failing properly to aggregate individual findings of fact, amounting to a failure to have regard to material evidence.

   On 13 September 2016, Upper Tribunal Judge Ockelton granted permission to appeal on these grounds.

Background facts

9. The Appellant came to the UK in 1994, aged 21. He married AW in 2002 and his son was born in 2005 and is now aged 11. In 1995 he purchased a property at [3], title to which remains in the Appellant's name. In 2002 he and his wife purchased a property at [52] and in 2007 they purchased a property at [56]. Each of these were bought with the assistance of a substantial mortgage and title in each was originally in his wife's name. AW was subsequently made bankrupt and title to the latter two properties is now vested in her trustee in bankruptcy.

The Appellant's older brothers and the A OCG

10. The Appellant has three older brothers, who are all now serving lengthy prison sentences. The eldest, AB1, is currently serving a life sentence imposed in 2001 following his conviction for conspiracy to murder, kidnapping and drug smuggling. The second, AB2, successfully appealed against a conviction, and was acquitted on retrial, for offences of heroin trafficking, conspiracy to blackmail and perverting the course of justice. Subsequently he was excluded from the UK and returned to Turkey. He is currently in prison in Turkey in relation to the seizure of a very large amount of cocaine. The third brother, AB3 was sentenced to 30 years' imprisonment in October

2011 following convictions involving drug smuggling and money-laundering. His appeal to the Court of Appeal was unsuccessful. Lord Thomas LCJ found that he had engaged in extensive travel to South America in connection with the drugs conspiracy. The trial judge had been entitled to conclude that AB3 was near the top of the supply chain and distribution organisation.

11. The FTT found (and it is not disputed) that historically the OCG existed and that, at least, AB1 had formerly led it (§57). It further found that there was logic in XY's suggestion that each of the three older brothers had been, in turn, the head of the OCG (§33).

Others involved and the NCA investigation and probe evidence

12. Others relevant to the events in question included in particular B said to be high up in the OCG (see paragraph 7(4) above); C, a more junior member of the OCG and a frequent associate of B; E, F; and D, who was operating an alcohol warehouse business in Bournemouth and said to be working for and on behalf of the Appellant.

13. The NCA had been investigating the activities of B and the Appellant over a number of years and covert listening devices were deployed both in vehicles used by B and at [the property at 52]. These probes recorded a large number of conversations and the transcripts of some of these were given in evidence by XY. For present purposes, the Secretary of State relied upon a number of recorded conversations involving B and C, B and the Appellant and between B, the Appellant, and D as well as others. The principal conversations relied upon took place between January and March 2014.

D: meeting on 29 January 2014 and flight abroad in March 2014

14. In particular on 29 January 2014, a meeting took place at D's warehouse in Bournemouth, during which the Appellant, in the somewhat understated words of the FTT (§51) "vented his spleen in no uncertain terms on D over matters which had gone wrong with the running of the business". B, who had no connection with the D drinks business, attended this meeting.

15. On 3 March 2014, there was an attempt to kidnap D and on the next day D fled abroad. In the days that immediately followed, there were a number of relevant conversations between B and C recorded in B's car.

Shooting at Z Road on 23 May 2014

16. On the evening of 23 May 2014, there was a shooting incident in Z Road in [an] area of North London. It involved one G firing into shop premises. As he ran off, he exchanged fire with an undercover NCA officer. C was present at the shop premises. XY said that the premises were used by members of the OCG and that the shooting was in retaliation for a confrontation between C and others the day before. G was arrested and subsequently tried and convicted of an offence of endangering life (the

original charge had been attempted murder). On that evening and the following day, 24 May 2014, there were conversations, recorded on the probe, between B and the Appellant, in which the shooting was discussed. The content of these conversations formed an important part of the Secretary of State's case.

The Appellant and others charged and tried June 2014 to January 2015

17. In June 2014, the Appellant was arrested and charged with offences of conspiracy to kidnap, conspiracy to blackmail and conspiracy to commit grievous bodily harm, all arising in connection with events in March surrounding D. His co-defendants included B, C and three others. B pleaded guilty in November 2014 and was sentenced to 8 ½ years imprisonment for conspiracy to commit GBH and conspiracy to blackmail. One other defendant pleaded guilty. As regards the Appellant, he was tried only on the count of conspiracy to blackmail at Woolwich Crown Court in January 2015. The jury failed to reach a verdict on that count. Other defendants who were tried were also acquitted.

The Decision in more detail

18. The Secretary of State's case before the FTT, and on this appeal, proceeds in three steps: first, that the OCG had existed for many years; secondly, that the Appellant is closely associated with a number of individuals with convictions for serious criminal offences, and in particular B; and thirdly that the Appellant is the head of the OCG.

19. The Decision considered the factual issues under two heads: first, the existence of the OCG and secondly, the Appellant's involvement in the OCG. In this context, it is noteworthy that the question which the FTT asked itself was whether it was satisfied that the Appellant "currently leads the A OCG or has the capability to revive it" (§41). On this basis, it appears not to have been critical to its decision that it was clear that the OCG existed at that time - only that it had existed in the past and that it could be revived.

The existence of the A OCG

20. As regards the first step, the existence of the OCG, the FTT found clearly that "there has been" a A OCG (or that the A OCG "has existed") for many years (§§23, 37, 38, 146, 154, first sentence) and that it had existed "at least until 2011" (§34). It also rejected, in trenchant terms, the Appellant's denials of its existence. The Appellant did not adequately address the evidence confirming the existence of the OCG. (§§23, 33, 38). Further it accepted that there was a connection between the three older brothers, all of whom had been involved in serious organised crime.

21. The Decision is less clear in its findings as to whether, at the time of the Decision, the OCG still existed. The FTT found this a "far more difficult question to answer" (§147). It certainly did not find that the OCG no longer existed (see the use of the tense "has been"). It found that since 2011 it had probably ceased to engage in the drugs trade

(perhaps implying its continued existence) (§146). G's evidence that the shooting in May 2014 was related to the A OCG, whilst not of itself of great weight, corroborated XY's evidence as to the existence of the OCG (§37). There was evidence to show that it existed, which the Appellant could not explain convincingly, but that evidence did "not necessarily show there was an active [A] OCG". The FTT concluded (§147) that "we have kept an open mind about the possibility that the [A] OCG continues to exist in some reduced form". In its final conclusion (§154), the FTT found "there *may* still be a reduced version of that organisation in existence".

The Appellant's involvement in the OCG

22. As regards the Appellant's involvement in the OCG, in the Decision, the FTT considered, in turn, evidence relating to a number of different issues. For the purposes of this appeal, the issues included the following:

    (1) The Appellant's place in the hierarchy of the OCG
    (2) The Z Road shooting
    (3) Security conscious behaviour
    (4) D
    (5) The Appellant's financial and business position
    (6) Evidence from AS.

(1) The Appellant's place in the hierarchy of the OCG

23. In this context, the Secretary of State relied upon four recorded conversations.

24. The FTT first considered two conversations between B and C on 7 and 10 March 2014, in which someone called "abi" was referred to as paying B and as giving him directions. The Appellant had accepted in cross-examination that B might have been referring to him (§§44 and 48). In respect of both conversations, the FTT concluded that whilst they might support the Secretary of State's case, it could not be said that there were no other possible interpretations of the conversations (§§46 and 51). Overall they did not go very far in establishing that the Appellant was the head of an OCG. These passages are relevant, inter alia, to Ground 1, the standard of proof.

25. The third conversation was B and E discussing what might happen if AB1 came back. In that conversation, B stated "I started this business with "A abi", I will finish it with "A abi" ... there isn't any other." XY's evidence was that that conversation was expressly referring to a power struggle between the two brothers if AB1 did come back. Having rejected the Appellant's alternative explanation of this conversation, the FTT found that it was "clear" that the pair probably were discussing the Appellant's brother and further found that the conversation "links the Appellant directly to the organisation which [AB1]… formerly led" (§57). As explained below, this is an important finding made by the FTT.

26. The fourth conversation was the Appellant discussing with B what XY termed "the structure of the OCG", in which the Appellant made references to a centralised system and him being distanced from it (§58). At §§59 and 60, the FTT rejected the Appellant's alternative explanation for this conversation. However, at §61, it concluded

> *"Nonetheless, we find we can only place limited weight on this evidence. Whilst the appellant's explanation was unsatisfactory, the extract is not sufficiently clear that we can find no other interpretations are possible other than XY's belief that it shows the appellant giving orders as to how the OCG should be arranged so as to ensure nothing that happened was attributable to him" (emphasis added)*

27. In conclusion in this section, (at §§62 and 63) the FTT found that "the Appellant has close associations with [B] and [C]". It also found that the evidence supported the notion that B and C respected the Appellant and took advice from him. However it was unable to say that this advice - or even direction - was more likely than not attributable to the Appellant being the head of an OCG. The Appellant had gained some "notoriety" from his family name which he probably used to exert influence. But there was a wide gap between that and the Appellant currently heading an OCG.

(2) The Z Road shooting

28. There were two recorded conversations, in B's armoured car, between the Appellant and B on 23 and 24 May 2014 in which the news of the Z Road shooting was passed on to the Appellant and the Appellant was interested in the fact that the NCA officers were at the scene. The Appellant accepted that he knew that B's car was armoured, that B had been shot at and that he knew people who had guns (§70). XY's interpretation of the conversation was that the Appellant told B that retaliatory action could be taken against those who had attacked the shop. In his evidence XY characterised this as "permission" (rather than an order) to retaliate.

29. At §74, the FTT stated:

> *"It was put to XY in cross-examination that there was no evidence of any retaliation being taken for the shooting ... . The implication of this line of questioning was that the absence of retaliation was inconsistent with there being a [A] OCG. However, that argument assumes that G was also a gang member. Moreover ... G was arrested at the scene and there was therefore no opportunity to take retaliatory action against him. ... In the circumstances, we do not draw any inference from the failure of the OCG to retaliate. ..."* (emphasis added)

Then at §77, the FTT concluded as follows:

> *"... we note that the appellant was given news of the shooting early on and his interest in it was not amusement. It is curious that the appellant was told about the incident so soon after it happened. However the imputation that the appellant then issued instructions to retaliate is not clearly borne out by the transcripts. Furthermore, given there is no evidence of any retaliation taking place, XY's depiction of the appellant as the head of a ruthless OCG*

prepared to use lethal violence does not gain much support from this evidence" (emphasis added)

This issue is picked up again at §152 (see paragraph 40 below).

(3) Security conscious behaviour

30. The Secretary of State relied upon two conversations said to evidence "security-conscious" behaviour on the part of the Appellant. As to the first, the FTT did not attach much significance to the evidence of the Appellant conducting meetings at or in front of a barber's shop premises, although it could not understand why the Appellant would be holding a large amount of cash belonging to the barber (§79). As to the second, a conversation between the Appellant and B discussing the possibility of a listening device having been installed in B's car, at §82, the FTT found that it was difficult to interpret this "as nothing more than innocent banter", but nevertheless did not consider that the extract contained clear evidence of the Appellant operating as the head of an OCG.

(4) D

31. The FTT found (at §88) that not only B and C were extremely keen to find D to bring him back to the UK (neither were partners in the drinks business), but also that it was more probable than not that *the Appellant* was seeking to trace him and "then to find a way to encounter him". Taking account of the "severe roasting" and "highly offensive, demeaning and provocative language" at the meeting on 29 January 2014, the FTT considered it "more probable than not that the Appellant's intentions went beyond having an ordinary business meeting" with D.

32. However, the FTT concluded that, whatever the Appellant's intentions when he finally met D, it could not say that "this evidence can only be interpreted as demonstrating the existence of an OCG". Whilst the Appellant plainly used extreme verbal intimidation and enlisted the support of unsavoury characters, to force D to change his behaviour, the means deployed to try to get hold of him could not be described as sophisticated. The evidence did not show that the steps taken to trace D "demonstrate the existence of an OCG".

(5) The Appellant's financial and business position

33. At §§91-115, the FTT considered the Appellant's financial position. The Secretary of State's case was that the Appellant was a wealthy man, derived from his position as head of the OCG, and that he had hidden that wealth. This involved considering the source of very substantial mortgage repayments on the two properties in the name of his wife. At §104, the FTT found that there was considerable doubt as to whether [the property at 52] was rented out such that the considerable cash mortgage repayments could be accounted for. On the other hand, whilst the Appellant obviously enjoyed respect among members of the community, the Secretary of State had not shown that

the Appellant was a wealthy man (§109). At §110, the FTT "did not find the evidence suggests it is more probable than not that the Appellant has hidden his wealth".

34. At §§111-112 the FTT went on, however, to express concern about the Appellant's business activities. His evidence that his finances had gone downhill since 2009 was inconsistent with his account of being able to secure large amounts of credit on nothing more than his word. The FTT drew the inference that he had presented an incomplete picture of his business dealings. At §114, the FTT went further and found that it was clear to it that the Appellant was not prepared to provide an accurate picture of his circumstances. At §115, the FTT concluded as follows:

> "*We have carefully considered whether these findings should lead us to conclude that the appellant might be hiding his wealth. However, on balance, we have concluded that they do not*"

It found it likely that the Appellant benefited from a certain notoriety which enabled him to make connections within the Kurdish community and that that might account for his ability to guarantee credit whilst not having any capital assets to provide security.

35. In relation to A Cars Ltd, the Appellant's claimed car business, there was a similar degree of opacity to his evidence regarding its operations. The FTT concluded (at §130) that A Cars Ltd does operate in a legitimate manner, but that it only "ticks over" and it had not been adequately explained why that should be the case. Again, the FTT was "sure the appellant has not provided a complete or accurate account of his activities". However it was not able to find on the balance of probabilities that it was being used to launder money. At its highest, the evidence showed that the Appellant operated on the fringes of legality, rather than that he used the business to provide him with a cloak of legitimacy whilst he operated as head of an OCG.

(6) Evidence from AS

36. XY relied upon a recorded conversation between AS and B on 12 February 2014 as showing that they were discussing the Appellant's criminal activities. B refers to the possibility of the Appellant being put in prison, and AS responds "Unless he and AB3 change their lifestyle they will have problems again". In oral evidence, AS gave an alternative interpretation of the conversation. At §137 the FTT found her evidence highly evasive and rejected her explanation. It continued "We infer from her refusal to explain what she had meant that her concerns were that the appellant would end up in prison because of his criminal activities".

The conclusions

37. At §§144-154, the FTT set outs its conclusions, by reference to the three steps identified in paragraph 18 above. As regards the first step, the existence of the OCG, we have already referred, at paragraph 20 above, to the FTT's conclusions.

38. As regards the second step, the FTT concluded at §149:

> *"We find as a fact that the appellant has many close associations with people with criminal records... We place particular reliance on his close association with [B], who has very serious convictions. We noted that the appellant was in a car with [B] on the night of the shooting and also the next day. We do not accept that they simply knew each other through the community or through their joint participation in the car trade. The recorded conversations between [B] and [AS] and also [B] and [C] indicate that there is a close association between the appellant and [B], even though, as far as we can see, [B] was not involved with the Bournemouth enterprise. The appellant's claim to have broken off relations with [B] when he realised what he had done appeared to us to be highly contrived. We accept XY's depiction of [B] as a violent career criminal. We noted the appellant's admission that [B] used the [A] name."* (emphasis added)

39. As regards the third step, the FTT addressed the question of whether the Appellant was the head of the OCG by reference to two issues: (1) the Appellant's relationship with B and (2) whether the Appellant has significant assets which he had hidden.

40. As to (1), the FTT found at §152:

> *"In our judgment, the most troubling part of the evidence concerns the appellant's close association with [B], who is known to be a loan shark and drug dealer. He uses an armoured car. He moved house after being shot at. He is now serving a lengthy sentence. Mr O'Callaghan described the appellant's relationship with [B] as the "fulcrum" of the respondent's case. We agree it is a central part of it. However, as said, the respondent's case only succeeds if it is shown that [B] acts as the appellant's subordinate. For the reasons given, we are unable to find that is the case. [B] certainly acts subserviently towards the appellant and talks about him to others as if he holds authority within the community. However it is telling that the CPS did not find there was sufficient evidence to prosecute the appellant in connection with the kidnap plot. It is also reasonably clear that [B] recognises the appellant does not approve of drugs dealing. We have found the probe evidence does not show with probability that the appellant was giving order to exact revenge following the shooting. If he did, the unanswered question arises of why no retaliatory action was taken. Again, if there were a chain of command of the kind described by XY, we consider it is likely that three years' surveillance would have revealed far more in the way of examples of orders being given and reported on."*

41. As to (2), at §153, the FTT concluded that it had not been shown that the Appellant held significant assets, repeating its finding that "they did not find it is likely that the Appellant had successfully hidden his wealth". A Cars Ltd was plainly not the Appellant's main means of supporting himself and his family. It had only been given a partial insight into his many business arrangements and the Appellant had not given truthful evidence about his precise circumstances. However the FTT was not satisfied by the evidence that he enjoyed a lifestyle which might be considered consistent with his being the head of an OCG.

The Parties' submissions

(1) The Secretary of State's case

42. The Secretary of State submits that the FTT committed three different types of error of law, as set out in paragraph 8 above. Accordingly, the Decision should be set aside for error of law and this Tribunal should proceed immediately to remake the decision and, on the clear evidence before us, proceed to make a finding that the Appellant was the head of the A OCG.

43. She makes the overarching point that she provided the only credible evidence in the case. By contrast, the Appellant's evidence to the FTT was not truthful and, at numerous junctures, was rejected by the FTT, leading to a general conclusion that he was not credible. Similarly, the FTT found AS not to be a witness of truth. By contrast, Officer XY was found to be a reliable witness whose evidence was fair.

44. As regards ground 1 (standard of proof), although the FTT stated that it was applying the civil standard of proof, the Secretary of State submits that it is plain from a reading of its findings of fact that, in respect of individual issues of fact, it did not do so. In practice the FTT wrongly applied a higher standard of requiring the Secretary of State to establish that there were no alternative explanations for the Appellant's conduct; on occasions, this approached the criminal standard, namely asking whether there was any reasonable doubt as to the Secretary of State's case. The Secretary of State identifies six different instances in the Decision where the FTT applied this higher standard of proof. In particular, this error was made in respect of the references to "abi" in the two conversations in March 2014. Further the FTT's reliance upon police and NCA investigations which did not lead to any adverse conclusions was misplaced, since those all require the criminal standard of proof to be satisfied: see §§89, 130. Indeed this supports the view that the FTT was approaching the standard of proof incorrectly.

