IAC-AH-VP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00888/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 January 2016	**On 19 April 2016**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

AHMET DEMIR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Walsh, Counsel
For the Respondent: Mr S Whitwell, HOPO

DECISION AND REASONS

1. This is a rehearing of the appellant's appeal against the decision of the respondent to make a deportation order in accordance with Section 32(5) of the UK Borders Act 2007 following his conviction in August 2011 at Snaresbrook Crown Court of causing grievous bodily harm with intent to do

grievously bodily harm. He was sentenced to 66 months' imprisonment. He was released on licence on 13 December 2013. His licence expires in August 2016.

2. Part of the decision to deport includes a decision dated 24 January 2014 to revoke his refugee status after the respondent gave the appellant and the UNHCR an opportunity to respond to her decision.

3. The appellant is a citizen of Turkey born on 6 November 1967. He is a Kurd. He entered the UK in July 1999 and claimed asylum. The application for asylum was refused. He appealed against that decision and in a determination promulgated in March 2002, an Adjudicator, Mr J G Macdonald, allowed his asylum appeal. He also found that the appellant's rights under Article 3 of the ECHR would be infringed by his removal. On 10 May 2002, the appellant was granted refugee status and indefinite leave to remain (ILR) in the UK.

4. Following his conviction for GBH, the respondent issued the appellant with the notification of his liability to automatic deportation on 30 August 2012 and asked to provide evidence as to whether any exception under Section 33 of the 2007 Act applied. Within his undated written response, the appellant submitted that he could not return to Turkey because he was a refugee.

5. On 17 December 2012, the appellant was invited to rebut the presumption that Section 72 of the Nationality, Immigration and Asylum Act 2002 applied to his case and that he had been convicted of a particularly serious crime and constituted a danger to the community. In their response, dated 21 January 2013, his legal representatives submitted that his proposed removal from the UK would result in a breach of his human rights under Article 8 of the ECHR due to his private and family life in the UK. The respondent stated that they failed to rebut the presumption that he had been convicted of a particularly serious crime and constituted a danger to the community.

6. On 10 September 2013 the appellant was informed of the intention of the Home Office to cease his refugee status and he was afforded an opportunity to submit representations in support of his continuing entitlement to refugee status. On 29 October 2013 his legal representatives made written submissions against the notification of intention to cease his refugee status.

7. On 24 January 2014, a decision was made to cease his refugee status in view of the fact that Article 1C(5) of the 1951 Refugee Convention and subsequently paragraph 339A(v) of the Immigration Rules, now applied.

8. The appellant appealed the Secretary of State's decision. His appeal was allowed by First-tier Tribunal Judge Shamash in a decision promulgated on 2 April 2015.

9. In a decision promulgated on 1 December 2015, Upper Tribunal Judge McGeachy considered that the judge made material errors of law in the determination and set aside her decision. He considered that the appeal should be heard afresh on all issues.

10. The reasons for finding that the judge made errors of law are set out Upper Tribunal Judge McGeachy's determination at paragraphs 35 to 39 as follows:

> "35. I have first considered whether the judge erred in law in considering the provisions of Section 72 of the Nationality, Immigration and Asylum Act. I consider that she did so. She accepted, of course, that the appellant had been convicted of a particularly serious offence – it was incumbent on her to do so given the length of the sentence. However I consider her reasons for finding that the appellant was not a continuing danger to the community was a decision which was unreasoned. The five matters which she sets out in paragraph 43 of the determination are not, in themselves, sufficient to rebut the presumption. The sentencing remarks of the judge make it clear just how vicious the attack on the victim was. It may be the appellant's only sentence but it was a criminal act in which he played a central role and he not only denied that he played a central role at trial but clearly did not, when discussing the matter with his probation officer, accept the full culpability of his decision. The judge simply appears to have ignored the context in which the crime was committed – a context which must include the appellant's other crimes.
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> 36. The fact that the appellant has been on licence and committed no further offences is surely an issue on which little weight should be placed given that he has, at the present time the deportation proceedings acting as a brake on any further activity – moreover the terms of the licence itself would lessen the likelihood of offences being committed.
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> 37. The reason that he is unlikely to constitute a danger because he has been prepared to engage in rehabilitation work and cooperated with the Probation Service is one which is hardly decisive and the fact that he has engaged in some lifestyle changes such as his use of drugs and alcohol was a conclusion only based on what the appellant and his sister had said – there was no evidence that he had given up alcohol completely and no certificate to show that he was no longer taking drugs. The fact that he is living with his sister is hardly a deterrent effect – he has always had his family around him while he was committing not only the index offence but the other offences. The reality is that the probation officer's report pointed out a number of factors which have not changed such as the fact that the appellant is not working and indeed never seems to have worked here to any

extent. I simply conclude that the decision of the judge, on the evidence before her was not one that was open to her.

