Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11855/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 January 2020	**On 26 February 2020**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

IK
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Nnumani, Counsel, instructed by Montague Solicitors LLP
For the Respondent: Ms R Bassi, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a remade decision following the identification of material legal errors in the decision of Judge of the First-tier Tribunal K R Moore, promulgated on 5 November 2018, dismissing the appellant's appeal against the refusal of a human rights claim dated 30 October 2017, which in turn followed a decision to make a deportation order against the appellant.

Background

2. The appellant is a national of Turkey, born in 1982. He entered the United Kingdom clandestinely in January 2002 and claimed asylum. His asylum claim was refused and an appeal was dismissed in March 2002. The judge found the appellant's protection claim to be incredible and rejected his claimed political activities and his claim that he would be at risk on return to Turkey.

3. The appellant thereafter remained in the United Kingdom and commenced a relationship with RR, a British citizen. They had a daughter, J, born in May 2006. The appellant made an application for leave to remain under the so-called legacy programme and in October 2008 he was granted Indefinite Leave to Remain (ILR) based on his relationship with RR and J.

4. The relationship between the appellant and RR soured and they separated. The appellant married DG, who is also a British citizen, on 19 May 2016 and they have a son, DK, born in September 2016. The appellant is now estranged from DG and currently has no contact with DK.

5. In June 2015 the appellant was convicted of burglary and criminal damage and sentenced to one year and seven months' imprisonment in respect of the burglary offence. A deportation order was signed in October 2015. The appellant had previous convictions in the United Kingdom. In September 2006 he was convicted of motoring offences including driving with no insurance. In December 2008 he was sentenced to two months' imprisonment for committing an act with intent to pervert the course of justice. A deportation order was made in respect of the appellant on 5 October 2016. The effect of the deportation order was to cancel the appellant's ILR.

6. In her Reasons for Refusal Letter, dated 30 October 2017, the respondent did not accept that the appellant had a genuine and subsisting relationship with J. Alternatively, although the respondent accepted that it would be unduly harsh for J to relocate to Turkey (as she did not form part of the appellant's family unit and lived with her mother, from whom the appellant was separated) she considered it would not be unduly harsh for J to remain in the UK with her mother, who was her primary care provider.

7. The respondent also referred to an assessment by Haringey Children's Social Services that had been concluded on 6 February 2017 and which indicated that DK and the appellant's teenage stepson would be better supported under a child protection claim due to incidents of domestic violence by the appellant against DG. The respondent accepted there was a genuine and subsisting relationship between the appellant and DK, although this was because the

appellant, at that time, resided at the family home with DK and DG. The respondent did not accept it would be unduly harsh for DK to remain in the UK without the appellant as DG would be able to continue to provide for and support DK.

8. The respondent additionally considered the appellant's length of residence in the UK, noting that he had not been lawfully resident in the UK for most of his life (the appellant entered the UK when he was approximately 20 years old and was not granted ILR until 2008), and rejected his claim to be socially and culturally integrated in the UK. There was nothing to suggest that the appellant would encounter any difficulties in reintegrating into Turkish society, he still had family in Turkey, and would be able to maintain his relationships but with those in the UK via remote forms of communication. The respondent was not satisfied there were very compelling circumstances such that his deportation would result in a disproportionate breach of Article 8 ECHR.

9. The appellant appealed the respondent's decision pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002 on both protection and Article 8 grounds. His appeal was dismissed on all grounds by Judge of the First-tier Tribunal Moore. In the 'error of law' decision promulgated on 22 March 2019 the Upper Tribunal found that Judge Moore misidentified the mother of the appellant's daughter and that this undermined the sustainability of his assessment of the relationship between him and his daughter, J. The Upper Tribunal noted that there was relatively limited evidence of the impact on the appellant's daughter should he be deported, and the limited nature of the evidence in respect of the appellant's relationship with his young son, DK. The Upper Tribunal was nevertheless satisfied that the 'unduly harsh' assessment (contained in paragraph 339(a) of the immigration rules and s.117C(5) of the Nationality, Immigration and Asylum Act 2002) had been undertaken on a significantly erroneous factual basis and without lawful regard to the evidence supporting the relationships and that, had the judge properly considered the evidence before him, the decision may have been different.