45. In this connection, the Secretary of State submits that the FTT's approach to the evidence of Officer XY was inconsistent and wrong. The FTT was wrong to seek corroboration of XY's evidence - it was not required. The FTT accepted that XY had the ability to interpret the evidence, but (at §§46, 62) failed to follow its own direction.

46. As regards ground 2, there are a number of instances in the Decision where the FTT reaches internally inconsistent findings of fact. This means that the FTT failed to deal with the evidence before it and as a result the Decision is irrational and/or perverse. The Secretary of State identifies, in the first place, three particular examples of such inconsistent findings. First, there are contradictory findings (§§74, 77 and 152) in relation to the significance, if any, of the failure of the OCG to retaliate following the Z road shooting incident. Secondly, the direct finding that the Appellant was clearly involved with the OCG and that B and E were discussing a future potential power struggle, between the Appellant and his brother AB1, over the leadership of the OCG (§57) (and also §63) was inconsistent with the ultimate conclusion that he was not the

head of the OCG (see §62 last sentence and §154). Thirdly, on the one hand, the FTT concluded that the Appellant had not been prepared to give an accurate picture of his financial position, and yet on the other hand, it found that the evidence did not lead the FTT to conclude that the Appellant "might be hiding his wealth".

47. As regards Ground 3, the FTT failed to aggregate its various findings on the different strands of activity, and thus failed to have regard to material evidence. For example, having found that the Appellant enlisted the support of unsavoury characters, such as B and C in his efforts to force D to change his behaviour, the FTT did not go on to consider why he did this (§§88, 89). It should have considered this together with other evidence and/or findings where the Appellant was giving directions to B and C, his ability to guarantee credit for international suppliers, with his travelling in B's armoured car and his acquaintance with people who had guns. The duty of the FTT was to consider whether the totality of the evidence, when judged in the round, demonstrated that the public policy and public security grounds were made out.

48. Further, the FTT failed to reach conclusions on the evidence**.** For example, having found that it was curious that the Appellant had been informed of the Z Road shooting so soon after it had happened, it failed to consider why the Appellant was informed. Further, having found that the Appellant was closely associated with B and that that was troubling, the FTT did not go on to consider what other explanation there might have been for that relationship other than his position as head of the OCG. Having found (§137) that AS believed that the Appellant was involved in criminal activities, the FTT did not go on to consider or enquire what those criminal activities were. In this regard, the FTT wrongly resolved the appeal by reference to the burden of proof alone rather than evaluating the evidence and reaching firm conclusions.

The Appellant's case

49. The Appellant submits that the Secretary of State's case amounts to no more than disagreement with findings of fact, which were reasonably and lawfully made. These disagreements do not amount to errors of law. It is a challenge of fact, dressed up as a challenge of law. This Tribunal should not engage in a microscopic search for error, and any specific errors identified by the Secretary of State are not material errors of law.

50. The Secretary of State's case is based centrally on the probe evidence. The limited amount of probe evidence relied upon has to be seen in the context of many hours of recordings made over three years. Yet those recordings contained no direct evidence of the Appellant issuing commands or criminality, which would have been expected if the Appellant had been head of the OCG.

51. Moreover, the evidence before the FTT, in particular the same surveillance evidence, had been considered by other authorities; yet this has not resulted in any finding adverse to the Appellant. The Appellant has not been convicted of any criminal offence and despite a lengthy investigation in relation to money laundering and

proceeds of crime, no further action was taken. In relation to the prosecution concerning D, the prosecution did not proceed against the Appellant with charges relating to kidnap or GBH. It is not in issue that the Appellant had been found not guilty at that trial, at which it was never alleged that he was involved in an OCG. (We note that, at §90, the FTT gave little weight to this contention). Further, the prosecution of *B* was not based upon the kidnapping or GBH having been ordered by the Appellant.

52. As regards B, there is evidence that he was engaged in criminal activities other than on the Appellant's instructions and thus the premise of the Secretary of State's case falls away. There were others who were "abi".

53. The Appellant's evidence was accepted by the FTT on the core issues, in particular that he did not enjoy the proceeds of crime, that he was in debt, that he had taken out loans, that he did not hold title to [the property at 3] and that he ran a car business. The adverse credibility findings were on peripheral issues only. As regards AS, her belief does not establish that the Appellant was head of the OCG. The criminality was business notoriety. There are many instances where the FTT did not accept XY's evidence, particularly in relation to the Appellant's financial and property position. The jury did not believe G.

54. As regards Ground 1, the passages in the Decision relied upon by the Secretary of State do not establish that the FTT applied the wrong standard of proof. For example, the other interpretation in paragraph 61 is that the Appellant was a businessman who trades on his notoriety, and makes money out of using his name and introducing people. This does not amount to being head of an OCG. XY was not involved in the making of the probe recordings and his evidence cannot be determinative of the appeal. As regards corroboration of his evidence, the FTT was correct to require evidence to substantiate what was "XY's belief". The FTT had to do its own assessment of XY's evidence and its approach at §46 was correct.

55. As regards Ground 2, upon detailed consideration, the suggested inconsistencies are not inconsistencies at all. There is no inconsistency between §74 and §77 of the Decision. The Tribunal found that there was no retaliation for the Z Road shooting and no order for any such retaliation and thus that this did not assist in establishing that the Appellant was head of an OCG. As to §57 the fact that the Appellant may have had some involvement with the OCG and a link with his brother, is not sufficient to establish that he was the head of such an OCG. As regards hidden wealth, the FTT's finding was properly based, in part, upon the conclusion of the police investigation.

56. As regards ground 3, first, the FTT was not satisfied that the OCG continued after 2011. Secondly, the findings of the Appellant's friendship with B and his discussion of the shooting do not establish the Appellant's involvement in the OCG. The particular findings relied upon by the Secretary of State do not add up to "command and control". The Appellant's notoriety was linked to the fact that the family was well-known in the Kurdish region. Being well-known in the community does not mean

that they were involved in criminal activities. Even if some of the Appellant's activities were "dodgy" and not necessarily legitimate, this is not the same as being head of an OCG. The FTT carefully considered and analysed all the evidence, and considered, in respect of each item, whether or not it established that the Appellant was the head of the OCG. It then considered the evidence in the round, asked itself the correct question applying the correct standard of proof and found that the Secretary of State had not made out her case. If and in so far as the FTT resorted to the burden of proof to decide the issues, it was entitled and correct to do so. The FTT appropriately considered and weighed all the evidence and concluded that, ultimately, it did not establish that the Appellant was the head of the OCG.

57. Finally in any event, any errors of law were not material; the Tribunal would still have come to the same conclusion. On any view, the Secretary of State's evidence does not establish that the Appellant is head of the OCG.

Relevant legal background

Foreign nationals: The right to residence and the power to deport

58. The relevant provisions of the EEA Regulations are set out at §§155 and 156 of the Decision. In summary, under regulation 19(2) of the EEA Regulations, an EEA national or a family member of an EEA national may be removed from the United Kingdom if the Secretary of State has decided that the removal is justified on grounds of public policy, public security or public health in accordance with the provisions of regulation 21. Regulation 21 sets out a number of principles governing such removal decisions, particularly where the decision is on grounds of public policy or public security. In particular the decision must be based on the personal conduct of the person concerned which must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society: regulation 21(5) and in particular regulation 21(5)(c). However, where a person has a permanent right of residence under regulation 15, regulation 21(3) provides for a special rule, namely that he cannot be removed except on serious grounds of public policy or public security. Under regulation 15(1)(b) a family member of an EEA national who is not himself an EEA national but who has resided in the United Kingdom with the EEA national for a continuous period for five years has such a *permanent* right of residence.

Error of law

59. Appeal to this Tribunal from a determination of the FTT under section 11(2) Tribunal, Courts and Enforcement Act 2007 lies on a point of law only: see rule 24(5) Asylum and Immigration Tribunal (Procedure) Rules 2005. The appellant must show that there was an error of law on the part of the FTT in its determination.

60. We have been referred to a number of authorities on what might amount to a relevant error of law for these purposes: *Edwards v Bairstow* [1956] AC 14; *R(Iran) and others v Secretary of State for the Home Department* [2005] EWCA Civ 982 at §9 per Brooke LJ;

Secretary of State for the Home Department v Nixon [2014] UKUT 00368 (IAC); *Das Gupta v Entry Clearance Officer, New Delhi* [2016] UKUT 00028 (IAC) at §17 . In summary, the following are the types of error of law, which are particularly relevant to the present appeal:

(1) failure to have regard to material evidence
(2) failure to take into account and/or resolve conflicts of fact or opinion on material matters
(3) taking into account and being influenced by immaterial evidence or matters
(4) unfair procedure: procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings
(5) misunderstanding or misconstruction of the law
(6) making a material misdirection of law on any matter
(7) irrationality (or perversity); perverse or irrational findings on matters which were material to the outcome (including material findings of fact for which there was no evidence).

61. As regards irrationality or perversity, in *Das Gupta* this Tribunal reasserted the importance of the approach in *Edwards v Bairstow*, in which various formulations were postulated; in particular Viscount Simonds described such a case as one where the lower court or body "have acted without any evidence or upon a view of the facts which could not reasonably be entertained". In our judgment this was not an exhaustive definition of perversity and we accept the Secretary of State's submission that a decision which contains findings of fact which are internally inconsistent, and material, findings is one which is irrational or perverse. Further, findings which are "contrary to the evidence" would constitute perversity or failure to have regard to material evidence.

62. However failure to be precise in language is not an error of law, if the reasoning is identifiable from consideration of the judgment as a whole: *Retarded Children's Aid Society v Day* [1978] 1 WLR 763 at 769. Judicial restraint should be exercised when a tribunal's reasons are being examined, and the appellate court should not assume too readily that the tribunal misdirected itself just because not every step in its reasoning is set out: see *R (JR Jamaica) v Secretary of State for the Home Department* [2014] EWCA Civ 477 at §9 (a case involving a challenge to findings on witness credibility, which does not arise in the present cases). Further the appeal court should not undertake a "microscopic search" for error: *NH(India) v Entry Clearance Officer* [2007] EWCA Civ 1330 at §28.

63. Finally, the error of law must be material, in the sense that it *might* (rather than must) have made a difference to the outcome before the FTT: *Nixon*, §5 and also, by analogy, *IA (Somalia) v Secretary of State for the Home Department* [2007] EWCA Civ 323 at §15 per Keene LJ, in relation to a public law challenge to an administrative decision.

64. As regards the *burden of proof,* in resolving disputed issues of fact, a court should conclude that it cannot decide one way or the other and thus rely on the burden of

proof (i.e. that the case is not proven) *only* exceptionally and as a last resort. In *Verlander*, the nature of such an exceptional case was described as being no more than one where the available evidence is conflicting, uncertain or falling short of proof. Nevertheless it is clear that a court is under a duty to strive to make a finding one way or the other, and, if it does resort to the burden of proof, it must give an explanation why and what efforts it has made to reach clear findings: see *Stephens v Cannon* [2005] EWCA Civ 222 at §§46 and 47; *Verlander v. Devon Waste Management Ltd* [2007] EWCA Civ 835 at §24; and *Daejan Ltd v Benson and others* [2011] EWCA Civ 38 at §86.

65. As regards the *standard of proof*, in relation to past acts, the standard is the normal civil standard of the balance of probabilities. Any material relevant to meeting that civil standard of proof may be received by the FTT whether it is hearsay or a summary of information held by others, but the weight attached to it will depend on its nature, the circumstances in which it was collected or recorded, the susceptibility of the information to error and the extent to which the appellant is able to comment or rebut it: see *Bah v. Secretary of State for the Home Department* [2012] UKUT 00196 (IAC) at §§60-66, citing *Secretary of State for the Home Department v Rehman* [2001] UKHL 47 at §§22-23.

Discussion and analysis

66. Whilst the Secretary of State's challenge is made by reference to three different categories of error of law, we approach the question before us by reference to particular substantive findings, central to the Decision and which are the subject of her criticism.

67. The issue in the case was whether the Appellant was the head of the OCG. The FTT identified two sub-questions, largely in line with the Secretary of State's "stepped" approach: (1) whether the OCG itself continued to exist at the relevant time and (2) the Appellant's involvement in the OCG. Although resolution of the step (1) may not be critical, we address it before addressing the central question of the Appellant's involvement - both because logically it comes first and because the FTT addressed it first. Before addressing either, however, we consider two preliminary general points.

The FTT's approach to XY's evidence

68. XY's evidence comprised two elements: first, adducing the evidence of the transcripts themselves, and second, giving his personal interpretation of the words used in the transcripts and the conclusions which he deduced from them. His witness statement essentially sets out his belief or opinion, based on the transcripts and other evidence, and his experience, that the Appellant is the head of the OCG. At §25, the Tribunal sets out its approach to XY's evidence. It accepted that he has "great expertise", albeit that he is not independent. It commended the manner in which he gave his evidence, and concluded that his answers assisted the FTT to understand the probe evidence.

69. The Secretary of State's complaint however is that, when it came to consider particular aspects of the probe evidence, the FTT did not give due weight or indeed any weight

to XY's interpretation of that evidence or to his opinions more generally. In particular, she criticises the FTT's refusal to accept XY's interpretation of the first conversation between B and C on 7 March 2014 (§46) and relegates XY's evidence to mere "theory".

70. We accept that XY's own interpretation of the transcripts and his beliefs as to what they demonstrated are, of themselves, direct evidence. We further accept that given his expertise and the fact that the FTT considered him to be fair and balanced witness, XY's evidence was properly to be accorded substantial weight. Moreover, by contrast, the FTT found the Appellant's evidence on particular points to be evasive, unhelpful and obstructive, that he had not given truthful evidence and that it had serious doubts about his overall credibility (§§38 and 154). Finally, we accept that there is no requirement for XY's evidence to be corroborated.

71. Nevertheless, we do not consider that the FTT erred in its approach to XY's evidence. Ultimately his evidence of interpretation of the transcripts and ultimately as to the Appellant's position in the OCG was opinion evidence (admissible due to his expertise). The FTT was not bound to accept that evidence, and was entitled, and indeed required, to reach its own conclusions and interpretations as to what the transcripts and XY's evidence established. A court must make its own assessment of the evidence, including any expert opinion evidence. That is what the FTT did here. In our judgment, the FTT's approach to XY's evidence at §46 and at §62 was neither inconsistent with what it said at §25 nor incorrect. Whilst the evidence adduced by the Appellant may have had little or no weight, nevertheless the FTT was entitled to reach its own conclusions.

Standard of Proof: Ground 1

72. As regards the standard of proof in general, the FTT properly stated at the outset the correct, civil, standard of proof to be applied to resolve the issue. Moreover, it is the case that at various points in the Decision, the FTT correctly directed itself to that civil standard of proof in relation to particular issues, and regardless of which way it decided that particular issue: see for example §§62 ("more likely than not"), 88 and 110 ("more probable than not"), and 130 ("on the balance of probabilities").

73. However, at other points, the FTT did, in our judgment, depart from this approach. In particular, where the FTT declined to make a finding adverse to the Appellant on the basis that there is or may be a *possible* alternative explanation or interpretation (or it could not find that there is no such possible alternative), in our judgment, the FTT was imposing upon the Secretary of State a standard of proof which is higher than the standard of "more likely than not". (Whilst it is the case that at §46 the FTT refers to "other possible *or likely* interpretation", this is, at best, ambiguous, and does not indicate a clear application of the correct standard, particularly given the other examples).

74. Of the six examples of error, relied upon by the Secretary of State, three of them arise in the FTT's assessment of the recorded conversations relating to the Appellant's place

in the hierarchy of the OCG. We address this further below. As regards the other instances of error relied upon the Secretary of State, we do not agree that the references (§38) to matters "not inevitably following" are, in that context, a purported application of a standard of proof at all. On the other hand, we agree that at §§89 ("the only interpretation") and 147 ("do not necessarily show"), the FTT fell into the same error of requiring proof to a higher standard than that of the balance of probabilities. To that extent, there was an error of law.

The existence of the OCG

75. The FTT considered this issue at §§21-37, 146-147 and 154. The FTT found clearly that the OCG "has existed" (at least until 2011). However, as to whether the OCG continued to exist, in our judgment, the FTT made no clear finding one way or the other: see §§147 and 154 and paragraph 21 above. (At certain points, the implication of particular findings is that the FTT considered it did still exist: see, for example, §146; however this is not sufficiently clear to amount to a finding).

76. First, the FTT considered that, in order to determine the issue before it, it was not necessary for it to make a clear finding one way or the other as to whether the OCG did still exist, as long as the possibility existed of the Appellant being able to revive it: (§41) see paragraph 19 above. We do not consider that the FTT erred in reaching this conclusion.

77. Secondly, if a decision, one way or the other, as to whether the OCG continued to exist was necessary for the FTT to determine the case before it, then in our judgment, the FTT erred in law, in failing to resolve a disputed issue of fact. The FTT made no such finding, beyond finding that the OCG might still exist: "keeping an open mind" does not amount to a finding. The FTT failed to make a decision altogether. Indeed it did not go so far as to make a finding of "not proven" (i.e. that it was not satisfied on the balance of probabilities that the OCG still existed).

78. Thirdly, at various points the FTT is not clear as to whether a particular issue goes to the existence of the OCG or to the Appellant's involvement in the OCG: for example, at §§74 and 77, 89, 147. Finally, as indicated above, in its assessment (at §147) of SO's references to "A", the FTT applied a standard of proof that was too high. This was a further error of law.

The Appellant's involvement in the OCG

(1) Conversation between B and E: Decision §57

79. In its section on the Appellant's "place in the hierarchy of the OCG" (§§41-64), the FTT addressed four recorded conversations. The third of those conversations was the one between B and E on 13 February 2014, considered at §§52 to 57, in which B confirmed his loyalty to the Appellant, if AB1 were to come back: see paragraph 25 above. XY's

belief was that that conversation referred to a power struggle between the two brothers and showed that the Appellant was head of the OCG (XY statement §16).

80. The FTT rejected the Appellant's explanations of the conversation. It made the important findings (§57) that that discussion *did* relate to AB1, that AB1 was formerly the head of the OCG and that the Appellant himself was directly *linked to the OCG* which had been led by AB1. Significantly, the FTT added that the transcript went further than the two conversations between B and C "in confirming XY's belief about the hierarchy". In other words, it supported the conclusion that the Appellant was head of the OCG.