38. Furthermore turning to the issue of whether or not the appellant still has a well-founded fear of persecution in Turkey, the reality is that the determination of the Adjudicator in 2002 should have been taken as a starting point but as a starting point only. His findings were that the appellant was a sympathiser – but not a member of the MLKP and that, although detained and ill-treated for two days on one occasion and briefly on the second occasion when he was asked to become an informer, he was not charged with any crime. The reality is that since 2002 the case law relating to asylum seekers has moved on and the judge did not consider whether or not the fact that the appellant had been detained thirteen years ago but not arrested would mean that he would be on any watch list now. That was a serious lacuna in her consideration of whether or not the appellant was entitled to refugee status. Similarly given the appellant's age she should surely have asked herself that given that the appellant left Turkey in 1999 and indeed he had not been called up for national service he would be penalised now for having left the country without having done national service. In any event there was nothing to indicate that the appellant was a conscientious objector. She should surely have considered that issue. Finally she should have considered the law relating to military service and the treatment of those who return and undertake military service taking into account relevant background information.

39. For these reasons I consider that the judge made material errors of law in the determination and I set aside her decision."

11. At the hearing before me, Mr Walsh relied on:

(1) His skeleton argument.

(2) Index to appellant's personal bundle.

(3) Index to appellant's background bundle.

(4) Turkey 2014 Human Rights Report by United States Department of State.

(5) Letter from the National Probation Service dated 27 January 2015 and the OASys Assessment dated 27 January 2015 attached thereto.

12. The appellant who was in court was not called to give evidence. Mr Walsh said that the appeal was going to proceed by way of oral submissions only.

13. Mr Whitwell said that he would have cross-examined the appellant if he had been called. He would be raising credibility because of what is set out

page 15 of the OASys Report. The appellant said therein that he has two sisters in the UK, and one in Turkey. He also has two brothers there, one younger than him. He said he used to go back and forth to Turkey to visit.

14. Mr Whitwell sought an adjournment because the appellant's bundles of documents had been given to him this morning and he needed time to respond properly to the background evidence. He submitted that there could be common ground between the Secretary of State and the appellant on the basis of the objective evidence and that common ground could be given by way of written submissions if required. He again repeated that he would have cross-examined the appellant if he had been called to give evidence as he would be raising credibility in relation to the assertion by the appellant that he used to visit Turkey.

15. Mr Walsh objected to the adjournment request saying that the case had been going on for too long, the issues had been identified by the Upper Tribunal namely whether the appellant was a danger to the public and would be at risk on return and the revocation of his refugee status. He submitted that the appellant's objective evidence was in the public domain. He had no objection to the respondent making written submissions after the hearing. He accepted that the appellant has family in Turkey. It was not the appellant's case that his family life in the UK could not trumped by the case before the Tribunal.

16. Following consideration of the arguments, I refused to adjourn the hearing and the appeal proceeded by way of oral submissions.

17. Mr Walsh submitted that there are two issues arising which he has identified in his skeleton argument. They are:

    (1) whether the certification of the appellant's appeal under Section 72 is made out, and

    (2) whether the deportation of the appellant would breach the Convention relating to the Status of Refugees and Article 3 ECHR.

    To assess the first issue the Tribunal must decide if the appellant constitutes a danger to the community. There is no issue as regards the seriousness of the index offence. In respect of the second matter the starting point is the correctness of the revocation of refugee status and risk on return to Turkey.

