Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01983/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons**
On 8 November 2021	**Promulgated**
	On 23 February 2022

Before

MR CMG OCKELTON, VICE-PRESIDENT
UPPER TRIBUNAL JUDGE GLEESON

Between

B N (TURKMENISTAN)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Ms Marion Cleghorn of Counsel, instructed by apltsols
For the respondent: Mr Tony Melvin, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of B N who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant is a citizen of the Republic of Turkmenistan who challenged the respondent's decision on 18 January 2018 to make a deportation order against him pursuant to section 32(5) of the UK Borders Act 2007 and to certify her decision pursuant to section 72(2) of the Nationality, Immigration and Asylum Act 2002 (as amended).

2. On 24 January 2018 the respondent decided that the exception in section 33 of the 2007 Act does not apply to him and that to remove him to Turkmenistan would not breach the United Kingdom's international obligations under the Refugee Convention, the Qualification Directive, or the European Convention on Human Rights and Fundamental Freedoms.

3. The remaking of the decision in this appeal is limited to the risk to this appellant arising from Article 176 of the Turkmen Criminal Code. The text of Article 176 in translation is appended to Mr Melvin's written submissions:

> **"Article 176. Encroachment against President of Turkmenistan**
>
> (1) Encroachment against the life and health of the President of Turkmenistan shall be punished by imprisonment for the term of 15 to 25 years.
>
> (2) Insulting or slandering against President of Turkmenistan shall be punished by imprisonment for term of up to 5 years."

   There is very sparse country or international evidence as to the scope and application of Article 176 of the Turkmen Criminal Code, either in its original form or as amended, and no country guidance decision by the Upper Tribunal to assist the First-tier Tribunal or us in approaching this appeal.

4. **Vulnerable appellant.** The appellant is a vulnerable person, because of his disability. He is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. No adjustments were sought at the hearing today, at which the appellant was present, but did not give evidence.

5. **Mode of hearing.** The hearing today took place face to face.

Background

6. The appellant came to the United Kingdom in March 2008 on a visit visa. On his account, he was then working in Turkmenistan as a customs officer and a government courier. He returned to Turkmenistan at the end of that visit.

7. The appellant returned to join his brother in the United Kingdom on 19 August 2008. His brother was studying here from 2008. In 2009, the appellant applied for assisted voluntary return (AVR) to Turkmenistan, but he did not progress the application and the respondent withdrew the offer of AVR. The appellant did not embark for Turkmenistan.

The index offence

8. In 2012, the appellant was in a short term relationship with a British citizen woman, a hairdresser who had a significant disability, due to a pre-existing spinal injury which left her with only 70% mobility in her right leg: she was unable to walk properly and had to use walking sticks to stabilise herself. The appellant knew this.

9. In June 2012, he moved in to his partner's accommodation, but he experienced growing jealousy of his partner's friendships with other men. In August or September 2012, he required his partner to delete all male contact numbers in her telephone and to explain why she had a tattoo of her former husband's name. He demanded the password to his partner's social media account and complained that he had not been introduced to her family. There were rows, and on about four occasions, matters became physical. On one occasion, the appellant is said to have grabbed his partner by the hair, and another, to have pulled her off a chair.

10. On 1 November 2012, the appellant came to a street near where his partner worked, demanded her mobile phone and checked it to see her calls. They went home, and the interrogation continued. He pulled her ponytail, she fell over, and he stabbed her in the neck with a three-inch vegetable knife, then got on top of her, threatening to finish her off. He dragged her into the hallway, threatening her further. His partner was extremely frightened.

11. Over four hours passed before the appellant summoned emergency assistance. The appellant's partner needed emergency surgery as the knife wound was dangerously close to her carotid artery. Following a therapeutic incision, she now has a 10-inch scar from her cheek bone to her collar bone.

12. On 8 February 2013, the appellant was convicted at Snaresbrook Crown Court on a charge of wounding with intent to do grievous bodily harm. He pleaded guilty. That year, his brother returned home to Turkmenistan after an absence of 5 years. It has not been said that he suffered any difficulties in Turkmenistan, on or after his return.

13. On 23 March 2014, while on remand awaiting sentencing, the appellant was assaulted in a revenge attack committed by two men who knew him and his partner outside the prison. The appellant sustained multiple injuries, including four broken vertebrae, which aggravated a pre-existing back problem and disc prolapse. He is now severely restricted in his mobility, is unable to walk for more than 30 or 40 yards and uses a

walking stick. He finds it difficult to stand for long periods, cannot use the stairs, and needs extra time to dress. The appellant has chronic, widespread back pain. Mr HS Dabis, his Consultant Orthopaedic Surgeon, considers that the back pain is likely to be permanent, having advanced by 4-5 years the appellant's ongoing pre-existing back trouble and disc prolapse.

14. On 15 August 2014, the appellant was sentenced to 10 years' imprisonment for his attack on his former partner. He did not appeal either the sentence or the conviction. It is not disputed that the crime of which the appellant was convicted is a 'serious crime' for the purpose of the section 72(2) presumption and paragraph 339F of the Immigration Rules HC 395 (as amended).