81. In its specific conclusions on this section, at §63, and despite its findings in §57, the FTT nevertheless rejected the proposition that the Appellant was head of the OCG. Further, at §§149-153, the FTT reached its final conclusions on the Appellant's involvement with the OCG, by drawing together and relying upon its various findings, including those covered in its section (§§41-64) on the Appellant's "place in the hierarchy of the OCG". In those conclusions, the FTT referred to three of the four recorded conversations: the two March conversations between B and C referring to "abi" (§§43-51), and the 18 February conversation between the Appellant and B (§§58-61): see paragraphs 24 and 26 above. However, in those conclusions, the FTT makes no reference at all to B/E conversation.

82. In our judgment, this is a significant omission. The findings at §57 are clear and important findings by the FTT itself of a connection between the Appellant and the OCG. Further, in its reference to loyalty to the Appellant in the event of the return of AB1, the former head of the OCG and given the context of the FTT's own findings, the narrative of the conversation is, at the very least, highly relevant evidence of the Appellant's leading position in the OCG.

83. Whilst we accept the Appellant's argument that the FTT's finding at §57 is not in itself a finding that the Appellant was the head of the OCG, it is certainly more than a "potential suggestion" of "some involvement" in the OCG. On the FTT's own view, this was the strongest evidence of the Appellant's position in the hierarchy, and yet it was not even mentioned in its final assessment of this issue. Even if the Appellant is correct that strictly this does not amount to a directly inconsistent finding, these were important evidence and important findings. We conclude that, in this regard, the FTT wrongly failed to take account of material evidence and of its own material findings.

84. In our judgment, in reaching its conclusion that the Appellant is not proven to be the head of the OCG (§§152-154), the FTT failed to take into account the evidence of the conversation between B and E discussing a power struggle between the Appellant and his brother AB1, and its own findings in relation to that conversation. The FTT thereby erred in law, by failing to take account of material evidence and/or failing to take into account facts on material matters.

(2) Retaliation for the Z Road shooting: Decision §§74, 77 and 152

85. The Appellant's involvement in events immediately following the Z Road shooting formed a central part of the FTT's consideration of the issue: see §§150 and 152 and 67 to 77. XY's evidence was that the conversation between the Appellant and B on the following day showed, inter alia, that the Appellant had "given permission" for members of the OCG to fight those who had carried out the attack. A central issue was why, in fact, there had been no retaliation.

86. At §77, the FTT found that the conversation did not clearly show that the Appellant "had issued instructions to retaliate". To similar effect, in its final assessment at §152, the FTT concluded that the evidence did not show that the Appellant was "giving orders to [B] to exact revenge". In reaching these conclusions in both passages, the FTT further expressly relied upon the fact that there had been no retaliation in fact. Thus, in these two paragraphs, the absence of retaliation was a point which favoured the Appellant's case and which militated against the Appellant being head of the OCG.

87. However, at §74, the FTT had directly considered the Appellant's argument that the absence of retaliation was inconsistent with the existence of the OCG and expressly declined to draw, from that absence, any inference in the Appellant's favour.

88. In our judgment, the FTT's positive reliance (at §§77 and 152) upon the absence of retaliation is inconsistent with its earlier finding that the absence of retaliation did not assist the Appellant's contention. These are inconsistent findings on an issue which was highly material to the FTT's ultimate conclusions. As such, this was an error of law. The "unanswered question", referred to in §152, of why there had been no retaliation had in fact been answered by the FTT itself at §74: G had already been arrested.

89. As to the Appellant's contentions, first, we do not accept the distinction which he seeks to draw between *the fact* that there was no retaliation (addressed in §77) and *the reasons why* there was no retaliation (addressed in §74). Both §§74 and 77 (and indeed §152) address what, if any, conclusion can properly be drawn (in relation to the existence of the OCG) from the fact of the absence of retaliation. Secondly, whilst it is the case that at §§77 and 152 the FTT find that no "order" to retaliate was given, an important part of the underlying reasoning for that finding is the absence of retaliation in fact.

90. Finally, we point out, in agreement with the Secretary of State, that, in its finding, the FTT appears to have mischaracterised XY's evidence and thus the Secretary of State's case, as being that the Appellant "issued instructions" and/or "gave orders" to retaliate when his evidence was that the conversation showed that he was merely "giving permission" for retaliation. There is force in the submission that the FTT was finding against the Secretary of State upon a basis never advanced. The difference between the two might well have been material to the FTT's conclusions on this issue, since it might have led it to fail to consider the implications for its conclusion on the Appellant's role in the OCG.

(3) The relationship between Appellant and B

91. At §152, the FTT found that B was not proven to have been acting as the Appellant's *subordinate*. This was a crucial step in reaching its conclusion that the Appellant had not been proven to be head of the OCG.

92. However, in the course of its analysis, the FTT made the following findings:

    (1) B was a violent career criminal, a loan shark and a drug dealer (§§149, 152)

    (2) The Appellant had a close association with B, which the FTT found to be the most troubling part of the evidence (§§149, 152).

    (3) The Appellant:

        (a) knew that B used an armoured vehicle and had been shot at, and that he used the A name.

        (b) enlisted the support of unsavoury characters, including B (§89).

    (4) B, in turn respected, sought and took advice from the Appellant (§62), and further he acted "subserviently" to the Appellant (§152).

93. Finally, and importantly, the FTT further found that the "troubling" close association between the Appellant and B did not arise simply "through the community or through their joint participation in the car trade". However, the FTT did not explain how, or decide the basis upon which, that close association *did* arise. Given the FTT's own characterisation of that issue as being "troubling", in our judgment that was a highly material issue and one upon which the FTT should have made a finding. Thus the FTT erred in law, in not resolving an issue of fact in relation to a material matter.

94. In argument, the Appellant suggested that the association arose from a business connection, but was unable to say whether it was legitimate or, on the other hand "dodgy" and "criminal". Regardless of that, the FTT made no relevant finding to that effect.

95. Secondly, in failing to consider, together and in the round, the findings in paragraph 92(1) to (4) above, we consider that the FTT erred in law, by failing to aggregate its individual findings of fact, amounting to a failure to have regard to material evidence and/or findings.

96. Thirdly, as regards the issue of being "subordinate", we consider that the FTT erred in law in relation to the two of the recorded conversations where B uses the term "abi". In its conclusions at §§46, 51 and 62, the FTT failed to take account of the Appellant's own admissions (§§44, 48) that the references in those conversations to "abi" might have been reference to him. That amounted to a failure to take account of material

evidence. Further, the FTT failed to make a clear finding, one way or the other, as to what or who was being referred to as "abi". It is not clear from §§49 to 51 whether the FTT concluded that (1) it was not satisfied that "abi" was not referring to someone other than the Appellant or rather that (2) "abi" was referring to the Appellant, but that merely seeking advice was not sufficient to show that the Appellant was head of the OCG. Finally, in its assessment of these conversations, the FTT applied a standard of proof which was too high. In particular at §51, the FTT effectively required the Secretary of State to demonstrate that no other interpretation of the 10 March 2014 conversation (other than that B was acting subserviently to the Appellant) was *possible*. As explained above, that standard of proof is higher than the balance of probabilities and is akin to applying the criminal standard of being "sure".

(4) Hidden wealth

97. The second, key, element in the FTT's conclusions on whether the Appellant was the head of the OCG was whether he enjoyed a lifestyle consistent with such a position. It concluded that that on the evidence he did not.

98. The Secretary of State's case was that the Appellant had managed to hide his wealth. On that issue, after considering his property interests, his business activities and specifically his car business, the FTT did not find it likely that he had hidden his wealth: §§110, 115 and 153.

99. However in the course of its discussion (at §§91-120), the FTT made the following *findings*:

    (1) Whilst mortgage payments totalling almost £100,000 had been paid in respect of two properties, the FTT did not accept the Appellant's case that those payments had been made from cash derived from rental income from [the property at 52]: §104.

    (2) As regards his business activities, the Appellant had presented an incomplete picture of his business dealings (§112) and had not been prepared to provide an *accurate* picture of his circumstances (§114).

    (3) As regards A Cars, there was also opacity in the Appellant's evidence and an absence of evidence to support his account of running a legitimate car business. The Appellant had not explained why the business only "ticks over". The Appellant's evidence to rebut the case that A Cars was a screen for other activities only served to undermine his account of it being a legitimate business. Again the FTT was sure that the Appellant had not provided a complete *or accurate* account of his activities: §§127, 128 and 130. A Cars was not the "main means" of support for himself and his family.

In its conclusion at §153, the FTT was "sure" that the Appellant was involved in many business arrangements of different kinds and it had only been given a partial insight into these.

100. In our judgment, the FTT found clearly that the Appellant had not disclosed, and, what is more, had been inaccurate in disclosing, the extent of his financial assets, his sources of income and his business arrangements. He had thus hidden his wealth, at least *from the FTT*. It does not necessarily follow that those assets had in fact been hidden more generally, in the sense that they could not be found by any third party. Nevertheless, in the absence of an explanation, it is a reasonable inference from the FTT's findings, given the context, that he had so hidden them. The FTT provided no adequate explanation as to why it did not draw that inference from the Appellant's failure to provide to it a complete or accurate picture of his finances. The only explanation given - notoriety and connections within the community, and operating on the fringes of legality - merely poses further questions as to what that involved; questions which the FTT did not answer. In our judgment, the findings in paragraph 99 above, are inconsistent with the key finding to the effect that the Appellant had not hidden his wealth. In this regard, the FTT erred in law.

101. We accept that the FTT's conclusion on this issue relied substantially upon the fact that the NCA investigation resulted in no action being taken (§§110, 130, 153). In our judgment, that was not determinative of the issue of whether wealth had been hidden nor does it detract from our conclusion that the FTT's findings were inconsistent.

(5) Other matters – D and AS

102. Finally, we consider that, in reaching its conclusions, the FTT failed adequately to take into account material evidence and findings in relation to two further matters, along with its other findings. First, in relation to D, having found that the Appellant was seeking to trace him and that his intentions, once found, "went beyond" having an ordinary business meeting, the FTT failed to reach a conclusion as to what in fact the Appellant's intentions were or why he was involving unsavoury characters. Moreover, as pointed out in paragraph 74 above, in considering that question, the FTT applied a standard of proof higher than the civil standard. Secondly, the FTT found as a fact that AS believed that the Appellant was involved in criminal activities: §137. Yet, the FTT did not go on to consider what those criminal activities were or might have been. This is a further example of the FTT erring in law, by failing to aggregate its individual findings of fact, amounting to a failure to have regard to material evidence and/or findings.

Materiality of the errors

103. As to the impact, upon the Decision, of the errors of law which we have identified, it may be that, each individual error, had it occurred in isolation, might not have led the FTT to reach a different conclusion. However we are satisfied that, taken together, had each of the errors not been made, the FTT's decision on appeal *might* have been

different and that the FTT, at the very least, might have concluded that the Appellant was the head of the OCG. In particular, the issues of retaliation and of the close association between the Appellant and B were at the heart of the FTT's decision and the errors of law we have found in those connections are more than capable of having affected the outcome.

Conclusions

Decision to be set aside

104. We conclude that in reaching its conclusion at §154 of the Decision, the FTT erred in law in the respects identified in paragraphs 74, 77, 78, 84, 88, 93, 95, 96, 100 and 102 above, and that those errors were material errors.

105. Accordingly, we will order that the Decision be set aside.

Re-making

106. We note the Secretary of State's submission that, once the legal errors in the Decision have been identified, the only finding that is consistent with the evidence is that the Appellant was the head of the OCG and that we should remake the decision. However the Appellant has indicated that that it wishes to draw attention to further documents, not considered at the error of law hearing, and to address other issues of fact. We consider that, before proceeding to remake the decision, there should be an opportunity for further submissions to be made, both in respect of any matters not previously canvassed and of points which arise out of this judgment. We will hear the parties as to the most appropriate manner in which such submissions should be made.

Notice of Decision

The appeal is allowed. The decision of the First Tier Tribunal is set aside to be remade.

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 his 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 Date

The Honourable Mr Justice Morris

ANNEX B

First-tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00253/2015

THE IMMIGRATION ACTS

Heard at Hatton Cross
On 11, 12 & 13 April and 13 June 2016

Decision & Reasons Promulgated:

……

Before

THE PRESIDENT, MR M A CLEMENTS
JUDGE OF THE FIRST-TIER TRIBUNAL FROOM

Between

A
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D O'Callaghan, Counsel, instructed by Irving & Co, Solicitors.
For the Respondent: Mr J Hall QC and Mr D Blundell, Counsel, instructed by the Government Legal Department.

DECISION AND REASONS

The background

1. The appellant is a citizen of Turkey. He has appealed under Regulation 26 of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations") against a decision of the respondent, dated 16 June 2015, to make a deportation order against him under section 5(1) of the Immigration Act 1971 on the ground that section 3(5)(a) applies. The appellant is the family member of an EEA national and the respondent has decided that his removal is justified on grounds of public policy and public security by reference to Regulations 19(3)(b) and 21 of the EEA Regulations.

2. The appellant has no convictions. The respondent seeks to justify her decision on the basis the appellant is the head of an Organised Crime Group ("OCG")[1] which has, during the period of the appellant's leadership, engaged in serious organised violence, blackmail and money-laundering. As such the appellant is considered to represent a serious threat to society and his removal is considered to be justified on serious grounds of both public policy and public security. The appellant denies being the head of an OCG and also denies the existence of the OCG.

3. Deportation action commenced on 11 February 2015 with a letter informing the appellant of his liability to deportation on account of his "longstanding involvement and leadership roles in organised crime". The respondent relied on the appellant's relationship with one B, who was believed to be the appellant's "principal lieutenant" in relation to his organised crime activities. A schedule to the letter contained transcripts of aural probe recordings setting out conversations to which the appellant was a party[2]. This evidence had figured in the trial of the appellant which had taken place at Woolwich Crown Court in January 2015. The appellant was arrested in June 2014 and originally charged with three offences: conspiracy to kidnap, conspiracy to blackmail and conspiracy to commit grievous bodily harm. Only the first of those charges proceeded to trial[3]. The appellant was acquitted after the jury failed to reach a verdict and no re-trial was ordered. His co-defendants were B, H, C, J (sometimes [only known by his second name]) and F[4]. B pleaded guilty on 21 November 2014 to two counts of conspiracy to commit GBH and blackmail[5]. He was sentenced to a total 8½ years' imprisonment. F also pleaded guilty and was sentenced to 3 years' imprisonment. The trial of J was discontinued. The other defendants were found not guilty. Another person, K, was included in the indictment but for some reason we have not been told his prosecution did not proceed with the others.

4. The appellant's solicitors made representations as to why the appellant should

[1] Specifically, the A Organised Crime Group.
[2] RB5, Tab 26, p 1265-1272.
[3] Para 16, statement of the appellant, AB, Tab A, p 10.
[4] RB4, Tab19A, p 1057
[5] Para 11, first statement of XY, RB1, Tab 1, p 4.

not be deported[6]. The appellant's solicitors pointed out the appellant had been acquitted and that the reasons for deportation relied on the same matters alleged in the trial. However, the respondent made the decision to remove him on 16 June 2015 and a deportation order was signed[7]. The main points from the decision letter[8] were as follows:

- the appellant qualified for consideration under the EEA Regulations because he was married to an Irish national;
- the appellant had resided in the UK continuously for ten years in accordance with the EEA Regulations;
- the appellant had permanent residence for the purposes of the EEA Regulations;
- his removal was justified on serious grounds of public policy and public security;
- notwithstanding his acquittal, the appellant represented a genuine, present and sufficiently serious threat to the public to justify his deportation;
- removal was proportionate;
- there was insufficient evidence to show the appellant enjoyed a family relationship with his son;
- the appellant's son's best interests required him to remain living with his mother;
- there was insufficient evidence showing the appellant had a genuine and subsisting relationship with his wife;
- the appellant's wife and son could adapt to living in Turkey.

5. The grounds of appeal filed by the appellant's solicitors argued principally that the appellant's decision was not in accordance with the EEA Regulations, the appellant having been acquitted after a trial[9]. The grounds argued the decision also breached Article 8 of the Human Rights Convention because of the appellant's valuable family life with his wife and son, whose best interests required him to remain with both his parents[10]. The appellant does not rely on protection grounds.

6. A lengthy case management review hearing was held on 13 November 2015. The Tribunal's Decision on Applications for Directions and Amended Directions is attached as an annex to this decision for ease of reference.

The hearing

7. The respondent filed five lever arch folders of documents in advance of the hearing and the appellant one. Further additional documents were filed during

[6] RB5, Tab 27, p 1274-1277.
[7] RB5, Tab 28, p 1278.
[8] RB5, Tab 28, p 1279-1286.
[9] RB5, Tab 29, p1287-1288.
[10] As a result of the amendments to Schedule 1 of the EEA Regulations made on 6 April 2015, the sole permitted ground of appeal is that the decision breaches the appellant's rights under the EU Treaties in respect of entry to or residence in the United Kingdom.

the hearing. Following an adjournment and consequential directions, the respondent filed a sixth lever arch file containing additional transcript evidence[11]. The appellant filed a second bundle, containing a second witness statement and additional documents. In view of the volume of papers produced this decision necessarily sets out only the most important parts of the evidence but this should not be interpreted as meaning other parts were not considered before this decision was made. We have read all of it.

8. Over the course of 11, 12 and 13 April we heard oral evidence from XY, an officer of the National Crime Agency ("NCA"), the appellant, the appellant's wife, AW, and the appellant's sister-in-law, AS. We have recorded the oral evidence in our record of the proceedings. Again, we shall only set out the most important parts of that evidence in this decision but we have considered all of it.

9. One of the issues discussed at the case management review hearing was the extent to which fairness required the respondent to disclose transcript evidence beyond the excerpts contained in the first witness statement of XY and amended in his third statement. The application made on behalf of the appellant had initially been for complete disclosure of the surveillance evidence. The Tribunal ruled that it was disproportionate to direct complete disclosure given the quantity of evidence which would be produced by such an exercise[12]. However, during cross-examination of XY it became apparent that there were real concerns about the manner in which the transcripts had been edited and set out in XY's statement, even after attempts had been made to resolve this issue by the service of his third statement. In the light of the Tribunal's observations to this effect, Mr O'Callaghan applied for an adjournment to enable additional limited disclosure of the transcript evidence to be made. Mr Hall QC did not oppose the application and an agreed order for directions was prepared. This is also annexed to this decision.

10. At the resumed hearing, neither the appellant nor XY were recalled. We heard closing submissions and reserved our decision.