18. As regards the first issue, Mr Walsh accepted that the appellant's offence was a particularly serious crime. In considering whether the appellant constitutes a danger to the community, Mr Walsh relied on the letter from the National Probation Service. The letter said that the appellant is currently registered as a MAPPA (Multi-Agency Public Protection Arrangement) nominal of Category 2, Level 1. This means that his case is reviewed by the Borough Multi-agency Risk Management panel on a

quarterly basis and can be safely managed by the Probation Service as a lone service.

19. The letter also said that the appellant has a total of nine previous convictions. In the main possession of class B/C drugs is the main pattern of offending behaviour. However, the index offence is the most serious of his offending. A recent Police Intelligence check indicated that there has not been any further offending behaviour. The last BIU check was dated on 4 December 2014.
20. The letter also said that individuals are also assessed by the OASys (Offender Assessment System) which is a probation/prison tool to assist practitioners assess how likely an offender is to reoffend and the likely seriousness of any offence they are likely to commit. It will assess the risk of harm an offender poses to themselves and others. The appellant is at this time assessed as being a medium risk of harm to the public, medium risk of harm to known individuals and a low risk of harm to children and a low risk of reoffending. These are based on the nature of the offence, static and actuarial social factors that can affect risk. Since his release on licence on 13 December 2013 on licence, the appellant has been living with his sister.

21. Mr Walsh relied on the OASys Report. It was recorded n July 2014 that there has not been any further offending behaviour that the author was aware of. The appellant continued to deny that he was a violent man or that he participated in the offence. He continued to sign on weekly to the Home Office Immigration Unit. In supervision they have discussed affiliation to gangs and that BRU could assist in checking any activity. They have also discussed family/friends loyalties but the appellant refutes any negative activities. The appellant could be evasive when probing about negative influences or peers, but was able to acknowledge that their role was about protection of the public and risk assessment.

22. It was recorded in December 2014 that the appellant continued to be compliant with his licence and that there was no offending behaviour. The appellant was in total denial, and as time went on he has been challenged about negative peers he associated with and he continued to cite that there were acquaintances that he hung around with when he was bored. The report said that the mere fact that the appellant has been able to verbalise insight and awareness of the impact on the victim indicated that he was able to accept responsibility. He was a pleasant man to work with but it did take a lot of probing and challenging to get him to this point.

23. At page 25 in respect of “Attitudes”, it was recorded in July 2014 that it was difficult to ascertain what progress the appellant was making in terms of his attitude as he could be evasive. He continued to refute that he had any involvement in the index offence. He admits to being present at the scene but not actively involved and that it was a case of mistaken identity. In challenging his lifestyle, he linked his offending to his past lifestyle at that time. In December 2014 the report said that he had progressed in

terms of his attitudes towards negative activity. He had been able to share insight into his offending in the index offence and cites that he led a shallow attitude because of the socialising he did back then as he was bored and not working. He cited that he had a lot of time in custody to reflect on his behaviour, the people he associated with and how the consequences of his actions have harmed and impacted others. Motivating the appellant to address his offending behaviour remained challenging as he was evasive which meant constant probing was necessary, but once one is able to gain entry into his thoughts, this was the usual way to gain a better understanding of his insight into his attitude.

24. Mr Walsh relied on page 31 of the OASys Report to the OVP (OASys Violence Predictor). In the first year he scored 11%, 18% in the second year and the OVP risk of reoffending was low. It was report in December 2014 that whilst it has taken the appellant a lengthy time to open up about the offence, he has admitted that he was present and was party to the assaults of the victim. He denies being the main instigator and cites that it was peer pressure that incited him to assault the victim alongside with the others. He denies using excessive force to assault the victim and cites that it was others that hurt him badly. He was vague in his account and minimised his account which was constantly challenged. He talked of hanging around a bad crowd as he was not in employment and had nothing to do. The report has said that the appellant has been able to gain insight since they have been working together to address the offending behaviour and associated factors. Given that substance misuse was present at the time of the offence, the appellant acknowledged that this may have inhibited his actions, that he still minimised his view.

25. Mr Walsh relied on page 36 where it was said that the appellant is at medium risk of serious harm to the community. He explained that this meant that the offender has the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances. He submitted that according to the report, the risk factors at the time of the offence were longer a current risk trigger, although the author said that regular discussion about victims' issues and victim empathy as well as ways of avoiding further offending situations and managing his anger will continue throughout the licence period. Recall will be considered if any risk concerns occur and there is non-compliance of the increased risk of harm demonstrated by the appellant in the index offence.