10. Judge Moore dismissed the appellant's protection claim and permission to appeal that aspect of the decision was refused. The appellant did not seek to amend the grounds of appeal to raise the refusal of the protection claim and there was no arguable basis for impugning this aspect of Judge Moore's decision. The central issue before me is whether the appellant's deportation would breach Article 8 ECHR.

The hearing

11. The appeal was initially listed for a resumed hearing on 19 September 2019. The Tribunal was informed that the appellant had been unable

to obtain disclosure of information pertaining to J. The hearing was adjourned and directions issued pursuant to rule 5(3)(d) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to RR to obtain the required information which was held by 3rd parties. A further hearing listed for 4 December 2019 had to be adjourned as the relevant information had still not been obtained.

12. The appellant's representatives prepared a main consolidated bundle of documents running to 88 pages. This included, inter alia, witness statements from the appellant dated 9 May 2019, 18 September 2019, and 9 December 2019, medical records relating to J, documentary evidence of telephone calls and messages between the appellant and J, photographs of the appellant and J, photographs of the appellant and DK, copies of bank statements indicating transfers of money from the appellant to RR, and some medical records relating to DK. A supplementary bundle of documents included a statement from the appellant dated 4 October 2018, and a manuscript letter from RR. The appellant additionally relied on a further bundle of documents that included a letter from Nova Solicitors dated 15 July 2019, further photographs of the appellant with DK, a letter from the Speech and Language Therapy Department at the Lordship Lane Health Centre dated 15 January 2019, and an undated manuscript letter from the appellant's sister. Ms Bassi served a copy of the appellant's Police National Computer (PNC) criminal history and several legal authorities. Ms Nnumani served a skeleton argument. I have read and taken account of all these documents.

13. I summarise the material elements of the appellant's written evidence. He has a strong and subsisting relationship with J. He tries to participate and engage with her upbringing and discusses problems she may have. He regularly visits her in Nottinghamshire where she lives with her mother, and she sometimes stays with him in London. They speak or text each other on an almost daily basis. In his May 2019 statement the appellant claimed to be on good terms with RR and that they agreed that whenever J wanted to spend time with the appellant and his family she was allowed to come to London. In his September 2019 statement the appellant claimed RR was now refusing to take his calls because he would not pay for new furniture. Two of the appellant's brothers and one sister live in the UK and J was close to her paternal cousins and liked to spend time with them. The appellant described how, when he visited J, he would take her shopping and to restaurants, and that he would give her pocket money. J would be devastated if the appellant was deported. RR would not be happy to allow J to travel to Turkey to visit him. The appellant worried that his deportation would have a "massive detrimental effect on her." Modern forms of communication would not substitute for the physical contact a child needs with her parents.

14. The split between the appellant and DG was acrimonious. In his October 2018 statement the appellant said that DG was not allowing him to have any contact with DK. In his May 2019 statement the appellant said he last saw DK in February 2018. The letter from Nova Solicitors, whom the appellant had instructed to deal with his family matters, indicated that, following an application to the Family Court, DK had started to allow the appellant to see his child based on an informal agreement. In his September 2019 statement the appellant said he attended a Family Court Hearing on 3 September 2019 in relation to visitation rights to DK. He claimed DG did not attend this hearing and that it had been adjourned to 29 October 2019. He made no reference to seeing DK on an informal basis or otherwise. In his December 2019 statement the appellant said he was taking "all the appropriate steps to have half custody rights for my son". He indicated that a hearing was to take place on 20 December 2019.