Uncontentious matters

11. The following matters are set out here by way of background. It is not considered that they were disputed.

12. The appellant lived in Turkey prior to his arrival in the UK on 5 April 1994, at the age of 21. He is Kurdish. His family home is in Lice in Diyarbakir Province, south-eastern Turkey. He held leave to remain in the UK as a student until 30 March 2001. An out of time application for further leave, submitted on 17 May 2001, was eventually refused on 12 April 2005 at which time he was served with

[11] In this Decision we shall refer to the respondent's bundles as 'RB1' to 'RB6' and to the appellant's bundles as 'AB1' and 'AB2'.
[12] Para 9(1) of the Decision on Applications for Directions (Annex 1 below).

a notice of liability to removal. No further enforcement action was taken. In the meantime, on 7 December 2002, the appellant married AW, an Irish national. The couple had a son, R, born in 2005. R is now ten years' old. In 2005 AW applied for a residence permit, acknowledging her right to reside in the UK, with the appellant as her dependant. The applications were granted by the respondent on 4 June 2007 valid until 4 June 2012. On 17 February 2010 the appellant applied to naturalise as a British citizen but his application was refused. The appellant made a further application on 1 September 2011, which was eventually refused on 16 June 2014, on character grounds.

13. In around 2002 AW and the appellant purchased a property at [52] in Edgware for £250,000 with the assistance of a mortgage. Title was in the name of AW. In 2007 they purchased [a property at 56] in Edgware for £430,000, again with the assistance of a mortgage and again in AW's sole name. This is now the couple's home. They kept [the property at 52]. An office was built at the side of the property for the appellant to use as an office. Both properties remain subject to substantial mortgages and they are currently vested in AW's trustee in bankruptcy. The action to make AW bankrupt followed the escalation of a relatively small debt for unpaid council tax on [the property at 52] to in excess of £70,000. The legal title of a significantly more valuable property, [the property at 3] Edgware, is held in the appellant's name.

14. Up until around 1998 the appellant was involved in family businesses, including running a hotel in Brighton. In 1997 the appellant was taking steps to purchase a lake and surrounding land in Oxfordshire. However, in March 1998, the family's assets were seized and the appellant did not proceed. In around 2000 the appellant abandoned his MBA studies.

15. The appellant has three older brothers who are all now serving lengthy prison sentences. The eldest, AB1, was sentenced in 1984 to 12 years' imprisonment for the importation of heroin and transferred to Turkey to serve his sentence. On 10 February 2001 he was tried in the Netherlands and found guilty on charges of conspiracy to murder, kidnapping and drug smuggling. His sentence was increased to life. He is the subject of an exclusion order in the UK.

16. AB2 was arrested on 27 March 1998 and charged with illegal entry, handling forged documents and possession of a firearm and ammunition. He was sentenced to two years' imprisonment, reduced to 12 months on appeal. He was arrested again in February 2004 and subsequently sentenced to 22 years' imprisonment following his convictions for heroin trafficking, conspiracy to blackmail and perverting the course of justice. However, he successfully appealed against his conviction and was acquitted at a re-trial in November 2010. He was excluded from the UK and voluntarily returned to Turkey, having renounced his refugee status. He had been recognised as a refugee following a successful appeal to the then Immigration Appellate Authority, which heard the appeal on 10 February 2005. The Adjudicator rejected much of what he was

told about events in Turkey but accepted the appellant would be at risk because of AB1's links to a pro-PKK TV channel and the perception of links between drug smuggling and the funding of the PKK. AB2 is currently in prison in Turkey in relation to the seizure of a very large amount of cocaine.

17. AB3 was sentenced to 30 years' imprisonment on 19 October 2011 following his convictions involving drugs and money-laundering. In 2005 the Asylum and Immigration Tribunal had accepted his account of political activity and ill-treatment. It accepted that the family were a high-profile Kurdish family and wealthy. It also found there was evidence of AB3 providing intelligence to HMRC officials. AB3's appeal against conviction and sentence was unsuccessful. Lord Thomas LCJ said the evidence plainly showed that MSB had engaged in extensive travel to South America in connection with the drugs conspiracy. The trial judge had been entitled to conclude that he was near the top of the supply chain and distribution organisation. His provisional release date is 18 November 2025.

Assessment and findings of fact

18. We now turn to contested matters and give reasons for our findings. In respect of our findings of fact we have applied throughout the civil standard of a balance of probabilities. Generally, the burden of proof rests on the appellant to establish any matter of fact on which he relies.

19. We may consider evidence about anything we deem relevant, even if it took place after the date of decision. There were no arguments about the admissibility of any of the evidence adduced. In the case of *MB (admissible evidence; interview records) Iran* [2012] UKUT 00019(IAC) the Upper Tribunal explained that Tribunals do not have a general discretion to refuse to receive relevant evidence on the basis of procedural defects as to how it was obtained. Apart from circumstances where the lateness of the evidence means that it is unfair to receive it, issues of fairness go to the weight to be attached to evidence, not admissibility.

20. The factual matters relied on by the respondent to show that there are serious grounds of public policy or public security justifying the appellant's deportation must be established by the respondent to the civil standard of proof of a balance of probabilities.

The existence of the OCG

21. The appellant's case is, not only that he is not the leader of the OCG, but that there is no OCG. The appellant accepts he is related to his brothers, as stated, but distances himself from them. In his first witness statement[13] he says he has very limited contact with any of his family members, apart from some of his nephews and nieces. He was involved in running the family businesses up until 1998 but, after their assets were seized in 1998, he decided to forge his own way

[13] Paras 13 and 14, first statement of the appellant, AB1, Tab A, p 8-9.

as an individual and in business. He has had familial contact after that but no business links. He is an ordinary businessman trying very hard to make a go of his life[14]. AS says in her statement that the notion that her husband is the head of an OCG is "ridiculous"[15]. The appellant's sister-in-law, AS the wife of AB3, also states that the appellant had very little contact with her husband[16].

22. In his evidence to us the appellant stated there was no OCG in his family's name[17]. In cross-examination the appellant was reluctant to confirm he knew anything about organised crime in general. He eventually confirmed he had heard about gangs making money from threatening people but only from the news, documentaries and from being in prison. He refused to accept that AB3 was an organised criminal. His refusal to answer a straightforward question as to whether he accepted his brother was an organised criminal led the Tribunal to have to intervene to ask him to answer questions. The appellant then confirmed only that his brother was found guilty. However, he did not believe AB3 was involved in that "kind of business". He said AB1 was the one involved. He said AB1 had publicly admitted international criminal activity. In relation to AB2, he similarly accepted he had pleaded guilty to being involved in organised crime but denied any knowledge beyond the conviction. Later he said he had suffered as a result of having the name A, which we took to refer to the failed prosecution and other investigations made by the authorities, as well as the present deportation proceedings.

23. In his written closing submissions, Mr Hall QC made much of the "evasive and obstructive" manner in which the appellant gave his evidence[18]. Mr O'Callaghan asked us to find he was a credible witness. We found the appellant's unwillingness to answer straightforward questions about his brothers' criminal activities, which are now a matter of public knowledge, to be disingenuous and a deliberate ploy to distance himself from his brothers and the imputation that he is, or has also been, involved in organised crime. We are sure that there has been an OCG in the name of A, as alleged by the respondent. We find ample evidence supporting this conclusion in the following.

24. XY is an officer of the NCA who has been involved in the investigation of serious organised crime for 25 years[19]. He previously worked for the NCA's predecessor, SOCA, and before that he worked for the investigation division of HMRC. During the last six years of his time with HMRC he was in the Eastern Hemisphere drugs branch which predominantly dealt with heroin trafficking from Turkey to the UK. At that time he became aware of the A family, although he had no involvement in investigating members of the A family until 2012[20].

[14] Para 61, first statement of the appellant, AB1, Tab A, p 43.
[15] Para 13, statement of AW, AB1, Tab A, p 50.
[16] Para 3, statement of AS, AB1, Tab A, p54.
[17] Para 16, the first statement of the appellant, AB1, Tab A, p 11.
[18] Para 9, Respondent's Outline Closing Submissions.
[19] Para 1, first statement of XY, RB1, Tab 1, p 1.
[20] Para 3, first statement of XY, RB1, Tab 1, p 2.

Mr O'Callaghan did not challenge these credentials but he did ask XY about his involvement with this case. XY confirmed he had acted simply as a "resource". He had not been present at the trials of either the appellant or G[21].

25. We accept XY's experience is lengthy and relevant to a case of this nature. He is a professional law-enforcement officer with specialist knowledge in the field of drug-trafficking. Mr Hall referred to him as being an "expert" in his closing submissions[22]. Mr O'Callaghan disagreed with this characterisation[23]. We have not assessed his evidence as if he were an independent expert, as he is plainly not independent, but we accept he has great expertise due to his lengthy experience as a law officer working in the field of organised crime, including the activities of organised criminals in the drugs trade. We considered XY was careful to keep within the limits of this role and he rightly made it clear when he did not know the answer to a particular question and when his answers were based on general impressions rather than specific knowledge. His answers assisted us to understand the probe evidence.

26. XY's evidence was placed under pressure by Mr O'Callaghan in relation to the fact, as XY accepted, the way in which excerpts from the transcripts had been set out in his first statement, dated 29 September 2015, gave rise to the possibility that something of the context of the excerpts might have been lost. In some places it was not clear that there had been a break in the conversation and, in others, there was no indication that parts of the conversation had been omitted. Plainly Mr O'Callaghan was right to pursue this matter. A third witness statement from XY was prepared in time for the third day of the hearing, on 13 April 2016, and XY was recalled to give further evidence. However, continuing concerns of the kind indicated led to the appeal being adjourned so that the parts of the conversations which immediately preceded and succeeded the extracts set out in XY's first statement, as amended in his third statement, could be seen and responded to by the appellant.

27. XY was apologetic for the fact these concerns led to the need for the appeal to be adjourned. We found his evidence about how it had come about that his first statement had been written in the way that it had been sincere and genuine. He had had had to copy and paste from various translations which were in different formats and this had led to some errors, particularly with regard to dates and times. His word processing skills were limited and he had had no support to assist him with the preparation of the statement, other than legal advice about what could be included. As the additional excerpts provided for the adjourned hearing showed, nothing of real importance had been left out of the original excerpts. We were satisfied, therefore, that XY has acted with integrity throughout these proceedings and that the errors and omissions from his first statement were purely accidental. No doubt the shortcomings in the

[21] See below on the Z Road shooting.
[22] See also paras 16-18, Respondent's Skeleton Argument.
[23] See para 44, Skeleton Argument on behalf of the Appellant.

first statement could have been avoided with greater oversight. Whilst we do not condone sloppiness in the preparation of evidence we understand the reasons for it in this case and we can be satisfied that no real prejudice was caused to the appellant by the errors in the statements and transcripts as originally served or the late service of the fuller extracts.

28. We noted that Mr O'Callaghan did not renew the application made by counsel at the case management review hearing that *all* the transcript evidence should be produced[24]. Having indicated that we were sympathetic to an adjournment on 13 April we were content for the representatives to agree the form of order for further directions. The resulting draft order was modest in its request, only asking to see transcripts of two minutes' recording either side of the existing excerpts[25]. Overall, therefore, we accepted XY's confirmation in his second statement, signed on 17 December 2015, that his choice of materials to exhibit to his first statement accurately reflected the strengths and weaknesses of his assessment of the appellant's activities[26]. In short, he had not "cherry-picked" the evidence to submit to us in order to create a skewed impression.

29. Much of the transcript evidence has been translated from Turkish. We have therefore made allowance for the fact that translations may not convey the precise meaning of the words used with complete success. However, it is also appropriate at this point to note that no objection was made to the translations provided. The appellant did refer during his cross-examination to the fact the transcript was a translation, although we did not understand him to be challenging the accuracy of the translation as such. He also made a comment about the translation of one small part of the additional transcripts but we do not regard the particular passage as significant[27]. No other matters were brought to our attention and we have therefore proceeded on the basis that it was accepted that the translations were accurate. We noted that the appellant confirmed the translations were generally correct at his trial[28] although he did suggest there might be difficulties towards the end of cross-examination.

30. We also made some allowance for the fact that, as XY explained, the audio quality of the probe evidence varied and that explained why in many places the transcript states, "unintelligible". We are also fully conscious of the fact that a transcript of a conversation merely tells us the words used but cannot tell us anything about the speaker's manner of expression.

31. We now turn to what XY's evidence tells us about the existence of the OCG. As said above, we accept that XY has particular knowledge of this type of criminality and we accept what he says about becoming aware of the OCG. He came across this knowledge in the course of his professional work, although he

[24] See para 24(1), Decision on Application for Directions (Appendix 1 (below)).
[25] See Appendix 2 (below).
[26] Para 2, the second statement of XY, RB2, Tab 12, p 559.
[27] Para 3, appellant's second statement, AB2.
[28] RB3, Tab 13, p 658.

was not personally involved in investigating it.

32. XY states that the OCG has existed since the 1970s[29]. The basis for this assessment is not entirely clear but we note that AB1 was convicted and sentenced for the importation of heroin in 1984. We note that AB2 told the Adjudicator hearing his appeal in February 2005 that his parents were well-off and had amassed considerable assets. He had sold property before coming to the UK and used the proceeds to purchase a hotel in Hove. His family still owned some 60 flats in Istanbul, a hotel, a farm and five summer houses[30]. At her appeal hearing in August 2008, AB1W, the wife of AB1, said she did not know whether the family still held assets in Turkey but she confirmed that AB1 had purchased a hotel in Brighton. She could not confirm the purchase price had been £3.2 million[31]. The appellant told the Tribunal in the appeal of AB2 that, in 1993, he had been in Italy attending a marble fair because he owned a 25% share in the family's marble factory[32]. AB1 was subsequently convicted in the Netherlands of conspiracy to murder, kidnapping and drug smuggling. AB2 was convicted in the UK in 1998 of illegal entry, handling forged documents and the possession of a firearm and ammunition. He has no further UK convictions but is currently in prison in Turkey in relation to, according to XY's statement, the seizure of 291kg of cocaine[33]. AB3's appeal against conviction was unsuccessful. As noted, the Lord Chief Justice observed he had been travelling to South America in connection with a drugs conspiracy and was directing operations in London[34]. Whilst the appellant and AS said they thought AB3 was not guilty, we see no reason at all to go behind the conviction. The Lord Chief Justice noted that the conspiracy to import cocaine was "highly organised drug trafficking on a vast scale, which had been planned and was in execution for a considerable time"[35]. The appellant confirmed that various business in Turkey were registered in his name since approximately 1990[36].

33. It appeared to us fanciful to suggest that there was not some form of connection between the appellant's three older brothers all of whom can safely be considered to have been involved in serious organised crime, involving the importation of hard drugs. XY suggests AB2 took over the leadership role when AB1 was sentenced in the Netherlands and that AB3 took over when AB2 returned to Turkey. There is a logic to this given that the three were born in 1956, 1961 and 1963 respectively. We also agree with Mr Hall that the appellant did not adequately address the evidence confirming the existence of an OCG and his oral evidence on this point was evasive and obstructive.

[29] Para 5, the first statement of XY, RB1, Tab 1, p 2.
[30] Paras 35 and 36, the Determination in HX/61045/2003, RB4, Tab 22, p 1118.
[31] Para 40, the Determination in HR/00430/2007, RB4, Tab 25, p 1233.
[32] Para 154, the Determination HX/61045/2003, RB4, Tab 22, p 1146.
[33] Para 7, the first statement of XY, RB1, Tab 1, p 3.
[34] Para 74, the Judgment […], RB1, Tab 2, p 98.
[35] Para 67, the Judgment […], RB1, Tab 2, p 97.
[36] Para 16, second statement of the appellant, AB2.

34. We find as fact there has been an OCG, at least until AB3's arrest in 2011.

35. XY has exhibited a series of press cuttings to support this conclusion[37]. We would be slow to attach significant determinative weight to such evidence for obvious reasons and, as stated above, we do not need to do so in this case. However, we would observe that it is unlikely that a serious newspaper such as *The Independent* would publish an article about AB2, describing him as "the Godfather of […]", as it did on 30 April 2006 following the conviction which was subsequently overturned, unless it felt confident about its sources of information. The article stated that AB2 co-ordinated a massive drug-smuggling ring, ran an extortion racket and was linked to a number of brutal murders. The same article referred to AB1 trafficking heroin and buying business and property interests in the UK. Reporters who spoke to business owners in the areas of North London affected spoke of a "A Clan" linked to the Bombacilars and Kurdish Bulldog gangs.

36. At his trial at the Central Criminal Court in relation to the Z Road shooting (see below), G claimed that the reason he fired shots into the café was to frighten members of the A gang, specifically C, who had threatened to visit his kebab shop with a view to extorting money from the family business[38]. He described them as "a really dangerous gang" and he said he believed the man he fired at in the street, who turned out to be an NCA officer, to be a member of the A gang[39]. He described the gang's activities as blackmail and extorting shop owners for money. They also kidnapped people. He said the appellant was in charge of the gang[40]. He said it was well-known that C worked for the A gang[41]. He also said B worked for the appellant and that C worked for B[42]. He said C and his gang always socialised in the café[43].

37. Of course, G was found guilty of the reduced charge of endangering life and his defence was disbelieved by the jury. We understand why Mr O'Callaghan said it was not a strong defence and went on to ridicule it in his closing submissions. We are slow therefore to attach any weight to G's evidence insofar as it was disbelieved by the jury. We cannot speculate about what was and was not accepted from the evidence. We simply record that, to the extent G has given evidence about the existence of an OCG, his evidence was consistent with XY's beliefs about it. As with the press articles, we do not need to rely on this evidence to arrive at our conclusion that there has been an OCG.

The appellant's involvement in the OCG - discussion

38. Our starting-point therefore is that there has been an OCG for many years and

[37] RB 1, Tab 3.
[38] RB2, Tab 11, p355.
[39] RB2, Tab 11, p 418, 424, 427 and 534-5.
[40] RB2, Tab 11, p356-7
[41] RB2, Tab 11, p 369.
[42] RB2, Tab 11, p 383-4.
[43] RB2, Tab 11, p 395.

that the appellant was not cooperating with the Tribunal when he denied its existence. It is inconceivable that the appellant did not know that the OCG existed given his family ties. We remind ourselves that his evidence was not that there was an OCG but it had been wound down or that there was one in existence but he had nothing to do with it. His denial of its existence undermines his credibility generally. However, we also accept that it does not inevitably follow from our finding that there has been an OCG that the appellant has been involved with it. We are fully conscious that the appellant has no convictions. Nor does it inevitably follow that the OCG continued to function because the appellant picked up the reins following the arrest of AB3.