26. Mr Walsh submitted that bearing in mind that the index offence was committed in 2010, and the appellant was convicted in 2011 and was released on licence after serving two years two months, I should be satisfied in the light of the OASys Report that he is not at present a danger to the public. Article 33(2) of the Convention which operates as an exclusion clause should be construed narrowly. He submitted that the appellant is on supervision and the community has that protection. Therefore he is not in danger of being a risk to the public. The Secretary of State reached that view in 2014 but since then and fourteen months

later, with continued supervision, the appellant does not pose a danger to the public.

27. Mr Walsh relied on the appellant's supplementary witness statement in which he indicates the courses he trained on in prison. Mr Walsh submitted that this was an indication of somebody engaging in the rehabilitation process. The danger must be serious to justify the Section 72 certificate.

28. With regard to the second issue, Mr Walsh relied on paragraphs 3.4 and 3.5 of his skeleton argument. He submitted that the respondent must establish that the appellant can no longer be a refugee because the circumstances in connection with which he has been recognised as a refugee have ceased to exist; and that if there is a change in circumstances, it has to be of a durable and fundamental nature.

29. Mr Walsh submitted that the appellant left Turkey in 1999. It was found that he had been detained twice and on the second occasion he was interrogated, ill-treated and separated from other detainees and interrogated about other people. After three days he was released by the police who required him to report if he had any more information about other people he had been interrogated about. His father arranged his departure before the reporting conditions kicked in. The appellant relied on the fact that he was a draft evader.

30. Mr Walsh submitted that the appellant was arrested in connection with his association with the MLKP, an illegal organisation. Mr Walsh relied on the USSD Report which said that the security forces used excessive force to disperse protests, detaining hundreds of demonstrators and charging many under the anti terror law. This resulted in numerous deaths. According to the Non-Governmental Organisation (NGO) Human Rights Foundation, 45 protest related deaths occurred during the year 2014. The report also said that the constitution of Turkey and the law prohibit torture and other cruel, inhuman, or degrading treatment or punishment, but there were reports that some government officials employed them. Human rights organisations continue to report allegations of torture and abuse, especially of persons who were in police custody but not in a place of detention, and during demonstrations and transfers to prison, where such practices were more difficult to document. Police officers in several parts of the country used disproportionate force to disrupt protests.

31. He relied upon an article dated 10 January 2016 which included a report by the Turkish Human Rights Foundation that between August and January, 162 civilians have been killed in confrontations between the outlawed Kurdish Workers Party (PKK) and the Turkish Army during curfews in Turkey's Kurdish cities. Mr Walsh submitted that Turkey has reverted to its previous circumstances so it cannot be said that the changes there have been durable and fundamental. He submitted that the Turkish regime is intolerant. The appellant is from Izmir. The

detention and ill-treatment practices do not meet the lower standard. He submitted that even members of the HDB, which is a legal party, have been subjected to detention and ill-treatment by the Turkish authorities. He submitted that reports and recent examples of circumstances pertaining to those associated with MLKP attract the hostility of the authorities in Turkey. It cannot be established on the objective evidence that the change of circumstances in Turkey have been durable and fundamental.

32. Mr Walsh relied on the respondent's Operational Guidance Note on Turkey issued in May 2013. The OGN relied on the country guidance decision in **IK (Returnees – records – IFA) Turkey CG [2014] UKIAT 00312**. He relied on the Tribunal's finding that the computerised GBT system has a defined and limited ambit. It comprises only outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. The GBTS is fairly widely accessible and is in particular available to the border police and booths in Istanbul Airport, and elsewhere in Turkey to the security forces. The Tribunal also held that if a person is held for questioning either at the airport police station after arrival or subsequently elsewhere in Turkey and the situation justifies it, then some additional enquiry could be made of the authorities in his local area about him, where more extensive records may be kept either manually or on computer. Also if the circumstances so justify, an enquiry could be made of the anti terror police or MIT to see if an individual is of material interest to them. If there is a material entry in the GBTS or in the border control information, or if a returnee is travelling on a one way emergency travel document (which Mr Walsh said the appellant would be travelling on), then there is a reasonable likelihood that he will be identifiable as a failed asylum seeker and could be sent to the airport police for further investigation.