15. In examination-in-chief the appellant said he last saw J after the Christmas celebrations. He collected her and she stayed with him and visited his family in London over a period of 3 days. He said he would see her once every 2 weeks, 3 weeks or a month. He would buy clothes and shoes for her and they went to the park together and swimming together. He described how J overheard a conversation between the appellant and RR concerning his possible deportation that caused her to cry. The appellant reiterated his belief that J was unlikely to be able to visit him in Turkey. The appellant referred to a Family Court hearing on 20 December 2019 and claimed that, as a result of DG's failure to carry out a 'test', the matter was adjourned until a further hearing on 4 March 2020. He claimed to have last seen DK 3 or 4 months ago. The appellant made serious allegations relating to DG's physical treatment of DK. He said he had reported his concerns to Social Services and a GP, and that Social Services had carried out an investigation. At this stage I informed Ms Nnumani of my concern that the privacy directions generally issued in contentious Family Court proceedings may cover the subject matter of this aspect of the appellant's evidence. The appellant claimed that DK needed him "quite a lot" because he has autism. The appellant confirmed that he would see his sister's son once a week. They would go swimming, go to the park, ride bicycles together and read books together.

16. In cross-examination the appellant said he had been to see J about 7 or 8 times in the last 6 months, and that J had stayed at his house on 3 occasions in the same period. The appellant would sometimes take J to school when he stayed with relatives who lived in the same city. The appellant claimed he went to hospital together with J when she took an overdose in September 2019. He told her not to do it again as it upset him and her mother. She promised she would not do it again. The appellant confirmed that there was no documentary or photographic evidence of his attendance at the hospital. The appellant claimed he spoke to J every day on the phone after she left

for school in the morning. He also claimed they messaged each other every day. When asked about an absence of any telephone calls or messages between 27 August 2019 and 27 September 2019 the appellant claimed J's phone had been stolen. It was pointed out to the appellant that there were also no telephone calls or messages between 16 May 2019 and 22 June 2019, a period of about 5 weeks. The appellant claimed he worked in a kebab shop for 14 years in the city where J lives and is known in that area. He was not currently working and received benefits from a jobcentre but would be able to work if he was allowed to remain in the UK. He received money from his brothers and his brother in law.

17. The appellant accepted that RR was J's primary carer. He claimed to be on good terms with her. Sometimes when J did something wrong RR would ask the appellant to speak to J. RR did not have any money and wouldn't send J Turkey. RR was now married and her husband was jealous and would not allow J to go to Turkey. The appellant did not currently have any contact with DK. The appellant repeated his allegations concerning DG and claimed she wanted to cause trouble for him. The appellant's brothers and sister did not attend the hearing because they worked and because the appellant did not inform them about the appeal hearing. The appellant's siblings had returned to Turkey since they entered the UK. The appellant had returned once to Turkey since entering the UK. He claimed the police had come looking for him as he had not undertaken military service. In re-examination the appellant said he lived with DK for approximately one year after his birth.

18. Both representatives made submissions which are a matter of record and which I have taken into consideration.

Legal Framework

19. The appellant appeals under s.82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) against the respondent's decision to refuse his human rights claim. He appeals on the grounds that his removal from the UK would be unlawful under section 6 of the Human Rights Act 1998 (s.84(1)(c) of the 2002 Act).

20. The burden of proof rests on the appellant to prove that his removal would breach Article 8. The standard of proof is the balance of probabilities. In determining the appeal I must have regard to the best interests of the appellant's two children, pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009.

21. Section 117A of the 2002 Act requires a Tribunal, when considering the public interest question, to have regard, in particular, to the factors listed in section 117B, and, in cases concerning the

deportation of foreign criminals, to the considerations listed in section 117C.

22. Section 117B reads,

> **117B Article 8: public interest considerations applicable in all cases**
>
> (1) The maintenance of effective immigration controls is in the public interest.
>
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
> (a) are less of a burden on taxpayers, and
> (b) are better able to integrate into society.
>
> (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
> (a) are not a burden on taxpayers, and
> (b) are better able to integrate into society.
>
> (4) Little weight should be given to—
> (a) a private life, or
> (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
>
> (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
>
> (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
> (b) it would not be reasonable to expect the child to leave the United Kingdom.

23. Section 117C lists additional public interest considerations in cases involving foreign criminals.

> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—

(a)C has been lawfully resident in the United Kingdom for most of C's life,
(b)C is socially and culturally integrated in the United Kingdom, and
(c)there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

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

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

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

24. Although s.117C(3) does not make any provision for medium offenders who fall outside Exceptions 1 and 2 the Court of Appeal in **NA (Pakistan) v Secretary of State for the Home Department** [2016] EWCA Civ 662 confirmed that Parliament intended medium offenders to have the same fall back protection as serious offenders.