39. We make our findings on the appellant's involvement on the basis of the evidence which we shall now discuss. It is helpful to break this down into the various areas roughly along the lines identified and set out in XY's statement, the skeleton arguments and the schedule of evidence prepared by Mr O'Callaghan, as well as others.

40. We shall set out a summary of the evidence and submissions on each area and then give our assessment before drawing the points together to reach an overall conclusion. We have looked at all the evidence and submissions in the round before reaching any conclusions.

The appellant's place in the hierarchy of the OCG

41. The respondent's case is that the appellant is the leader of the OCG, the presumption being that he took over control after his older brother, AB3, was imprisoned in 2011. We remind ourselves that the respondent must show that, among other things, the appellant represents a present threat to public security and therefore that we must be satisfied the appellant currently leads the OCG or has the capability to revive it.

42. It is worth mentioning at this stage that we accept that an OCG is likely to have a leader, who would exercise authority over his subordinates, and that it is in the nature of such organisations that the person at the top would simply be the organiser who would have people under his control who would be willing to carry out the actual crimes on his instructions. Some of his subordinates would be in control of others, creating a pyramid structure. In this context it is not necessarily surprising that the head of an OCG would not have any convictions.

43. XY's first excerpt from the transcript evidence is a conversation between B and C which took place in B's car on 7 March 2014[44]. XY's belief is that B is a "loan shark" and the appellant's violent enforcer and that C is another member of the OCG who is junior to B in the chain of command. In the extract provided the men appear to be talking about the remuneration they receive from someone called "abi". C asks B how much "abi" gives him but B declines to give that information. C also asks B for extra money which B says he is not authorised to

[44] Para 13, first statement of XY, RB1, Tab 1, p 5-6.

give him.

44. In cross-examination the appellant pointed out that his name was not used in this conversation. However, he accepted they might have been talking about him. Asked then why they were talking about how much they received from him, the appellant suggested they could be talking about business invoices. B ran a car firm called [PP] Cars. Pressed to explain why C would ask B how much he, the appellant, had been paying him, the appellant said it was just a joke. We did not find the appellant's replies helpful as it appeared to us difficult to interpret what B is saying about money received from the appellant as relating to car deals. Nor do we detect any trace of humour in the conversation.

45. However, having carefully read the transcript, including the extended version provided with XY's fourth statement, we find it is not possible to come to firm conclusions about what the pair are discussing and, more importantly, whether they are discussing their relationship to the appellant. It is at least clear to us that B and C are discussing various sources of income and that they are not exclusively paid by "abi". They talk about their respective "wage pacts" but then B asks C to clarify whether he is asking only about money received from abi or other income as well. At one point C refers to paying money to "the boss" without it being clear who he is talking about[45]. The appellant is not named anywhere. C appears to be complaining that he gets less than B but B will not confirm this.

46. We are conscious that this extract, along with all the probe material, has been presented to us along with an explanation as to its meaning provided by XY. We have been careful to attempt to stand back and read the material impartially without actively looking for parts which confirm XY's beliefs. We have attempted as far as possible to keep an open mind about what the words used seen through the prism of translation could really mean. This excerpt is a good example of a conversation which could reasonably be interpreted to fit with the theory that B and C obtain money, perhaps through blackmailing small traders in the area, and that this money has to be given to the appellant for the "organisation". They are discussing what cut they are permitted to retain for themselves. B has since been convicted. On the other hand, the appellant is nowhere mentioned and, in our judgment, the conversation is not sufficiently clear or coherent that it can safely be said that there are no other possible or likely interpretations.

47. XY's second excerpt from the transcript evidence is another short conversation between B and C, which also took place in B's car three days later on 10 March 2014[46]. They talk about the fact D had spoken to B at some time previously and asked him to go into the drinks business with him. B reported that he had told D that only "abi" could tell him to get involved.

[45] RB6, second Tab 1, p 158.
[46] Para 15, first statement of XY, RB1, Tab 1, p 7.

48. Mr O'Callaghan cross-examined XY on the basis that "abi" could refer to someone else. XY said that "abi" refers to the appellant. It is a term of respect. He said that B uses the term elsewhere in the transcript evidence to refer to the appellant, although he accepted he might also use it to refer to others because it is a commonly used word. XY maintained B was referring to the appellant because there was nothing in the whole of the probe evidence suggesting B ever worked for anyone else. In cross-examination the appellant could not say why B said what he said but he accepted B could have been referring to him. Then he said B might have been showing off.

49. We note from the earlier transcript of 7 March 2014 that C appears to use "abi" to refer to B. It is plainly used as a term of respect[47]. However, the overall tone of that conversation is one of familiarity between them. In the 10 March 2014 extract, C addresses B as "mate"[48].

50. We find the second of XY's extracts is of little assistance in demonstrating the appellant's place in a hierarchical structure. The speakers are plainly respectful towards the person they refer to as "abi", who is not named, but the critical passage relied on by XY, where B says only "abi' can tell him to get involved, could be explained by B seeking advice.

51. As became clear, the appellant did exercise authority over D in respect of the drinks business in Bournemouth and B had attended the meeting on 29 January 2014 in which the appellant had vented his spleen in no uncertain terms on Dover matters which had gone wrong with the running of the business[49]. This particular conversation was held only days after D had disappeared and both B and C had been involved in the visit to D's house in Bournemouth. It is not surprising therefore that the pair would be speaking about D in these terms and B would be justifying not getting involved directly with D. Again, we cannot say that this extract carries significant weight in showing the appellant's place in a hierarchy which must be an OCG. Whilst it might be read as showing B acting subserviently towards the appellant with respect to the Bournemouth drinks business, that is not the only interpretation possible and it does not go very far in establishing the appellant is the head of an OCG.

52. The third excerpt in XY's statement sets out a conversation between B and another person, called E, discussing what may happen if AB comes back[50], which began as a result of E having a dream about it[51]. The date of the conversation is erroneously recorded as 13 January 2014 but XY clarified in his

[47] See RB5, Tab 26, p 1267 and also, for example, RB6, first Tab 6, p 133 and second Tab 1, p 159. The appellant confirmed this usage at his trial: see RB3, Tab 13, p 575.
[48] RB6, second Tab 2, p 163.
[49] See RB6, first Tab 3.
[50] Para 16, first statement of XY, RB1, Tab 1, p 8.
[51] RB6, second Tab3, p 167.

third statement this should read 13 February 2014[52]. Perhaps the most significant quotation is when B confirms, using the appellant's first name, that "… I started this business with "A abi", I will finish with "A abi" … there isn't any other …"

53. XY said he believes the reference to AB coming back refers to the appellant's eldest brother and that the conversation discusses what would happen if he did come back in terms of a power struggle. Mr O'Callaghan made the point in cross-examination that it was unlikely that B would be referring to the appellant's brother because he is serving a life sentence in the Netherlands, where a life sentence means life unless a Royal pardon is granted. B would know this.

54. We noted from the statement made by AB1 on 21 December 2014, at the request of the lawyers acting for AB3, that he had made significant progress towards revealing "fabricated evidence etc." Fresh evidence was being investigated by the Attorney-General[53]. He appeared at that time to be confident that he might overturn his conviction, although there is no evidence before us of the up to date situation. We find this evidence lessens the impact of Mr O'Callaghan's point.

55. Mr O'Callaghan also put it to XY that the reference by E to this being the second time (AB had come back) was inconsistent with this being the appellant's brother as there had not been a first time. XY could not answer this. He maintained the reference by B to "business" must refer to criminal enterprise.

56. The appellant's cross-examination on this conversation was again interrupted by the Tribunal requesting the appellant to answer questions in a straightforward manner. He pointed out that, if the AB mentioned had been his brother, it would not have been appropriate for B to refer to him as "brother AB", as this would be disrespectful. He said it was possible B was referring to his own brother, called [by the same first name], but he accepted [B's brother] was younger than B, so this was unlikely. The appellant denied that B was saying that he would be loyal to him even if AB1 came back. We take on board the appellant's point, made throughout his evidence, that it is difficult for him to know what people were talking about in a conversation at which he was not present.

57. In our judgment, the additional transcript evidence filed by XY makes it clear that the pair probably were discussing the appellant's brother, AB1. There are references to the hotel business, to AB1 going to the Netherlands and to his being in prison such a long time[54]. We find this extract goes further than the other two towards confirming XY's belief about the hierarchy and it also links

[52] Para 7, third statement of XY (not in a bundle).
[53] Para 9, statement of AB1, AB1, Tab D, p 31.
[54] RB6, second Tab3, p 168-169.

the appellant directly to the organisation which AB1 formerly led.

58. XY also produces an extract of a conversation in B's car on 18 February 2014 in which the appellant talks about the structure of the OCG. It is worth setting this out verbatim:

> "Centralised, you know centralised? What I've managed to do or tried to distance myself from centralisation. Do you understand? What do I do? Let Ramo use his initiative, Serdo[55] his own initiative. Dino[56] should have another initiative. Let them check one another but let them have their own initiatives. I can't establish the mechanism for them to check one another because they "It's nothing to do with me," they prevent what you establish. They stay back. It ends with them not taking their own responsibilities. However, you know what will take us to go on properly forever? It's me not be centralist. Everything must not be done because I say them? The others and everyone should have their own initiative. … If such a system, such a set up can be established you would become immortal, you would become immortal. You understand what I'm saying? It will be immortal. …"

59. The appellant responds by saying this was only an extract from a long conversation about Middle Eastern politics[57]. Specifically, the appellant was explaining how Israel had managed to establish itself. Cross-examination of XY focused on the length of the extract and the fairness of not providing more of the conversation in order to understand the context. After the adjournment on 13 April, additional parts of the conversation were produced[58]. We have carefully noted this extract. XY has produced the transcript beginning 7 minutes prior to the original excerpt, which is five minutes more than directed. The audio ends almost immediately after the original excerpt. There is nothing in the full extract indicating there was any discussion of Middle Eastern politics. In fact, the full extract shows very clearly that the context was that the appellant was admonishing B and was angry with him. He describes him as someone who can "take someone over a cliff".

60. In cross-examination, the appellant was asked to account for his use of the words "immortal" and "centralised". The appellant said the context of the conversation was that he was criticising H for discouraging another member of the community from establishing a barber shop in Bournemouth. He was saying that they should encourage each other. He gave himself as an example and said he should not be in the middle of everything. He was not giving orders. However, he could not say who else might be B's boss. Again, the additional transcript evidence provides no support for the appellant's account.

61. Nonetheless, we find we can only place limited weight on this evidence. Whilst the appellant's explanation was unsatisfactory, the extract is not sufficiently

[55] According to the appellant, "Ramo" = H; "Serdo" = B.
[56] The appellant told us C's nickname was "Dino".
[57] Para 21, statement of the appellant, AB1, Tab A, p 14.
[58] RB 6, second Tab7, p 187-188.

clear that we can find no other interpretations are possible other than XY's belief that it shows the appellant giving orders as to how the OCG should be arranged so as to ensure nothing that happened was attributable to him.

62. We consider the evidence on this issue, taken as a whole, shows the appellant has close associations with B and C. The former has a serious criminal record. The use of the word "abi" does not indicate the appellant's superiority in an OCG as it is clearly a term of respect used in normal discourse within the Kurdish community. We respect XY's professional opinions and give them some weight. We have also placed some significance on the appellant's evasive posture towards the issue of whether the AB1 being discussed was his brother. The extracts support the notion that B and C respect the appellant and take advice from him. However, we are unable to say that this advice – or even direction – is more likely than not attributable to the appellant being the head of an OCG.

63. As we shall discuss below, we are far from finding the appellant operates solely as a legitimate businessman. It was plain to us that the appellant has gained some notoriety from his family name and that he probably uses it to exert influence. However, there is a wide gap between this and finding the appellant currently heads an OCG

64. Likewise, in considering the evidence of AS (see below), we found much in her evidence which paints the appellant in an unfavourable light. In the conversation recorded between her and B in the latter's car on 12 February 2014 B complained that he had not managed to set up a business to give him "an official income."[59] This contradicted the appellant's evidence that B was a legitimate car dealer, trading as [PP] Cars. However, showing someone may not operate entirely as he presents himself, that is as a car dealer and entrepreneur, is not the same as showing he is the head of an OCG.

The residence card

65. The appellant argues that, were he the head of an OCG or even involved with one, he would not have been issued a residence document on 4 June 2007. XY was unable to comment on this. As with a previous application for leave to remain, the appellant's application for a residence document took a very long time to decide. His naturalisation application also took a long time to decide[60]. The implication is that the Home Office dragged its feet and was investigating the appellant before, eventually, deciding there was nothing adverse to warrant refusal. We understand the logic of this but do not consider it borne out by the evidence.

66. The appellant's solicitors have produced the response to a Subject Access

[59] Para 51, first statement of XY, RB1, Tab 1, p 42.
[60] Para 13, witness statement of the appellant, AB1, Tab A, p 8.

Request made on 11 March 2015[61]. This sheds very little light on the thinking behind the decision, approved on 27 February 2007, to issue documents. We accept there is nothing in the file showing there was information to hand regarding the possibility the appellant was involved with crime, let alone an OCG. Of course, it is unlikely he would have been granted a document if this had come to light. It appears from the handwritten minutes that the Minister approved the application[62]. However, we do not infer anything from this as it is possible that nothing which the police were aware of at that time had been communicated to the European Casework Directorate. The appellant had, as now, no convictions. We cannot infer from the absence of anything in the notes that there was information but it was not considered sufficiently serious to warrant refusal. We therefore regard this as a neutral point.

Z Road shooting

67. At the beginning of XY's evidence, he showed us a number of short video clips taken from CCTV recordings depicting from different angles a shooting in Z Road, in [an] area of North London, which took place during the evening of 23 May 2014. It showed one G taking out a handgun and firing into shop/café premises. He then ran off, exchanging fire with someone who, unknown to him, was an NCA officer. G was arrested and subsequently tried. He was convicted only of endangering life, although the original charge had been attempted murder. XY said the premises which G fired at were used by members of the OCG, including C and one M. He also said that the shooting came in retaliation for a confrontation between C and others the previous day. C is shown emerging from the café after the shooting. XY suggested the reason he was wearing gloves (on a warm evening) was to avoid forensic contamination from the use of a firearm. There was no suggestion the appellant was present.

68. Towards the end of his first statement, XY sets out the transcript of a conversation between the appellant and B in the late evening of the day of the shooting, 23 May 2014[63]. It records B receiving a telephone call from someone about the shooting and appearing to instruct the caller to leave the place, presumably the café, and go home. B then relays this information to the appellant. The transcript ends at this point with a loss of audio and the sound of a door, which we take to be the car door.

69. The appellant told us the reason he was in a car with B at that time was probably that B was taking him home. We have considered the significance of the fact that news of the shooting was passed to the appellant via B so soon after the incident had taken place. As noted, NCA officers were at the scene and the transcript clearly shows the appellant and B were interested in this aspect of the incident.

[61] See AB1, Tab B.
[62] AB1, Tab B, p 17.
[63] Para 51, first statement of XY, RB1, Tab 1, p 65-66. See also the fourth statement of XY, RB6, Tab26, p281-282.

70. Towards the beginning, XY's first statement contains a transcript of a conversation between the appellant and B the following morning. It was also recorded in B's car, an armoured BMW[64]. Mr O'Callaghan told us that his instructions were that the appellant did not know the car was armoured but, in cross-examination, the appellant said the car had been a joke to him, suggesting he was aware of it. Indeed, he went on to explain it. He said B had moved back to Edgware after his car had been shot at in front of his house. The logical inference to draw was that B was taking steps to protect himself. The appellant accepted in cross-examination that he was acquainted with people who had guns.

71. In the excerpt the appellant appears to instruct B that he will go away and, if anyone calls for him, he should tell them he had told people not to fight. Towards the end of the excerpt the appellant appears to suggest that, if there had been someone with a gun at the door, he could have fired back at their feet. The message conveyed by the appellant to B was, according to XY, that retaliatory action could be taken against the people who had attacked the shop but the appellant must not be seen to be involved. The additional transcript evidence did not add anything material[65].

72. The appellant points out that he was not charged in connection with the incident or any connection to the premises[66]. He emphasises that the only significant part of the conversation is his instruction not to fight, implying he meant this literally. The appellant also pointed out in his second statement that the owner of the café, , was not questioned by the police and did not make a statement for G's trial[67]. This point would have carried more weight if it had been made much sooner so that the respondent's legal team could have considered it. However, we accept that some weight should be given to the fact the appellant was not found to have any connection to the café premises.

73. XY then sets out another excerpt later the same morning in which B passes on the message to M that they should have been armed and ready[68]. This is consistent with B being a dangerous criminal. However, there is nothing in the short extract which shows B was passing down orders from the appellant or anyone else.

74. It was put to XY in cross-examination that there was no evidence of any retaliation being taken for the shooting by the OCG or anyone else. The implication of this line of questioning was that the absence of retaliation was inconsistent with there being a OCG. In Mr O'Callaghan's colourful phrase, this

[64] Para 20, first statement of XY, RB1, Tab 1, p 11; the erroneous date was amended by XY in para 9 of his third statement (not in a bundle).
[65] RB6, first Tab 8, p 153-154.
[66] Para 21, first statement of the appellant, AB1, Tab A, p 13.
[67] Para 13, second statement of the appellant, AB2, p 6. We note G stated at his trial that he worked for the appellant: RB2, Tab11, p 370.
[68] Para 21, first statement of XY, RB1, Tab 1, p 15.

would surely be a time for the appellant to give the order to "go to the mattresses.[69]" However, that argument assumes that G was also a gang member. Moreover, as XY pointed out, G was arrested at the scene and there was therefore no opportunity to take retaliatory action against him. He accepted that one other person involved was not arrested. In the circumstances, we do not draw any inference from the failure of the OCG to retaliate. This would require us to indulge in undue speculation about the incident based on the little information we have. We are not able to say that G was acting on behalf of another gang.