33. Mr Walsh submitted that the appellant's profile on return will include that he escaped when he was due to report to the police. On the evidence and in light of the objective evidence, he submitted that the appellant remains a refugee.

34. Mr Whitwell relied on the respondent's letter of 24 January 2014 upon the cessation of refugee status and the decision that Section 32(5) of the UK Borders Act 2007 applies.

35. Mr Whitwell relied on the sentencing judge's remarks in respect of the index offence. The sentencing judge said "*It follows from the jury's verdict on this day in January within a matter of minutes of encountering Mr Tashina you summoned five or more young men with the intent that they should inflict, cause, grievous harm to the man you had just met and you succeeded in your object.*"

36. Mr Whitwell submitted that in the appellant's current witness statement, at paragraph 6, he said that at the time that he was undeveloped, naive

and foolish to participate and he failed to predict and understand the consequences and impact on his life, relatives and friends. Mr Whitwell submitted that the appellant's reference to "*participate*" does not accord with the appellant's role in the sentencing judge's remarks and this indicates a lack of remorse.

37. In relation to the probation officer's assessment the appellant was at low risk of reoffending, Mr Whitwell said that this was more nuanced than that. At page 40 under the "Predictor Scores % and Risk Category", the appellant was assessed as medium risk of reoffending in year one and two. He submitted that it can be seen from the certificates of redevelopment and progress at paragraph 7 of the appellant's witness statement that only one stems from cannabis; the rest relate to reading and writing and IT.

38. Mr Whitwell submitted that the Section 72 certificate has not been rebutted by the appellant in light of the evidence. The seriousness of the offence has not been questioned.

39. In respect of the second issue, Mr Whitwell accepted that the starting point was the determination in March 2002. The judge held that this was an appellant who was a draft evader and who has been mistreated at the hands of the authorities. He was only released by the authorities on certain conditions that he would report back to the police station. He was in breach of those conditions. There was evidence that the police have acted on that breach and have gone to the appellant's home and have questioned his parents about his whereabouts. Mr Whitwell submitted that the appellant was a sympathiser and not a member of MLKP. He has no convictions. It has been seventeen years since he has been in the UK.

40. Mr Whitwell questioned the appellant's credibility against. He submitted that the evidence at page 15 of the OASys Report was relevant. The appellant said that he used to go back and forth to Turkey to visit. However in his original witness statement dated 25 November 2014, he said he had not returned to Turkey since 1999. This puts a different complexion on his case. It begs the question how he was able to travel back and forth on a travel document that has no stamps. The submissions go to **IK** which considers whether an appellant is able to travel and bypass the GBTS system and border control in Turkey.

41. Mr Whitwell submitted that military service in Turkey starts in the twentieth year of birth. Mr Whitwell submitted that the appellant was born in 1977. Military service is for fifteen months. According to paragraph 33 of the Reasons for Refusal Letter, liability for military service continued to the age of 41, except on grounds of health or disability. Mr Whitwell noted that Mr Walsh did not push the draft evasion point. He therefore failed to see how the appellant could rely on the Refugee Convention on the evidence.

42. Mr Whitwell submitted that the OGN at paragraph 3.9.13-3.9.15 focuses on the level of involvement by an appellant in the left wing group. In this case the appellant was a sympathiser and not a member of the MLKP. Mr Whitwell accepted that the background evidence relied on by Mr Walsh postdates the OGN. He also accepted that the circumstances in Turkey have slipped back but submitted that they were nowhere near the circumstances in 2004 for example. He submitted that the news articles from human rights organisations should be treated with caution. Mr Whitwell relied on paragraphs 22 to 27 of the cessation letter where the Secretary of State makes her argument in respect of the objective evidence.

43. Mr Whitwell submitted that **IK** did not remove circumstances where an appellant whose home area is in the south east could relocate to Istanbul. The appellant's lack of conviction or arrest will not make him fall foul of the GBTS system and therefore he would not fall squarely within **IK**.