Findings of fact and reasoning

25. I will first consider the appellant's relationship with J. I am satisfied, having regard to the documentary evidence of telephone calls and text messages, and the appellant's statement and oral evidence, in addition to the evidence of money transferred to RR, that the appellant has a genuine and subsisting parental relationship with J. The text messages indicate that the appellant does send money to J and that they have an active and loving relationship. I find that the appellant has visited J and that, on occasion, J has stayed with the appellant in London. I am not however persuaded that the appellant has the intensity of contact with J that he claims. The documentary evidence of telephone calls and messages does not support the appellant's claim to communicate with J everyday, and there are two periods between 27 August 2019 and 27 September 2019 and between 16 May 2019 and 22 June 2019 when there was no evidence of contact between the appellant and J. I take account of the appellant's claim that J lost her mobile phone in respect of the first period of time, but there was no evidence in support of this other than the appellant's own assertion. No explanation was provided in respect of the 2nd period of time. Nor am I satisfied that the appellant attended the hospital with J when she overdosed, as he claimed in her oral evidence. There was no evidence from J or her mother that the

appellant attended the hospital, nor was there any independent evidence of the same in any of the medical notes and reports.

26. I have carefully considered the medical evidence relating to J. The medical records that have been provided to me date back to 7 March 2018. They note that on 3 October 2018 J was feeling stressed, lonely and sad as she had to leave her old school and her new friends had decided to 'unfriend' her. J denied there were any problems at home and had superficial cuts from a shaver. She was referred for counselling and the crisis team were advised, and she was later referred to a child and adolescent psychiatrist. A letter from a counsellor dated 23 January 2019 indicated that J and her mother had decided that she would prefer to have her counselling sessions within her school. The self-harm does not appear to have been occasioned by J's concern that the appellant may be deported.

27. On 10 September 2019 J attended A&E as a result of a drug overdose. This was identified as deliberate self-harm and J was seen in the mental health clinic. The medical notes indicate "No treatment required." A note dated 16 September 2019 suggested that the overdoes was the result of "emotional immaturity". J and her mother were made aware of how to contact mental health services in case of crisis and there was not considered to be a need for any follow up. A discharge letter dated 10 September 2019 indicated that J was diagnosed with "Anxiety Disorder", although no further details were provided. The discharge letter indicated that J took an overdose following an argument with her father regarding a mobile phone. A letter from a doctor at the Bassetlaw Mental Health Liaison Team, dated 11 September 2019, indicated that the overdose (of steroid and contraceptive tablets) was occasioned because J broke her mobile phone during a "strop" because her father bought her the wrong model. There is no indication that the overdose was occasioned by J's concern that her father would be deported. The letter stated that J had capacity to make decisions around all aspects of her care and that she confirmed that she did not want to end her life by taking the tablets. Reference was made to J's cuts previously caused by a shaver, which was said to be due to issues with her boyfriend or rejection by friends. There were no current risks identified and no current risks that would indicate further overdose of self-harm and J was safely discharged. In the 'Summary and Care Plan' the doctor stated, "I can see no evidence to indicate that the overdose was the result of an acute mental illness, and was in fact the result of what I feel to be emotional immaturity. I therefore feel that [J] does not require any further follow up from CAMHS."

28. Given that J has a genuine and subsisting parental relationship with her father, and that she lives with her mother, who is her primary carer, and in light of her previous self-harm and her overdose, indicating that she is a child with certain vulnerabilities, I am satisfied

that it is in her best interests for her father to remain in the UK so that they can continue their relationship by face-to-face contact.

29. J's best interests are the primary consideration, but they are not the paramount consideration. Having found that it is in J's best interests for the appellant to remain in the UK, I must now consider whether his deportation would have an unduly harsh impact on her.