75. Cross-examined about these conversations, it was put to the appellant that the incident had not been a joke, as he had suggested. However, the appellant maintained that his comments about shooting back were simply stupid remarks and not intended seriously. He said he had been in the car with B when B received a call telling him about the shooting. The appellant eventually accepted the excerpt showed that he understood that people he knew had guns but he said it was not for him to decide what they did. The appellant denied giving an instruction which was passed on to F. He accepted that B and F had pleaded guilty to a charge of conspiracy to cause grievous bodily harm with intent in relation to other matters.[70]

76. The appellant points out that he was on remand at the same time as G and attended the prison mosque at the same time as him without there being any incident between them[71]. Again, we infer nothing from this. We only have the appellant's assertion about this and, given the seriousness of the charges he was facing, we believe the appellant would be unlikely to jeopardise his defence by acting personally against G.

77. Drawing the points together, we note that the appellant was given news of the shooting early on and his interest in it was not amusement. It is curious that the appellant was told about the incident so soon after it happened. However, the imputation that the appellant then issued instructions to retaliate is not clearly borne out by the transcripts. Furthermore, given there is no evidence of any retaliation taking place, XY's depiction of the appellant as the head of a ruthless OCG prepared to use lethal violence does not gain much support from this evidence.

Security conscious behaviour

78. XY produces excerpts which he believes show the appellant exhibiting security-conscious behaviour which would be consistent with an OCG. In particular, the appellant conducted meetings at H Barbers premises in Edgware. He says the appellant has no legitimate controlling influence in the business to explain his frequent presence there. We note that the appellant told us he invested in the

[69] Meaning to prepare for gang warfare.
[70] See AB1, Tab A, p 92-108.
[71] Para 19, first statement of the appellant, AB1, Tab A, p 13.

business through A Cars Ltd. We also note that H, whom the appellant describes as a barber[72], was one of those charged in connection with the attempted kidnapping of D[73]. One very short extract appears to record B talking about being at a meeting in front of the barbershop in Edgware at which the appellant and E were present[74]. The appellant says in his statement he was simply socialising there as it was near to his business premises [at 52][75]. As a car dealer he conducts much of his business over the telephone. He would go outside the shop to talk for privacy reasons but he denies being aware that he was under surveillance. XY explained that it was difficult for law enforcement officers to infiltrate such a place. He said there had been a lot of surveillance of the premises. He accepted the barbershop has some legitimate customers.

79. We do not attach much significance to this evidence as showing the appellant is head of an OCG. The appellant could be visiting the barbershop for any number of innocent reasons, although we could not understand why the appellant would have been holding a large amount of cash belong to H Barbers[76]. There is nothing in the respondent's evidence establishing the premises are used for any nefarious purposes.

80. In another excerpt produced by XY, the appellant and B discuss the possibility that B's car had a listening device installed when it was taken by the police for forensic examination after being shot at[77]. This took place on 27 January 2014. It was suggested to XY that this could have been simple banter given the possibility of a bug having been placed in the car did not appear to stop B talking about it. The appellant explains this conversation in the following way. He had arranged for B to sell an Audi car for him at an auction. He had sold the car to someone who had been in an accident in which a woman was killed. He was asking whether he would get the car back as the full purchase price had not at that stage been paid[78].

81. The additional probe evidence is not entirely clear but it suggests that the car they were originally discussing had encountered a problem with its smartphone connectivity/bluetooth after going to the police pound. Our interpretation is that B was hypothesising about the reason for that being a listening device which the police had installed. It is difficult to reconcile the appellant's evidence with the transcript because it appears that the pair were discussing a different vehicle before the appellant asks about the Audi and B explained the police would not return it because a woman had died in a murder-related matter[79]. They then went on to talk about a Jaguar and

[72] Paras 16 and 33, first statement of the appellant, AB1, Tab A, p 11 and 24.
[73] He was found not guilty on all counts: see RB4, Tab 19A, p 1057G.
[74] Para 23, first statement of XY, RB1, Tab 1, p 17.
[75] Para 22, first statement of the appellant, AB1, Tab A, p 14.
[76] Para 11, statement of Ali Das, AB1, Tab C, p 3.
[77] Para 25, first statement of XY, RB1, Tab 1, p 18.
[78] Para 23, first statement of the appellant, AB1, Tab A, p 15.
[79] RB6, Tab 9, p 193-195.

problems with a gas-fuelled vehicle.

82. On the one hand, it is difficult to interpret parts of this conversation as nothing more than innocent banter. On the other hand, we do not consider this extract contains clear evidence of the appellant operating as the head of an OCG. Much of the conversation concerned various cars and we bear in mind it is the appellant's case that he is a legitimate car dealer.

D

83. D is a former business associate of the appellant. In the criminal proceedings, the prosecution alleged that the appellant, B, H and C conspired to blackmail D, to kidnap him and to cause him GBH. There had been a meeting on 29 January 2014 at [the property at 52] in which the appellant had verbally abused D for around three hours. During the late evening of 3 March 2014 D dialled 999, having observed H, C and K outside his house. He reported that they were threatening him[80].

84. XY explains in his statement that, after a dispute with the appellant and the aborted kidnap attempt from his home in Bournemouth, D fled abroad on or about 4 March 2014. XY believes the OCG then sought to locate D through a range of sophisticated methods[81]. XY exhibits a set of D's bank statements and a forensic report confirming that the appellant's and B's fingerprints were found on them. From around early March 2014 the statements show transactions in different European countries and someone has marked these and written the name of the country in Turkish alongside the entries. XY believes these show the appellant and B attempting to trace D[82].

85. The appellant's statement contains a very detailed account of his dealings with Dup to and including the problems caused to their joint drinks business, H and B Cash and Carry, by D's disappearance. Among other things, he had changed the computer passwords before he left. The appellant admits his fingerprints appear on the bank statements and explains he wanted to try to find out what had happened to the business's assets. However, he did not write on them[83]. At his trial he accepted his counsel's description of an abusive tirade which he delivered to D at the meeting on 29 January 2014 as a "severe roasting"[84] but he repeatedly denied under cross-examination that he had intended to intimidate him. To the judge he denied that D had looked distressed. Asked whether he was not concerned that D would react violently to the appellant saying he was going to "fuck his wife", the appellant said he was not because D appeared not to care what was being said[85]. We find that wholly unlikely. On any reading the transcript shows very clearly that the appellant was using highly offensive,

[80] AB1, Tab A, p 79-82.
[81] Paras 27 to 29, first statement of XY, RB1, Tab 1, p 20.
[82] Para 29, first statement of XY, RB1, Tab 1, p 20.
[83] Paras 24 to 32, first statement of the appellant, AB1, Tab A, p 15-24.
[84] RB3, Tab 13, p 636.
[85] RB3, Tab 3, p 943-947.

demeaning and provocative language towards D over a very lengthy period[86]. However, we also take Mr O'Callaghan's point that the CPS can be presumed to have decided there was insufficient evidence to charge the appellant with making threats to kill and, of course, the appellant was not convicted.

86. The probe evidence records a conversation between B and C on 7 March 2014 in which C appears to suggest beating up L, who is likely to be D's brother[87]. The appellant makes no comment on this[88]. We note that, at the end of the transcript, B says they will go and see L without repeating any intention to beat him up. Whilst the pair refer once or twice to "abi" and B appears to receive a call from "abi"[89], there is nothing beyond speculation to show the appellant was involved with a plan to injure L. We also note that Mr Has, the appellant's criminal solicitor travelled to Turkey to take a statement from L in October 2014 in which he described the appellant in glowing terms and blamed the collapse of the business squarely on his brother[90], although a tactical decision was taken at the appellant's trial not to call any evidence[91].

87. XY also sets out transcript evidence of B and C discussing the possibility of tracing calls in Europe on 11 March 2014[92]. B reports that intelligence people in Turkey could not track numbers in European countries. B and C appear to hatch a plan to transfer the ownership of D's car and then report it as stolen so that the police will contact them when it is found and they will be able to apprehend D outside the magistrates' court. B says, "We'll wait outside … (unintelligible) you grab and throw him inside, right? If the plan goes well, it's very nice, eh?" Mr O'Callaghan suggested to XY that it was not a very well thought out plan because the perpetrators would be unlikely to get away with snatching somebody outside a public building. It was put to XY that such a fantastic plan was inconsistent with a ruthless OCG of the kind described. XY maintained B had previously tried to kidnap D, although both B and the appellant were found not guilty of this particular offence.

88. We find there is evidence showing B and C were extremely keen to find D to bring him back to the UK. We remind ourselves that neither of them were partners in the Bournemouth business venture. Whilst we recognise the appellant was acquitted of all charges in connection with this matter, we find it more probable than not that the appellant was seeking to trace D and then to find a way to encounter him. The appellant admitted at his trial he wanted to contact D after he disappeared[93]. The overall context of the conversations and

[86] See RB6, first Tab 3.
[87] RB6, Tab 6, p 133 and Tab 7, p 150, and para 20, statement of Ali Has, AB1, Tab C, p 6. See also the appellant's confirmation at his trial: RB3, Tab 13, p 573.
[88] Para 12, second statement of the appellant, AB2, p 5.
[89] RB6, first Tab 6, p 138.
[90] AB1, Tab C, p 59-64
[91] Para 20, statement of Ali Has, AB1, Tab C, p 6.
[92] Para 30, first statement of XY, RB1, Tab 1, 21.
[93] RB3, Tab 13, p 652.

the tone of the language used makes it more probable than not that the appellant's intentions went beyond having an ordinary business meeting with D. Indeed, Mr Has confirms in his statement that the previous meeting between the appellant and D could not be described as a "traditional business meeting" because it was clear the appellant was angry[94]. That appears to us to be a considerable understatement. However, we also recognise the force of Mr O'Callaghan's argument that, taking XY's beliefs about what the probe evidence shows at face value, it could not reasonably be said that the evidence showed "sophisticated" efforts to trace D. Whether or not the business was legitimate, it is clear that D had upset the appellant and assets of the company were missing. Retrieving the missing money and goods appeared to depend on making contact with D.

89. Whatever the appellant's intentions were when he finally came face to face with D we cannot say this evidence can only be interpreted as demonstrating the existence of an OCG. The appellant was not convicted. The CPS accepted the appellant was not aware of the threat to kidnap D. He plainly used extreme verbal intimidation and enlisted the support of unsavoury characters, such as B and C, in his efforts to force D to change his behaviour. On the other hand, the means deployed to try to get hold of him cannot in truth be described as "sophisticated". The evidence does not, in our judgment, show that the steps taken to trace D demonstrate the existence of an OCG.

90. At this point we should say that we have considered one of Mr O'Callaghan's central arguments, which was that the CPS had not prosecuted the appellant and his associates on the basis of organised crime. He helpfully took us to the definition of the offence in section 45 of the Serious Crime Act 2015. However, that provision was obviously not in force at the relevant time and we were not told in what way the appellant's prosecution tangibly differed from a prosecution on the basis of organised crime. Accordingly, we have given this argument little weight in our deliberations.

The appellant's properties

91. XY states that the appellant owns [a property at 3], Edgware, which is worth in the region of £1.3 million. He purchased the property in 1995[95]. The appellant states he does not have any beneficial ownership of the property, which is owned by his brother, AB1. He holds it as AB1's "nominee"[96]. The appellant produced documents to support his contention regarding this property.

92. Firstly, there is an order of Sedley J, made on 8 April 1998, prohibiting the disposal of various assets and appointing a receiver. Those assets included [the property at 3]. The proceedings were brought under the Drug Trafficking Act 1994. The defendant in the proceedings was AB1, although the order was

[94] Para 19, statement of Ali Has, AB1, Tab C, p 6.
[95] Para 36, first statement of XY, RB1, Tab 1, p 33.
[96] Para 7, first statement of the appellant, AB1, Tab A, p 4.

addressed to him, NE Ltd and the appellant. The order was made following a request for confiscation of assets made by the Dutch government.

93. Secondly, there is a copy of a witness statement made by AB1 on 21 December 2014 on behalf of AB3 in which he explains that he sold assets before leaving Turkey, having secured the agreement of the British government to whom he had agreed to provide information. He bought the house without a mortgage and title was registered in the appellant's sole name[97]. None of his brothers had any beneficial interest in the house[98].

94. Thirdly, there is a transcript of the oral judgment in AB2's appeal to the Court of Appeal (Criminal Division) given on 30 October 2014. The Court was solely concerned with a challenge to a confiscation order made by the Crown Court. The Court dismissed the appeal finding the hearing had been fair notwithstanding the absence of AB2 (who was by that time in prison in Turkey). In doing so, it left undisturbed the trial judge's rejection of evidence that AB1 was the beneficial owner of [the property at 3] such that AB2 had no interest[99].

95. There is no suggestion the appellant lives there. It is unclear who does but we note AB1's statement claims none of the brothers live there and it is his family home[100]. We note that it is the address given for one AR, one of the visitors to the appellant while he was on remand in HMP Belmarsh[101]. The appellant states that he is his nephew[102] and we assume this is the AR referred to as being AB1's son[103].

96. The balance of the evidence does not support the view that the appellant has any beneficial interest in the property, although his legal title plainly shows a connection to his brother's activities at the time it was purchased. We accept the appellant is prohibited from disposing of the property and that he does not live there.

97. The property at [52] was purchased in 2002 when the appellant was in the UK with leave to enter as a student and around the time he married. The property was registered in AW's name. The property is currently vested in the trustee in bankruptcy with a view to selling it[104]. XY exhibits a series of statements from AW's HBOS mortgage account showing the mortgage was paid by way of "considerable cash payments", totalling £33,540, between December 2009 and

[97] Para 4, statement of AB1, [bundle]AB1, Tab D, p 30.
[98] Para 14, statement of AB1,[bundle] AB1, Tab D, p 33.
[99] Para 44, Judgment […], AB1, Tab D (no page numbering).
[100] Para 14, statement of AB1, AB1, Tab D, p 33.
[101] Para 34, first statement of XY, RB1, Tab 1, p 31.
[102] Para 34, first statement of the appellant, AB1, Tab A, p 29.
[103] Para 15, first statement of the appellant, AB1, Tab A, p 10.
[104] See the Order of the Central London County Court, dated 22 October 2014, AB1, Tab H, p 36-37.

December 2012[105].

98. The house at [56] was also purchased in AW's name. We accept that, at the time of the purchase in 2007, the appellant's immigration status was still in the process of being resolved which would have made it problematic to obtain a mortgage in his or joint names[106]. As with [the property at 52], the property is currently vested in the trustee in bankruptcy[107]. XY also shows that, between July 2009 and December 2012, the mortgage was paid by means of cash deposits totalling £64,940[108].

99. The inference which XY asks us to draw is that money was being "laundered" from the appellant's criminal activities to repay the mortgages on AW's properties. The appellant denies this and explains in his statement that the mortgage is paid in cash derived from rental income from [the property at 52][109]. AW confirms that the appellant took control of their finances and she believes the cash payments were derived from rental income[110]. In cross-examination the appellant explained that, since 2009, his finances had gone downhill. In particular, his wife had not been able to cope. Mr Hall put it to the appellant that it was an enormous waste of time to receive rent in cash and to pay it into the bank each time. The appellant insisted it was necessary because rental income and also income from Turkey did not always arrive on time. He denied that the money was from the proceeds of crime.

100. Whilst we note the appellant declared rental income and his documents have been seized[111], we observe nonetheless that there is little before us by way of a paper trail showing the money which was deposited in the mortgage accounts came from payments of rent in cash. We have in mind evidence such as tenancy agreements, receipts, rent books, statements from tenants, utility bills, accounts, accountant's letters, tax payments or any of the numerous ways in which landlords can establish the receipt of rental income. We note that, at his trial, the appellant said that he rented out three double rooms[112]. He said D was the "main tenant"[113], B was a tenant until 2009[114] and C lived there in 2011/12[115].

101. The appellant has produced documentation relating to AW's unmet council tax liability which led to the bankruptcy proceedings[116]. A statement has been

[105] Para 39 of XY's first statement, RB1, Tab 1, p 33 and Tab 9.
[106] The completion date was 16 August 2007 and the appellant had been granted a residence document in June. However, it is probable that came too late for the appellant to be included on the mortgage agreement and contract for sale.
[107] See the Order of the Central London County Court, dated 22 October 2014, AB1, Tab H, p 36-37.
[108] Para 38 of XY's first statement, RB1, Tab 1, p33 and Tab 8.
[109] Para 12 of the appellant's first statement, AB1, Tab A, p 8.
[110] Para 5, statement of AW, AB1, Tab A, p47.
[111] Para 50, first statement of XY, RB1, Tab 1, p 38.
[112] RB3, Tab 13, p571.
[113] RB3, Tab 13, p 584.
[114] RB3, Tab 13, p 587, although we note this address is not listed in B's PNC records: RB1, Tab 4, p 149-150.
[115] RB3, Tab 13, p 588.
[116] See AB1, Tab C.

prepared by Mr Ali Has, the solicitor currently representing the appellant and AW in civil proceedings[117]. In the section of his statement dealing with AW's ongoing council tax issue he says that his firm's file shows that the issue emanated from 2008/9 and was in relation to renting out [the property at 52]: "As far as we can understand it, it was said that the property had been let to multiple occupants and that for that reason a HMO licence had to be applied for. At the time N had been renting the property. He failed to pay the relevant council tax on the property for about 2 years or so. The original council tax sums due were in the region of approximately £2,068.23 and despite N accepting liability for the debt both in writing and in person to Harrow Council, they decided to pursue AW for the debt."[118]

102. AW confirmed in her statement made in the proceedings she has brought seeking to annul the bankruptcy order made on 12 August 2011 that she recollects [the property at 52] being rented to N and P[119]. The latter left but this did not concern her and her husband told her that N was a good tenant. Later on, another tenant, called Q, also tried to resolve the matter with Harrow Council. Emails confirming this were attached to AW's statement, as was a statement signed by N on 13 December 2012[120].

103. One tenancy agreement has been copied, which related to the tenancy granted by AW jointly to N, P and A Cars Ltd on 18 October 2009 at a rental of £1300 per month. The guarantor was H. We note that XY includes H in his list of members of the OCG[121] and N (alias NN) as a visitor to the appellant in HMP Belmarsh who has some minor convictions[122]. XY also states that N has been contacted by B in prison. The appellant states that B was one of the first tenants[123].