44. Mr Walsh in reply submitted that the appellant's evidence in the OASys Report that he went back and forth to Turkey was not brought up at the hearing before First-tier Tribunal Judge Shamash. According to his instructions the issue came up before a judge at an adjourned hearing on 24 November 2014. I looked at the Record of Proceedings for that day and indeed the judge said that "another issue that arose was mentioned in the OASys Report that the appellant may have visited Turkey on a number of occasions. Counsel's instructions were that he did not have an interpreter when speaking to the probation officer and may have misunderstood. The HOPO suggested that checks could be made to see whether the appellant has travelled since arrival in the UK. Material to a proper determination of the protection claim if he has returned to Turkey in the meantime. Protection claim is at the heart of this case."

45. Mr Walsh said that he did not know what the Secretary of State's enquiries have revealed. First-tier Judge Shamash found the appellant to be a refugee. This issue did not form part of the Secretary of State's case before Judge Shamash. He said the information in the OASys Report cannot be used at this stage. It is too late and wrong for the Secretary of State to rely on it at this stage.

46. In response to Mr Whitwell's submission that there was a certain lack of remorse on the part of the appellant, Mr. Walsh submitted that the OASys Report at December 2014 showed a big progression on the part of the appellant. He was released in 2013 December. He has not reoffended according to the experts and the courses he undertook in prison were to help him build up life skills. Mr Walsh maintained that in light of the objective evidence, the changes in Turkey cannot be said to be fundamental and durable.

Findings

47. The first issue that I must consider is whether the certification of the appellant's appeal under Section 72 is made out.

48. Section 72(2) of the Nationality, Immigration and Asylum Act 2002 states that, for the purposes of Article 33(2) of the Geneva Convention, a person is presumed to have been convicted by final judgment of a particularly serious crime, and constitute a danger to the community of the UK, where he has:

    - been convicted in the United Kingdom of an offence, and

    - sentenced to a period of imprisonment of at least two years.

49. The consequences of applying Section 72 to a person is that their claim for asylum will be refused as they do not qualify for a grant of asylum under the Immigration Rule 334 on the basis that Article 32(2) of the Geneva Convention applies to him and as a result the Geneva Convention does not prevent removal from the UK.

50. It is not disputed that in 2010 the appellant committed a very serious crime. Indeed on 5 August 2011 at Snaresbrook Crown Court, he was convicted of causing grievous bodily harm with intent to do grievous bodily harm, for which he was sentenced to 66 months' imprisonment.

51. The argument by Mr Walsh that the Section 72 certificate has been rebutted focuses on the appellant's lack of re-offending since he was released on licence in December 2013, and the progression of his understanding of the offence committed by him. In support of this argument Mr Walsh relied on the OASys Report and its assessments.

52. I was not persuaded on the evidence that the appellant has rebutted the Section 72 certificate. The sentencing judge was clear in his comments as to the particular role played by the appellant in the crime. He said the appellant was the instigator and took a lead role in the offence with the intent that the five or more men he had summoned within a matter of minutes of encountering Mr Tashina should inflict, cause, grievous bodily harm to the man he had just met and he succeeded in his object. Four years later in July 2014, the OASys Reports clearly indicated that the appellant was in denial and had no appreciation of the offence that he had committed. There was one instance in December 2014 when it was said that it had taken a long time for the appellant to open up about the offence and had admitted that he was present and party to the assault of the victim. Yet, from the evidence before me, he denied being the main instigator and said that it was peer pressure that incited him to assault the victim alongside with the others. He denied using excessive force to assault the victim and cited that it was others that hurt him badly. He was vague in his account and minimised his account which was constantly challenged. Insofar as this was progression, I found that the appellant's constant minimisation of his role in the crime indicated to me that he

continues to remain a danger to the community. I also note from his current witness statement that he used the word "*participate*" which, I found to be a further indication of the appellant's failure to appreciate the role that he played in the crime.