30. The meaning of "unduly harsh" has been considered in several authorities. In **MK Sierra Leone** [2015] UKUT 00223 (IAC) it was noted at paragraph 46 that "unduly harsh" does not equate with uncomfortable, inconvenient or merely difficult … "harsh" in this context, denotes something severe, or bleak … the addition of the adverb "unduly" raises an already elevated standard higher. This was approved in **KO (Nigeria) [2018] UKSC 53**. At paragraph 23 the Supreme Court observed that one is looking for "a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent" (see also the decision in **RA (s.117C: "unduly harsh"; offence: seriousness) Iraq** [2019] UKUT 00123 (IAC), at [8] and [17], confirming the high threshold for the 'unduly harsh' test).

31. The evidence before me indicates that J will clearly miss the appellant if he is deported. In a text message sent on 9 August 2019 J states she is devastated that the appellant may be deported. It is clear that she may feel great distress as a result and that her life may be made more difficult. Those however are the likely consequences of the deportation of any foreign criminal who has a genuine and subsisting relationship with a child in this country (**SSHD v PG (Jamaica)** [2019] EWCA Civ 1213). Although there is a diagnosis of 'anxiety disorder' relating to J, and she recently took an overdose, the medical evidence suggests that this occurred as a result of 'emotional immaturity' rather than any underlying mental health issue. I note the absence of any follow up from CAMHS following the overdose and that J has in the past had the support of counsellors at her school. J lives with her mother who is her primary carer and who will continue to ensure her welfare and security. Whilst I am prepared to find that J is, at least to some degree, a vulnerable child, the evidence before me does not indicate that her safety, mental and emotional health or welfare will be jeopardised to an appreciable degree if the appellant was deported. Although they will be unable to continue their relationship in its current form, the appellant will be able to continue communicating with J on the telephone and through the Internet. Communication will not therefore be severed. I note from the photographs and the statements that J has a good relationship with her paternal cousins and I take into account the possibility that the appellant's absence may prevent J from continuing to visit her cousins, but there was no suggestion that she could not continue to contact her cousins through more remote forms of communication or

that they would be unable to visit her. Having holistic regard to the evidence relating to the impact on J of the appellant's deportation, I find the impact on her would not be unduly harsh.

32. I now consider the appellant's 's relationship with DK. Until the application made by the appellant to the Family Court he had not seen DK since February 2018. I accept, having regard to the letter from Nova Solicitors, that the appellant began to see DK weekly based on an informal agreement sometime in mid-2019. This however stopped shortly afterwards. The appellant alleged that DK's mother, DG, had been ill-treating DK and that, as a result of concerns expressed by him, the Social Services carried out an investigation. The appellant did not however make any application for the Upper Tribunal to obtain any of the relevant materials from the Family Court through the mechanism of the Protocol on Communications between the judges of the Family Courts and Immigration and Asylum Chambers of the First tier Tribunal and Upper Tribunal, despite having ample opportunity to do so. Nor was there any evidence that the appellant sought permission to obtain disclosure of such material from the Family Court itself. The appellant has had substantial opportunity to obtain such material since lodging his application with the Family Court. There was no evidence before me of any interim order the Family Court may have issued relating to direct or indirect contact between the appellant and his son. There was no application at the hearing before me to adjourn so as to facilitate the disclosure of any relevant materials. In these circumstances, whilst I accept that the appellant has ongoing Family Court proceedings (despite the absence of any independent evidence that a hearing occurred on 20 December 2019 and that a further hearing will occur on 4 March 2020), there is little evidence before me that the appellant currently has a genuine and subsisting parental relationship with DK.

33. I accept that the appellant previously had a genuine parental with DK when he lived with him and DG, and that the respondent accepted as much in her Reasons for Refusal Letter. The factual matrix has however materially changed since then. Whilst I acknowledge, as a relevant factor, the possibility of such a relationship developing in the future (**Makhlouf v SSHD** [2016] UKSC 59), there is insufficient evidence before me, for the purposes of this appeal, that such a relationship currently exists.