104. We appreciate the appellant's documents were seized. However, we find the evidence of a genuine rental arrangement which could yield sufficient sums to make substantial mortgage repayments on two properties at the same time for up to three years very scant indeed. We note the evidence of Mr Has has been couched in extremely careful terms and, significantly, his statement does not inform us what findings, if any, were made by the county court in respect of AW's evidence on this point. The Order, made on 22 October 2014, makes no reference to tenants or rental income[124]. There is considerable doubt in our minds as to whether [the property at 52] was rented out in the conventional sense to rent-paying tenants such that the considerable cash repayments can be

[117] Statement of Ali Has, AB1, Tab C, p 1-11. Mr Has was not called to give evidence because the respondent's legal team indicated this was not necessary.
[118] Para 27, the statement of Ali Has, AB1, Tab C, p 8.
[119] Statement of AW made in respect of the bankruptcy proceedings, AB1, Tab C, p 69-75 (our copy has not been signed or dated).
[120] AB1, Tab C, p 79 – 83.
[121] Para 33, first statement of XY, RB1, Tab 1, p 24.
[122] Para 34, first statement of XY, RB1, Tab 1, p 27 and PNC entry at RB4, Tab 14, p 958-960.
[123] Para 8, first statement of the appellant, AB1, Tab A, p 4.
[124] AB1, Tab C, p 84-85.

accounted for.

105. We have noted that the appellant and AW were arrested in connection with allegations of money laundering but these allegations did not relate to the mortgage repayments or claimed rental income[125]. No further action was taken due to lack of evidence[126], a point which we shall consider further below. We assume no allegations have ever been made in respect of the mortgage repayments prior to these proceedings. We do not therefore give this matter significant weight in our overall consideration of whether the appellant is the head of the OCG.

106. The appellant's case, as explained by Mr O'Callaghan, was that he cannot possibly be the head of an OCG because he is hard-up, he has missed mortgage payments and is in still arrears with his mortgage on [the property at 56][127]. We have seen a letter from the Bank of Scotland to AW, dated 27 January 2016, stating there were arrears of £2,329.43 and the existing payment plan had expired[128]. As at 1 May 2015 the outstanding balance on the account was £440,844.65[129]. The appellant has taken out two loans from Santander to ease his money problems[130]. The appellant says they converted the mortgage on [the property at 52] to an interest only mortgage after they bought [the property at 56][131]. As noted, AW has been made bankrupt because a relatively small debt was allowed to spiral out of control. We accept the information in the documents showing the GB has mortgage arrears and that the appellant has borrowed from Santander. We also accept the medical report, dated 18 March 2015, prepared by Dr Peter McCrae, a consultant psychiatrist working in the NHS, shows that AW has struggled to cope with the situation, although the main trigger for her adjustment disorder appears to have been the fact the appellant was remanded in custody awaiting trial from June 2014 until January 2015[132].

107. We have set out above some of the evidence relating to AW's financial problems. We further note that, in around April 2015, the NCA served AW with a notice of assessment of tax under section 29 of the Taxes Management Act 1970 for the periods from 2004/5 to 2008/9. Her liability for tax was estimated to be over £300,000 and is alleged to have derived from discrepancies between the income declarations made in her mortgage applications and declarations made to HMRC[133]. XY states that, in her mortgage applications, AW declared an income of £140,000 per annum from A Cars Ltd, which was not reflected in

[125] See Pre-Interview Briefing, 27 November 2013, AB1, Tab C, p 13-15.
[126] See Notification of No Further Action, 27 November 2014, AB1, Tab C, p53.
[127] Para 11, first statement of the appellant, AB1, Tab A, p 7.
[128] AB1, Tab H, p 50.
[129] AB1, Tab H, p 51.
[130] AB1, Tab H, p52-55.
[131] Para 6, first statement of the appellant, AB1, p 4.
[132] See AB1, Tab J, p 5-11.
[133] Paras 34-36, statement of Ali Has, AB1, Tab C, p 9.

the company's accounts[134]. The matter has yet to be resolved. AW says nothing about this in her statement other than referring to a letter from her lawyer[135]. We accept the matter is still pending resolution and we do not attempt to prejudge it. We merely note that AW's lawyer, Mr Has, suggests the entire fault lay with mortgage brokers[136]. The accountancy firm which had inflated AW's income is no longer trading[137].

108. For our purposes this evidence underscores the need for us to approach all issues concerning the appellant's finances with an abundance of caution. On the one hand, the appellant manages to make very substantial cash payments towards his mortgages without showing in a satisfactory manner that the money came from the sources he claims. On the other hand, he seeks to show that he and AW are impecunious and therefore invites us to find this does not sit easily with the respondent's case that he is the head of an OCG, which is presumably a profitable situation. It is unfortunate that the issues regarding AW's non-payment of council tax, which led to bankruptcy proceedings, and the ongoing assessment of her liability for unpaid taxes have not been resolved in a way which assists us to make an assessment of whether the appellant is correct in his assertions regarding his impecuniousness. However, other matters did assist us.

109. Mr O'Callaghan's submissions to us made much of the fact the appellant is not, as he put it, awash with money. We find he was right to highlight this point because it must be correct that, if the appellant were the head of an OCG, he could reasonably be expected to enjoy a certain lifestyle. Whilst he obviously enjoys respect among members of the community and he has probably gained notoriety as a result of his family name, it has not been shown by the respondent that he is a wealthy man. On the face of it, the clear evidence that he is unable to pay off his mortgages and his wife's debts have led to both properties, including their home, being vested in the trustee in bankruptcy is wholly inconsistent with XY's beliefs regarding the appellant operating an OCG which engages in, among other things, extortion rackets.

110. It would be naïve not to recognise that the head of an OCG could be expected to take steps to hide his wealth. However, there was considerable force in Mr O'Callaghan's argument that the investigation of both the appellant and AW for money laundering had led to no charges being laid against them. Mr Has describes what happened in his statement[138]. The appellant and AW were arrested on 27 November 2013 in relation to an investigation into the use of A Cars Ltd for money laundering purposes. The period investigated ran from July 2007 to April 2013. The £7,000 seized in a search of [the property at 52] was returned because it was established it did not belong to the appellant or AW.

[134] Para 43, first statement of XY, RB1, Tab 1, p 34.
[135] Para 6, witness statement of AW, AB1, Tab A, p 47.
[136] Para 37, statement of Ali Has, AB1, Tab C, p 10.
[137] AB1, Tab C, p 90.
[138] See AB1, Tab C, p 1-5.

On 27 November 2014 the NCA wrote to Mr Has to say there was insufficient evidence to provide a realistic prospect of conviction. In other words, an investigation lasting a whole year into an 8-year period did not yield sufficient evidence to found a charge. In the circumstances, we do not find the evidence suggests it is more probable than not that the appellant has hidden his wealth. Indeed, the fact AW has been made bankrupt over what was originally a fairly insignificant debt is not consistent with such an inference being drawn.

111. One matter which did concern us was the appellant's evidence to us, given in cross-examination on 12 April, about his business activities. The appellant confirmed that he set up a new business in around 2013 in partnership with D and two others on the basis he could give a personal guarantee for £80,000 credit provided by someone called Umit so that goods could be purchased[139]. If the business failed, he said, he could re-mortgage his property. Pressed to explain why the suppliers would provide goods if it could not be shown that the credit would be honoured, the appellant said that the supplier would vouch for him. However, he accepted he had no connection to the supplier at the time he offered to guarantee the credit. Asked to explain how, as a car dealer, he was able to obtain credit in this way, the appellant's evidence floundered. He referred to knowing a lot of people, being social and having connections in the community.

112. We recall the appellant's evidence to us that his finances "went downhill" from 2009 onwards. That is inconsistent with his account of being able, as a simple car salesman and low-key businessman, to secure large amounts of credit on nothing more than his word to fund business arrangements across Turkey and Europe. We consider the appellant's credibility was undermined by this area of cross-examination and we draw an inference that the appellant has presented an incomplete picture of his business dealings.

113. Additionally, in questions from us at the end of his oral evidence, the appellant appeared to retreat from his earlier evidence. We pointed out that his account of being in mortgage arrears did not sit easily with his claim he could meet his obligations as a credit guarantor by re-mortgaging his house. He then said that this happened before he had money problems. His problems had only been in the last three or four years. That contradicted his evidence that his financial problems started in 2009.

114. Our view was fortified to an extent by the appellant's subsequent evidence that he receives a share of the profits of a large commercial building in Istanbul but this income is not deposited into his account. It is now paid into the account of AB1's wife. We found the appellant's responses to Mr Hall's questions about why other money is paid into AW's account rather than his own unimpressive. It was clear to us that the appellant was not prepared to provide an accurate picture of his circumstances.

[139] See also para 25, first statement of the appellant, AB1, Tab A, p 17 and RB3, Tab 13, p 593 and 596.

115. We have carefully considered whether these findings should lead us to conclude that the appellant might be hiding his wealth. However, on balance, we have concluded that they do not. Whilst the appellant might not be prepared to be entirely frank and open about his business dealings and associations, we still do not believe he would allow his home to be put at risk and his wife's health to suffer over a debt which he could manage to repay but prefers not to in order to provide a smokescreen for his true activities. Given his family's name and reputation, it is likely the appellant benefits from a certain notoriety which enables him to make connections and introductions within the Kurdish community. We cannot speculate but this might also account for his ability to guarantee credit whilst not having any capital assets to provide security.

The purchase of a lake

116. XY believes that the appellant's intended purchase of a lake and land in Oxfordshire in 1998 was being funded by money from the OCG because the deal fell through when the family's assets were frozen[140]. This showed the appellant was actively involved in the OCG. The appellant was recorded by a probe describing how he was "hit by that operation"[141]. XY contrasts the appellant's access to large amounts of money with his evidence at his trial in 2015 that he had to abandon his studies because he was impecunious[142]. The appellant states in his first statement that he discontinued his studies in 2000 and that XY had got his dates wrong[143]. Mr O'Callaghan put this to XY at the beginning of his cross-examination. XY explained he was not suggesting the appellant was lying when he said he could not proceed with the purchase because of the family's assets being seized. The point was that the appellant's ability to buy a lake was not in keeping with student life. He accepted that not all the assets that were seized were the proceeds of crime and some were returned to the family. However, the majority were seized.

117. We find the appellant was at cross-purposes with XY in his statement and the point XY had been trying to make in his statement was that it was highly suspicious that a student, who subsequently had to abandon his MBA studies due to lack of funds, had been contemplating the purchase of a large area of land and a lake with a view to developing the site. It is clear to us that, until the asset seizure, the appellant had access to the family's money, much of which was found to be the proceeds of crime. He has not offered an explanation for this. However, the case we are considering is that the appellant is the head of the OCG and this evidence shows at most only that he potentially benefited from the financial backing which his brothers provided. It has not been suggested the appellant was not a genuine student while he was enrolled on

[140] Para 4, first statement of XY, RB1, Tab 1, p 2.
[141] Para 54, first statement of XY, RB1, Tab 1, p 54.
[142] See the transcript at RB3, Tab13, p 567.
[143] Para 13, AB1, Tab A, p 9.

courses and we find it unlikely that he could pursue studies at the same time as contribute substantially to running an OCG.

A Cars Ltd

118. XY's evidence to us was that he believes the appellant operates this business as a "front' for his OCG activities. In the course of investigations the authorities had searched both [the property at 52], where the business operates from, and [the property at 56]. A number of documents had been seized. We have had sight of the company's trading accounts prepared by Graham Cohen & Co Ltd, Accountants, from April 2005, when the business was incorporated, until April 2012[144]. Some of the probe evidence was obtained through a device installed in [the property at 52]. XY accepted in cross-examination he is not an expert in the car business.

119. XY suggests the business does trade to a limited extent in a legitimate manner but, in his opinion, does not have the infrastructure that would be expected of a car sales business[145]. For example, the company does not appear to have the means to advertise, there is no forecourt, business website or footprint on any other website. The company is not registered for VAT, does not have any employees or PAYE records. XY suggests the company trades within a closed community of the appellant's associates so as to give him cover as a legitimate businessman. XY has provided a table of AW's declared earnings taken from HMRC records, showing her income from A Cars Ltd ranged from £5225 in 2007/8 to £9600 in 2012/13[146]. However, there are no corresponding credits in AW's bank statements. The appellant confirms that AW receives a salary of £800 from the company, which she does not necessarily pay into her bank account[147].

120. The appellant has maintained that A Cars Ltd is a legitimate business and he explains that the company not only buys and sells cars but the business also invests in other businesses[148]. He explains that the business is effectively home-run. He built an office at [the property at 52] and there is a hardstanding to accommodate cars. He does not need to advertise because he buys cars from salvage and auctions and he does business within the trade. He arranges for the cars to be "fixed up". He uses other firms to sell the cars for him. The VAT threshold has not been reached. The only employees are himself and AW. The appellant is critical of XY's lack of understanding of the car trade.

121. It was put to the appellant in cross-examination that he uses A Cars Ltd to conceal his OCG activities. The appellant denied this and reiterated that he is hard-up.

---

[144] RB2, Tab 10.
[145] Para 42, first statement of XY, RB1, Tab 1, p 34.
[146] Para 46, first statement of XY, RB1, Tab 1, p 35-36.
[147] Para 12, first statement of the appellant, AB1, Tab A, p 8.
[148] Para 37, first statement of the appellant, AB1, Tab A, p 31.

122. In response to a letter from the appellant's solicitors, which we have not seen, Graham Cohen & Co Ltd has provided some additional documents relating to the business, such as some handwritten invoices in respect of car rentals and commissions in 2011[149]. We have also been provided with what we assume to be photographs of [the property at 52], showing a a single-storey gated property and a number of vehicles parked within the yard and probably invisible from the street[150].

123. We have no expertise in the car sales business. We accept there are different types of business and there may be other markets apart from the traditional visible car sales business which has a forecourt or showroom and which places advertisements online and in various publications. The respondent accepts the appellant does trade in second hand vehicles and the probe evidence shows in various places that the appellant has knowledge of cars. However, we were very surprised to hear from the appellant that he is unable to drive. Given he has no employees we were left to wonder how it is that he manages to move cars from place to place and even to park them at [the property at 52].

124. In his second statement the appellant seeks to clarify that he is able to drive but has not held a British driving licence for a variety of reasons[151]. The appellant has supported his account with a letter from DVLA, dated 28 May 2014, which we note is addressed to him at [the property at 3], Edgware[152]. This evidence does little to detract from the point we have made that it is unlikely that a serious car salesman would not make it a priority to be able to drive.

125. The figures show this is not on, the face of it, a lucrative business. The accounts for the year ending 30 April 2013, the latest we were shown, recorded a gross profit of £31,250 from which administrative expenses of £29,629 were deducted leaving an operating profit of £646[153]. The expenses included salaries of £9,712 and director's remuneration of £9,712. The accounts refer only to the cost of sales and make no mention of other business investments, as described by the appellant and also briefly confirmed in a letter from Graham Cohen & Co Ltd, dated 3 June 2016[154].

126. It appeared to us that there was a similar degree of opacity to the appellant's evidence regarding the operation of A Cars Ltd as there had been to his evidence of the rental income derived from [the property at 52] and his ability to guarantee credit on behalf of suppliers in Turkey. As noted, he maintained he has no employees other than himself and AW but there is no evidence of money being paid into GB's bank account. A few bank statements in respect of A Cars Ltd's HSBC account have been attached to the letter from Graham Cohen & Co

[149] AB1, Tab H, p 1-38.
[150] AB1, Tab H, p 63-70.
[151] Para 15, second statement of the appellant, AB2, p6-7.
[152] AB2, p 20.
[153] AB1, Tab H, p 19-34.
[154] AB2, p 22.

Ltd. Even a cursory glance at these shows that there were very few transactions. In our judgment they do not reflect the description of his business given by the appellant in his witness statement[155]. We also find it significant that, whilst he explains the limited market in which he chooses to operate, the appellant has not explained why he chooses to limit his business in this way given there must be opportunities to work more widely and therefore to grow the business. This is an example of the appellant reacting with explanations to the case against him but not providing a convincing account of the bigger picture. On the one hand, he claims he is hard up. On the other, he seeks to present himself as a serious businessman but does not explain why he has restricted his car sales business to an extremely narrow market.

127. We were also struck by the absence of the kind of evidence which ought to be readily available to support the appellant's account of running a legitimate car business. He gave evidence to the effect he is involved in numerous transactions to do with the selling on of cars and also rentals and storage. We saw no compelling evidence from the insurance brokers he referred to or from any of his customers, trade or otherwise. We appreciate many of his documents were seized. However, he has been on notice for a long time that XY's evidence would be that the business is a screen for other activities. The appellant has not taken steps to adduce cogent evidence beyond the few additional documents provided by his accountants.

128. The appellant has sought to add to the portrait he gave us of his business activities at the hearing by adducing fresh evidence suggesting he has been involved in various other business projects[156]. Two letters from fellow businessmen briefly confirming this have been provided[157]. The value of the letter from R was diluted by the evidence handed up by Mr Hall showing that R was convicted on 15 December 2015 with others of conspiring to commit four immigration offences. He was subsequently sentenced to an absolute discharge because of his mental health problems.

129. Again we find the appellant has reacted to challenges to his status as a legitimate businessman by adducing fresh evidence but we agree with Mr Hall that the effect of this is to undermine further his account of running A Cars Ltd as a legitimate car sales/rental business. The appellant's decision to file this evidence so late in the day means it could not be tested. We attach little weight to it.

130. Drawing these matters together we find that A Cars Ltd does operate in a legitimate matter but that it only "ticks over" and it has not been adequately explained why that should be the case. We are sure the appellant has not provided a complete or accurate account of his activities. On the other hand, the

[155] See para 38, first statement of the appellant, AB1, Tab A, p32.
[156] Para 16, second statement of the appellant, AB2, p 7-8.
[157] AB2, p 21 & 23.

lengthy money-laundering investigation conducted by the police did not produce evidence sufficient to prosecute the appellant or AW. We recall that the original allegation was that they were using the business to launder money[158]. We are not able to find on the balance of probabilities that that is the case notwithstanding our reservations about the appellant's evidence. These reservations are not sufficient, in our judgment, to infer the appellant uses the business to provide him with a cloak of legitimacy whilst he operates as head of an OCG. At its highest the evidence only shows the appellant operates on the fringes of legality.

The evidence of AW

131. AW gave brief evidence to adopt her statement only[159]. She was asked no additional questions by way of examination-in-chief and she was not cross-examined. She explains in her statement that she finds these proceedings stressful and we have noted that she has been frail of health. To the extent her evidence records the history of her relationship with the appellant and the birth of their son, we accept it. We also accept her evidence about the appellant's relationship with his son.

132. To the extent her evidence relates to the purchase of properties, the council tax debt on [the property at 52] and the running of A Cars, we accept that she has been directed throughout by the appellant. Her evidence has not assisted us with our task of deciding whether we accept the appellant's account or not.