53. I accept that since his release on licence in December 2013 the appellant has not committed any further offences. I attach little weight to this because I agree with what UTJ McGeachy said in his decision. It is this; that at the present time the deportation proceedings are acting as a break on any further activity and, the terms of the licence itself would lessen the likelihood of offences being committed. A recurring theme in the OASys Report was the appellant's assertion that he became involved in the crime because he was not working and was bored. I had no evidence before me that the appellant has found employment. I accept that he has been engaging with the rehabilitation and supervision process. However, he has been assessed as being at medium risk of serious harm to the public. Medium risk of serious harm is defined as an offender having the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances, for example, failure to take medication, loss of accommodation, relationship breakdown, drug or alcohol misuse. At the present time the appellant has accommodation with his sister as a result of the bail condition placed upon him. He is unemployed. There was no evidence that he was no longer taking drugs or abusing alcohol. In the circumstances, I am unable to find that the appellant is no longer of medium risk of serious harm to the public, bearing mind the particular role he played in the index offence.

54. For the reasons given above, I am not persuaded that the appellant has rebutted the certificate.

55. I assess the second issue - whether the deportation of the appellant would breach the Refugee Convention relating to the Status of Refugees and Article 3 of the ECHR - in the context of the objective evidence placed before me. Mr Whitwell accepted that the objective evidence relied on by Mr. Walsh post-dated the OGN Report of 2013.

56. I accept Mr Walsh's submission that the change in circumstances in Turkey since the appellant's grant of refugee status in 2002, have to be of a fundamental nature and durable. In light of the objective evidence drawn to my attention by Mr Walsh, I am unable to find that the change in circumstances in Turkey since 2002 have been of a fundamental nature and durable. The Turkish authorities continue to arrest and detain political opponents and those associated with political parties that are considered to be illegal in Turkey.

57. The appellant was found to be a sympathiser of the MLKP Party. The objective evidence shows that members of the MLKP continue to be harassed and persecuted by the Turkish authorities. Since the breakdown of the peace process, it appears that circumstances in Turkey are volatile

to say the least. In the light of the objective evidence, I do not find that the changes in Turkey since 2002 can be said to be of a fundamental nature and durable.

58. There is however the issue of credibility which was raised by Mr Whitwell right at the beginning of the hearing. This was in respect of what is recorded at page 15 in the OASys Report. It is recorded that the appellant said "he used to go back and forth to Turkey to visit." The issue had arisen at an adjourned hearing on 24 November 2014. It must have been because a similar report issued on 19 June 2014 contained the same information. No directions were issued by the judge requiring the Secretary of State to look into this matter. The matter was not raised before First-tier Tribunal Judge Shamash. It was raised before me by Mr Whitwell. Mr Walsh did not seek an adjournment to take instructions on the matter and did not call the appellant to resolve the credibility issue that had been raised by Mr Whitwell who argued that this evidence contradicted the appellant's assertion in his original witness statement dated 25 November 2014 that he had not returned to Turkey since 1999.

59. Mr Walsh chose to rely on the instructions given at the adjourned hearing on 24 November 2014, namely, that the appellant did not have an interpreter and must have misunderstood what he was being asked. Consequently, Mr Walsh submitted that it was too late for Mr Whitwell to raise it. I disagree. The OASys Report dated 27 January 2015 contains 47 pages. At page 15 and elsewhere in the report, the appellant said a lot of things and gave a lot of personal information. None of these other details has been challenged. Indeed, the report was relied on by Mr. Walsh. I find that this matter could have been resolved had the appellant been called to clarify the matter. He was not called and this evidence remains as a credibility issue. In the absence of any challenge to anything else he said in the report about himself and his family, I am not persuaded that a lack of an interpreter meant that the appellant misunderstood what he was being asked. If this particular assertion had no truth in it, the appellant could have addressed it either in a statement following the adjourned hearing on 24 November 2014 or approached the National Probation Service to either delete or amend the report or given oral evidence to resolve the issue. Whilst the HOPO o 24 November 2014 made a suggestion that this evidence could be verified, there was no such evidence before me. The appellant's assertion that he used to go back and forth to Turkey to visit remained in the report and was not evidence that I could ignore. I have no evidence on what document the appellant would have used to travel back and forth to Turkey on his visits. Nevertheless relying on his evidence, to which I give considerable weight, I find that the fact that the appellant was able to make those visits undermined his claim to be a refugee. Accordingly, I reach the conclusion that the deportation of the appellant would not breach the Convention relating to the Status of Refugees and Article 3 of the ECHR.

60. I dismiss the appellant's appeal.

Signed Date: 18 March 2016

Upper Tribunal Judge Eshun