34. Even if I am wrong, and the appellant does, or is likely in the foreseeable future, to establish a genuine and subsisting parental relationship, I am not persuaded that the impact on DK of the appellant's deportation would be unduly harsh. In reaching this conclusion I proceed on the basis that it is in DK's best interests that the appellant remain in the UK, although there is actually little clear evidence in support of this proposition. There is no reliable evidence before he that DG has been ill-treating DK. The medical records for DK

indicate that DG receives frequent support from Health Visitors and suggest that DG cares for DK by taking him to the GP surgery when he is unwell. There was some concern that DK may be on the autistic spectrum. An initial report on DK, dated 15 January 2019 and issued by the Speech and Language Therapy Dept of the Lordship Lane Health Centre, indicated that DK presented with delayed attention, listening and play skills, and delayed understanding of language and use of expressive language. There were with difficulties with his social interaction skills. DG was given advice on action to take with DK and he and his mother were invited to a Social Communication Group. In 2017 DK had been the subject of a Child In Need and Child Protection plan as a result of allegations of domestic violence between the appellant and DG, but the limited evidence before me suggests that DK currently has the support from his NHS Trust and is properly supported and cared for by his mother, with whom he lives. There is little evidence of the likely impact on DK should the appellant be deported. In the absence of such evidence, and given that DK is currently living with his mother, who is his primary carer, I am not persuaded that the high threshold of undue harshness has been met.

35. I now consider whether the appellant meets the requirements of paragraph 399A, mirrored in Exception 1 in s.117C(4) of the 2002 Act. It is not in dispute that the appellant has not been lawfully resident in the UK for most of his life. This alone is sufficient to dispose of his appeal so far as it relates to paragraph 399A and Exception 1 in s.117C(4). I am prepared to find that the appellant is socially and culturally integrated in the UK. I so doing I acknowledge that the appellant's criminal convictions do not exclude him from integrating into society (**CI (Nigeria)** [2019] EWCA Civ 2027), and that he has, in the past, worked in the UK, that he passed the Life in the UK test in 2014, and that he has siblings and nieces and nephews, one of whom is said to be autistic (although I have not seen an independent evidence of this). I do not find that there are very significant obstacles to his integration in Turkey. He has no fear of ill-treatment in Turkey and lived in the country for more than half his life, including his formative years. He is familiar with the language and the culture. He is fit and is capable of finding employment given his employment experience in the UK. There is no reliable evidence suggesting that his siblings in the UK would not provide him with support, at least in the short term, as he said his brothers were giving him financial support in the UK. Having regard the principles established in **SSHD v Kamara** [2016] EWCA Civ 813 and **AS v SSHD** [2017] EWCA Civ 1284, which considered the concept of "integration" in s.117C(4)(c) of the 2002 Act and paragraph 399A of the immigration rules, and applying a broad evaluative judgment, I find that the appellant will be be enough of an insider in terms of his understanding of how life in Turkish society is carried on and that he has a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in Turkey and to build up

within a reasonable time a variety of human relationships to give substance to his private or family life.

36. I now consider whether there are very compelling circumstances over and above those in Exception 1 and 2 rendering his deportation disproportionate under Article 8. When determining the existence of 'very compelling circumstances' the appellant is entitled to rely on matters identified in Exception 1 and 2 in s.117C, but he needs to point to features of his case of a kind mentioned in Exceptions 1 and 2, or features falling outside the circumstances described in those Exceptions which makes his claim based on Article 8 especially strong (**NA (Pakistan)**, at [25] to [29]; **RA (s.117C: "unduly harsh"; offence: seriousness) Iraq** [2019] UKUT 00123 (IAC), at [20]).

37. In the Court of Appeal decision in **Rhuppiah** [2016] EWCA Civ 803, Sales LJ referred to the "appropriately high threshold of application" for the 'very compelling circumstances' test (a point undisturbed on appeal to the Supreme Court). This chimes with what was said in **Hesham Ali** [2016] UKSC 60 (at [38]) that 'very compelling circumstances' means "a very strong claim indeed." In **NA (Pakistan)** Jackson LJ held, at [33] and [34]

> Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.
>
> The best interests of children certainly carry great weight, as identified by Lord Kerr in *HH v Deputy Prosecutor of the Italian Republic* [2013] 1 AC 338 at [145]. Nevertheless, it is a consequence of criminal conduct that offenders may be separated from their children for many years, contrary to the best interests of those children. The desirability of children being with both parents is a commonplace of family life. That is not usually a sufficiently compelling circumstance to outweigh the high public interest in deporting foreign criminals.