The evidence of AS

133. AS is married to AB3, the appellant's older brother. She gave evidence on behalf of the appellant.

134. XY has provided probe evidence of a conversation between AS and B recorded in B's car on 12 February 2014[160]. In the course of their conversation they discuss the appellant and XY opines that the correct interpretation of this is that they are discussing his criminality. For example, there is the following exchange:

> "O: You see what we live with.
> AB: I know your life is difficult.
> O: If only A Abi could get his passport and go. Otherwise they are going to put him in prison I swear.
> AB: Very difficult (unintelligible) even if he gets it and goes. If he lives like this it will be the same wherever he goes. Unless he and AB3 change their lifestyle they will have problems again."

135. We note that AS accepts this conversation took place but she offers a different interpretation. She explains that she meant that both the appellant and her husband would have problems if they continued to involve themselves so much

[158] AB1, Tab C, p 13-15.
[159] AB1, Tab A, p45-50.
[160] Para 51, first statement of XY, RB1, Tab 1, p 40-43.

in the community. The appellant was often approached for advice[161].

136. Cross-examined, she insisted that she had been shocked that her husband was found guilty and she denied being aware that he had been leading a bad lifestyle. She said he used to help people in the community but not in a way she thought could lead him to end up in prison. Asked about the transcript referred to above, she acknowledged that B had told her he had been followed by the police. She denied ever wondering why he had been followed by the police. She said she was "paranoid" about being watched. In relation to the dialogue set out above, she refused to be drawn as to why she had expressed a fear that the appellant might be sent to prison. She would only say that friends might tell lies about him but she would not say what sort of accusations she had in mind. She would not say who the bad people were that the appellant ought to keep away from.

137. We found AS's evidence highly evasive. We agree with Mr Hall's characterisation of her frequent resort to denying all knowledge as "Nelsonian blindness." We reject her claim set out in her witness statement that she feared that the appellant would encounter problems from the community because he was too ready to help people. We infer from her refusal to explain what she had meant that her concerns were that the appellant would end up in prison because of his criminal activities. We place little reliance on her insistence that he was innocent but that bad people would make false statements about him because, when pressed, she could tell us nothing about why she thought this.

138. Another exchange relied on by XY goes as follows[162]:

"O: If we bought a house our name will also be cleared yenge[163]. I don't know what is going to happen.
AB: So are you saying you can't buy a house before you have a clean name?
O: If I buy a house and the state come one day and says where did you bring the money from, what am I going to say? If they say where did you bring the money from.
AB: Of course you have to have an official income.
O: That's it, I don't have an official income or anything. We have nothing. We have to do something.
AB: A grocery store or something. I don't know something. Your income has to be out in the open. It comes and goes there. Are you not thinking about something like that?
O: We are looking yenge. Wherever (unintelligible) we do something official it goes wrong. We can't do with official things. It goes under straight away. So went shops went under.
AB: I don't know if you did it with reliable people they will not go down. (unintelligible)
O: (unintelligible)

[161] Para 4, statement of AB, AB1, Tab A, p 55.
[162] RB1, Tab 1, p 42-43.
[163] A term of respect for a senior female, equivalent to "Aunt".

AB: Those around you are rotten. As long as those around you are rotten, you will rot it/them.

O: Willingly or not you rot amongst it, one would get lost in it. If there are one or two clean ones, they disappear amongst them. I ensure you they disappear/get lost."

139. In her statement AS denies that she was discussing money laundering with B. She says was suggesting he set up a business legitimately so that he could make a mortgage application[164]. She was assisting him to find a property to buy with his partner.

140. Cross-examined, she said she did not know how B was earning a living when she had the conversation with him. She denied knowing him well. She denied knowing that B was a car dealer and that he bought cars from the appellant, as the appellant had told us. She denied knowing that B was spending time with criminals and would not explain what she had meant by "rotten people". She said she was not really describing anyone.

141. Again we found AS's refusal to answer questions about what she had meant undermined her claim that the conversation had an innocent explanation and was misinterpreted by XY. We see no reason why she should not have been able to answer Mr Hall's questions if it were really the case that she knew nothing about B. We find her account impossible to reconcile with the transcript, the clear meaning of which is that she was advising B to operate a legitimate business as a front. The plain meaning of the conversation is that B's activities were not legitimate and AS knew this. Of course, that part of the conversation was exclusively about B and did not involve the appellant.

Prison visits

142. The final part of XY's evidence which we wish to refer to is his confirmation of the criminality of some of the visitors who attended HMP Belmarsh while the appellant was remanded in custody[165]. He lists their names and records their convictions and non-convictions, taken from the PNCs. There are 17 individuals on the list. XY acknowledges that some of the offences might not be considered to be at the upper levels of criminality. However, some were very serious and it is notable how many of the appellant's visitors have criminal records. The appellant's evidence in cross-examination that he had no control over who visits him hardly addresses the clear implication of this evidence, which is that he has a large number of associates who commit crime, in some cases very serious crime. There can be no doubt that the appellant has many acquaintances who have convictions.

143. However, there are limitations as to the effect of this evidence. One of the visitors listed turns out to be a magistrate. We were struck by Mr O'Callaghan's

[164] Para 5, statement of AB, AB1, Tab A, p 55.

[165] Para 34, first statement of XY, RB1, p 27-32, and see PNCs and visitor records at RB4 at Tabs 14 and 15, p 949 - 1006.

cross-examination of XY which showed that restrictions on visits to prisoners on remand are less rigorous than on visits to convicted prisoners but also that prison governors have powers to exclude undesirable visitors, particularly at HMP Belmarsh. In other words, we are asked to infer that the prison authorities were not on the face of it concerned that the appellant might be conducting meetings in order to continue running the OCG. There are no transcripts of those meetings. We cannot infer from the fact the appellant met with several people with criminal records of various degrees of seriousness, even looking at the evidence in the round, that he was likely to be running the OCG from inside HMP Belmarsh. It cannot be the case, as he maintained in cross-examination, that his good name is important to him if he associates with people who are frequently in trouble with the police. Whilst this evidence fits with our impression that the appellant has many associations with criminals we cannot say it takes the matter very far in terms of establishing that he is the head of the OCG.

The appellant's involvement in the OCG - conclusions

144. We now attempt to draw together the various findings we have made in order to reach a conclusion about the appellant's role in the OCG.

145. Mr Hall argued that a journey consisting of three evidential stages should lead to the conclusion he sought, namely that the appellant is the head of the OCG.

146. The first step is to acknowledge that the OCG has existed for many years. As we have said at paragraph 34 (above), we find as fact that there has been an OCG. At least during the time that the appellant's brothers were at large, this operated so as to import huge quantities of drugs to the UK, as well as to engage in other serious crime involving blackmail, kidnapping and very serious violence. This takes matters up to around 2011. We find it significant that there is nothing in the evidence to support the view that the appellant has ever been involved in the importation of drugs or of any drug offences at all. Mr O'Callaghan drew our attention to the probe evidence, which should be dated 7 January 2014, in which B confirms the appellant does not want anything to do with drugs[166]. Nor does the evidence suggest at any point that the OCG is currently involved in the drugs trade. We believe that, if it were the case that the appellant, B or any of the other persons recorded were involved in the drugs trade, there would have been something in the three years' surveillance material to confirm this. It appears clear to us that, whatever became of the OCG after the imprisonment of the appellants' brothers, it has probably ceased to engage in the drugs trade.

147. We note the phrasing of Mr Hall's first stage test, which asks the question in the past tense. We accept there has been an OCG but we think it is important to ask whether it continues in operation and, if so, to what extent it continues to operate. We found this a far more difficult question to answer. The drugs trade

[166] RB6, Tab15, p 214.

was clearly a major part of its operations in the past. XY's belief appears to be that the OCG continues to operate through its extortion racket. Some of the transcript evidence can be read as reflecting XY's theory. There are also references to people being identified as "As"[167], which the appellant could not explain convincingly. However, we accept such references do not necessarily show there was an active OCG. B could have been referring to historical loyalties rather than these necessarily being references to the appellant. We have kept an open mind about the possibility that the OCG continues in some reduced form.

148. Mr Hall's second stage is to find that the appellant is closely associated with a number of individuals from the North London Turkish community with convictions for serious criminal offences. B and Care given as examples.

149. We find as fact that the appellant has many close associations with people with criminal records. This is plain from the papers as a whole and also admissions made by the appellant in his evidence to us. We find the appellant's insistence that his good name is important to him very difficult to reconcile with his associations, his denial of having any knowledge of organised criminal groups and his admission that he knew that people he associated with had guns. We place particular reliance on his close association with B, who has very serious convictions. We noted that the appellant was in a car with B on the night of the shooting and also the next day. We do not accept they simply knew each other through the community or through their joint participation in the car trade. The recorded conversations between B and AS and also B and C indicate that there is a close association between the appellant and B. We noted B was present at the meeting with D on 31 January 2014 even though, as far as we can see, B was not involved with the Bournemouth enterprise. The appellant's claim to have broken off relations with B when he realised what he had done appeared to us to be highly contrived. We accept XY's depiction of B as a violent career criminal. We noted the appellant's admission that B used the A name.

150. Mr Hall's third stage is that the appellant is the head of the OCG. He relies on the evidence of B and C discussing remuneration, B appearing to take orders from "abi", who is the appellant, the appellant giving orders to B to fight back after the shooting and the evidence of XY that he had not come across B working for anyone else. Mr Hall also relies on the evidence given at the trial of G, the appellant's discussion of how to become "immortal", security-conscious behaviour and the obscurity of the appellant's financial situation. We have carefully considered all of these points above in our discussion of the evidence. They are all matters capable of being interpreted so as to support XY's beliefs about the appellant which are, in turn, based on his professional experience of organised crime. We have endeavoured to explain the basis upon which we have been able to attach weight to them or not.

[167] See, for example, B at RB1, Tab 1, p39 and p 65.

151. We have also considered Mr O'Callaghan's closing submissions. We have taken note of his general point that the probe evidence was obtained as part of "Operation Accountant", which lasted approximately three years. Whilst a fair amount of transcript evidence has been produced, it can be safely assumed that hundreds or even thousands of hours of recordings yielded nothing of interest. Mr O'Callaghan argued that the few hours of transcript evidence ultimately relied on by the respondent cannot bear the weight which she seeks to load on them as showing the appellant is the head of the OCG. He also argued that we should infer from the non-disclosure of much of the documentation seized that they contain nothing of interest in these proceedings.

152. In our judgment, the most troubling part of the evidence concerns the appellant's close association with B, who is known to be a loan shark and drug dealer. He uses an armoured car. He moved house after being shot at. He is now serving a lengthy sentence. Mr O'Callaghan described the appellant's relationship with B as the "fulcrum" of the respondent's case. We agree it is a central part of it. However, as said, the respondent's case only succeeds if it is shown that B acts as the appellant's subordinate. For the reasons given, we are unable to find that is the case. B certainly acts subserviently towards the appellant and talks about him to others as if he holds authority within the community. However, it is telling that the CPS did not find there was sufficient evidence to prosecute the appellant in connection with the kidnap plot. It is also reasonably clear that B recognises the appellant does not approve of drugs dealing. We have found the probe evidence does not show with probability that the appellant was giving orders to B to exact revenge following the shooting. If he did, the unanswered question arises of why no retaliatory action was taken. Again, if there were a chain of command of the kind described by XY, we consider it is likely that three years' surveillance would have revealed far more in the way of examples of orders being given and reported on.

153. It has not been shown that, at least as far as the UK is concerned, the appellant holds significant assets. He is unable to dispose of any of the three properties which are registered in his name. He has unpaid mortgages on two of them and other debts. For the reasons we have given above we do not find it is likely that the appellant has successfully hidden his wealth. A Cars Ltd ticks over as a going concern but is plainly not the appellant's main means of supporting himself and his family. We are sure he is involved in many business arrangements of different kinds and that we have only been given a partial insight into these. On the other hand, it has not been shown that the business was used to launder money. We do not consider the appellant to have given truthful evidence about his precise circumstances. However, neither are we satisfied by the available evidence that the appellant enjoys the lifestyle which might be considered consistent with his being the head of an OCG.

154. To conclude, we find there has been an OCG. There may still be a reduced version of that organisation in existence. The appellant may trade on the

notoriety of the name he has inherited. However, despite our numerous misgivings concerning the appellant's overall veracity, we are not satisfied that it is more probable than not that the appellant is the head of the OCG.

Decision

155. We now apply the law to our findings. The respondent's power to deport foreign nationals is derived from section 3(5)(a) of the Immigration Act 1971 but, in the case of EEA nationals and their family members, the governing principles are to be found in Regulations 19 and 21 of the EEA Regulations, which were designed to transpose into domestic law the provisions of articles 27, 28 and 29 of Directive 2004/38/EC of the European Parliament and Council, of 29 April 2004 ("the Citizens' Directive").

156. The EEA Regulations read as follows in relevant part:

"**Permanent right of residence**

15. (1) The following persons shall acquire the right to reside in the United Kingdom permanently—

(a)…

(b)a family member of an EEA national who is not himself an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;

Exclusion and removal from the United Kingdom

19.

…

(3) Subject to paragraphs (4) and (5), an EEA national who has entered the United Kingdom or the family member of such a national who has entered the United Kingdom may be removed if –

…

(b)the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with regulation 21;

Decisions taken on public policy, public security and public health grounds

21. (1) In this regulation a "relevant decision" means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a permanent right of residence under regulation 15 except on serious grounds of public policy or public security.

(4) ...

(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles—

(a)the decision must comply with the principle of proportionality;

(b)the decision must be based exclusively on the personal conduct of the person concerned;

(c)the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;

(d)matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e)a person's previous criminal convictions do not in themselves justify the decision.

(6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and economic situation of the person, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin."

157. We remind ourselves that the respondent accepts the appellant has acquired a permanent right of residence. His case therefore attracts the additional protection provided by Regulation 21(3) and "serious grounds of public policy or public security" must be shown before the appellant's removal is lawful.

158. In *Bah (EO (Turkey) liability to deport)* [2012] UKUT 196 (IAC) the former President of the Upper Tribunal gave guidance, in the context of a conducive deportation appeal, to the effect that the Tribunal had not erred in permitting the Secretary of State to rely on evidence of conduct falling short of criminal convictions. The assessment should be forward looking.

159. At the beginning of these proceedings we were provided with detailed skeleton arguments setting out the law and an agreed bundle of authorities. We are grateful for this assistance. However, when it came to closing submissions, the representatives were agreed that this appeal resolves itself according to our finding of fact with regard to whether the appellant is the head of the OCG or not. Mr Hall's core submission was that the evidence showed this to be the case and therefore, notwithstanding the protections offered by Regulation 21, the public interest prevailed. Mr O'Callaghan's core submission was that the evidence fell short of showing the appellant was the head of the OCG but, in the event we found he was, then his removal would be justified and proportionate. Family life considerations and the best interests of the child would not outweigh the public interest. We found this approach very helpful and we have not found it necessary to set out the law any further.

160. In the light of this agreed approach, we need only refer to our conclusion that, on the available evidence, we are not able to be satisfied that it is more probable

than not that the appellant is the head of the OCG. Accordingly, the appellant's appeal is allowed.

Anonymity

161. Mr O'Callaghan sought an order for an extension of the anonymity direction granted at the case management review hearing so as to include any reference to the A name. We indicated we would consider this at the end of the hearing.

162. Mr O'Callaghan argued that anonymity was appropriate to protect the interests of the appellant's child. There was a possibility his friends would search the internet and the results would make a link between his family and organised crime. Mr Hall argued that it was not appropriate to make an anonymity direction in this case because the interests of open justice prevailed. These were weighty matters which were not displaced in this case. He pointed out that the A name is already in the public domain. The appellant had been tried in public using his name. Mr O'Callaghan pointed out that this case was not a continuation of what was already in the media relating to this appellant. That material referred to the appellant's brothers.

163. We gave this matter careful consideration and we also considered the effect of our allowing the appeal[168]. Having done so we have concluded that it is not appropriate to make any anonymity direction in this case. The direction made at the case management review hearing is revoked and no further directions are made. Our reasons are as follows.

164. Our starting-point is that there is weighty public interest in open justice. In *Application by Guardian News and Media Ltd and others in HM Treasury v Mohammed Jabar Ahmed & Ors* [2010] UKSC 1, the Supreme Court considered the "recent efflorescence of anonymity orders" prior to which the general rule was that judicial proceedings were held in public and the parties were named in judgments[169]. The Court set out the correct test as being whether there was sufficient, general public interest in publishing a report of proceedings which identifies a party to justify curtailing that party and his family's right to a private and family life[170]. When conducting the balancing exercise, there is a "powerful, general public interest" in identifying a party in important proceedings[171].

165. We remind the parties that the decisions of this Tribunal are not reported. However, we understand the appellant's concern that, if the press obtained a copy of this decision, it might wish to report it given the notoriety of the A

[168] See generally Presidential Guidance Note No 2 of 2011: Anonymity Directions in the FtT(IAC) (Issued 14/02/2011)

[169] Paragraph 22.
[170] Paragraph 52.
[171] Paragraph 76.

name. The appellant's concern is that this might lead to his son being associated with organised crime, thereby potentially damaging his reputation and relationships. Article 8 is clearly engaged. The appellant points out he was acquitted at his trial and, as seen, we have allowed his appeal.

166. However, we agree with Mr Hall that the A name is already in the public domain as the sheaf of press article produced by XY shows. Moreover, the appellant gave evidence in three appeals in this Tribunal in his own name without this having had any consequences for his son. Likewise, his trial was public and his name was not withheld without there being any adverse consequences for his son. In our judgment, this shows the prospect of the kind of harm which concerns the appellant occurring is extremely remote and is heavily outweighed by the public interest in ensuring that justice is seen to be done.

NOTICE OF DECISION

The appellant's appeal against the respondent's decision to remove him, dated 16 June 2015, is allowed under the EEA Regulations.

Signed Date 29 June 2016

Mr M A Clements
President of the First-tier Tribunal (Immigration and Asylum Chamber)

Judge Froom
Judge of the First-tier Tribunal (Immigration and Asylum Chamber)

TO THE RESPONDENT
FEE AWARD
As no fee was paid there can be no fee award.

Signed Date 29 June 2016

Mr M A Clements
President of the First-tier Tribunal (Immigration and Asylum Chamber)

Judge Froom
Judge of the First-tier Tribunal (Immigration and Asylum Chamber)