38. In **RA (Iraq)** the test in s.117C(6) was described as "very demanding."

> … The fact that, at this point, a tribunal is required to engage in a wide-ranging proportionality exercise, balancing the weight that appropriately falls to be given to factors on the proposed deportee's side of the balance against the weight of the public interest, does not in any sense permit the tribunal to engage in the sort of exercise that would be appropriate in the case of someone who is not within the ambit of section 117C. Not only must regard be had to the factors set out in section 117B, such as giving little weight to a relationship formed with a qualifying partner that is established when the proposed deportee was in the United Kingdom unlawfully, the public interest in

the deportation of a foreign criminal is high; and even higher for a person sentenced to imprisonment of at least four years.

39. In **RA (Iraq)** and **MS (s.117C(6): "very compelling circumstances") Philippines** [2019] UKUT 00122 (IAC), both of which analysed **KO (Nigeria)**, it was held that, in determining whether there are very compelling circumstances over and above those described in Exceptions 1 and 2, a Tribunal will need to have regard to the seriousness of the offence and will need to engage in a wide-ranging evaluative exercise.

40. On 15 June 2015 the appellant received a sentence of 19 months, on a guilty plea, for burglary and theft of a dwelling. The sentencing judge stated, “This was a very bad offence of its type. A considerable amount of damage, gratuitous damage, was done to the property.” The sentencing judge was unable to say precisely what value of property was lost, “but it was clearly significant.” I note the appellant’s other, earlier convictions as set out in paragraph 5 above, and that he has not committed any offence since the index offence in 2014 and I weight this in his favour. Given the length of sentence and the Sentencing Judge’s remarks, I consider the offence to be serious. There is limited evidence that the appellant is at risk of re-offending and I accept that he has expressed regret for his offending. Given the consequences of the appellant’s criminality on his lawful residence in the UK and his relationship with his children, I am satisfied that his remorse is genuine. I take this into account when assessing the existence of very compelling circumstances.

41. In assessing the weight of the public interest I take addition account of the principle of general deterrence (see **MS (s.117C(6): "very compelling circumstances") Philippines** [2019] UKUT 00122 (IAC), at [49] to [52]). I do not hold against the appellant the public interest factors in s.117B(2) & (3). In the appellant’s case these are neutral factors. Although the appellant gave evidence via the Turkish interpreter it was apparent that he had a reasonably good grasp of English (unsurprising given his length of residence in the UK), although he mentioned receiving benefits he also indicated that he was financially supported by his brothers and brother-in-law and that he would be capable of work if allowed to remain in the UK. I also attach weight to the public interest in the maintenance of immigration control, noting however that the appellant had ILR from 2008 until the making of a deportation order in 2016. I must attach little weight to the appellant’s private life established when he was in the UK unlawfully, but I take full account that he had ILR between 2008 and 2016. I note that the appellant is currently in another relationship. Little evidence was however adduced in support of this relationship and his current partner did not prepared a witness statement and did not give evidence.

42. I take into account, in my holistic assessment of the appellant's claim, his relationships with both his children, and his relationship with his siblings and his nieces and nephews. I note the letter from the appellant's sister which refers to the relationship between him and her son, who is said to have learning difficulties. I am prepared to accept that the appellant does have a good relationship with his nephew, but I reject Ms Nnumani's submission that the appellant has a 'parental' relationship with his nephew; the child has his own parents and there was insufficient evidence to suggest that the child's parents did not discharge their parental responsibilities. I have additionally considered the appellant's private life established in the 18 years that he has resided in the UK, including his employment and the degree of his integration, and the difficulties he may face in reintegrating in Turkey after his long absence. Having cumulatively considered all these factors, and balanced them against the identified public interests, I am not persuaded that there are very compelling circumstances such that his deportation would breach Article 8.

Notice of Decision

The appeal 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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

D.Blum 18 February 2020

Signed Date

Upper Tribunal Judge Blum