15. On 4 September 2015, the respondent invited the appellant to give reasons why a deportation order should not be made against him. The appellant did not reply. On 1 March 2016, the respondent notified the appellant that she had decided to make a deportation order.

16. On 14 and 18 March 2016, eight years after his initial arrival in the United Kingdom, the appellant made asylum and human rights claims. On 18 January 2018, the respondent rejected the appellant's protection claims and certified her decision under section 72(2). She also refused him leave to remain on human rights grounds or discretionary leave.

17. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

18. By a decision sent to the parties on 21 May 2019, First-tier Tribunal Judge Buchanan upheld the section 72(2) certification and dismissed the asylum and humanitarian protection appeals. He did not find the appellant's account to be credible, with certain exceptions. He found that, even had there been no section 72 certificate, he would not have been satisfied that there was a real risk of the appellant being persecuted for a Refugee Convention reason. Humanitarian protection was not pursued in the First-tier Tribunal (see [46] of the First-tier Judge's decision).

19. At [44] in his decision, the First-tier Judge set out the part of the appellant's claims which he accepted:

> "44. I accept that the appellant is a national of Turkmenistan. I accept that he has his parents and three siblings and their children living in Turkmenistan. I accept that the appellant journeyed to the United Kingdom from Turkmenistan in March 2008 and returned to Turkmenistan for two weeks in July 2008. I accept that the appellant was convicted of a serious offence in 2013 and sentenced in 2014, and spent time in prison until released after a period of immigration detention, in 2018. I accept that, whilst in prison, the appellant was assaulted, and now suffers with back pain, and that he is engaged in litigation seeking compensation from the prison authorities. I accept he takes a variety of drugs to control the pain

> arising from his condition. I accept that the appellant worked as a government courier and then as a customs officer in Turkmenistan before 2008. …"

20. The respondent's note of a check made on the appellant 12 February 2009 stated that the appellant had used a false *spravka* identity document to enter the United Kingdom and that he was unavailable on the landline numbers he had provided on entry. That issue only came up in submissions before the First-tier Tribunal and the appellant did not assist the judge as to the information he had provided to enable him to leave Turkmenistan.

21. The First-tier Judge also set out what he did not accept: he rejected the appellant's account that he was wanted by the Turkmenistan government, or that he was at risk of being perceived as a spy. He rejected the appellant's claim to have signed an undertaking not to leave the country without specific permission, nor did he accept that when the appellant left Turkmenistan in 2008, on two occasions, he did so without permission. The judge noted that in 2008, the appellant had been able to leave Turkmenistan, return for two weeks, and leave again, which 'demonstrates that it is not a matter of significance'. The First-tier Judge gave little weight to the use of a false *spravka*. The First-tier Judge dismissed the appellant's international protection claims.

22. The First-tier Judge next considered Article 3 ECHR. He considered that there was a substantial risk that the appellant would be investigated on return, given that his application for asylum could be perceived as critical of the regime, and that he would be charged under Article 176 of the Criminal Code with 'insulting the President'. The penalty for that, if convicted, was imprisonment for up to 5 years.

23. Having regard to the dire conditions in Turkmenistan prisons 'described as wholly unsanitary and overcrowded and unsafe and potentially located in areas of extremely harsh climate conditions and where the nutritional value of food is poor', and the government's use of imprisonment as 'a tool for political and religious repression *and retaliation* (*my emphasis*)', the First-tier Judge found that the Article 3 ECHR test was satisfied. He did so for the reasons set out at [55]:

> "55. What persuades me that the appellant would be at risk of treatment contrary to Article 3 is the fact that he would be returning and entering the prison system as a disabled person, reliant on aids to walk and a cocktail of drugs to manage severe pain. That factor is sufficient in my judgment to bring this case within the ambit of Article 3. I do not conclude that any failed asylum seeker would be at risk if returned, but in the particular circumstances of this case, and given the appellant's serious medical position, I am persuaded that the appellant has shown he would be at risk of treatment contrary to Article 3 if returned to Turkmenistan as a failed asylum seeker. On that basis I allow this appeal on human rights grounds. "

24. The First-tier Judge noted that the appellant had neither withdrawn nor pressed his case under Article 8 ECHR. He had no family life in the United Kingdom and had given virtually no information about any private life he might have developed here. The appellant's contention was that he needed to remain in the United Kingdom to pursue his claim against the prison authorities arising out of the assault on him in prison, and relied on Article 6 ECHR, but the First-tier Judge considered that the case against the prison authorities could be conducted remotely by electronic means. Applying section 117C of the Nationality, Immigration and Asylum Act 2002 (as amended), the judge was satisfied that Article 8 ECHR did not avail the appellant.

25. The First-tier Judge upheld the section 72 certificate and allowed the appeal only on Article 3 ECHR grounds.

26. The Secretary of State appealed to the Upper Tribunal.

Error of law decision

27. On 23 August 2019, Upper Tribunal Judge Dawson preserved the findings of the First-tier Tribunal, but set aside the First-tier Judge's decision in part, limited to the risk to the appellant by reason of perceived 'insult to the President' contrary to Article 176 of the Criminal Code of the Republic of Turkmenistan. At [19ff] in his decision, he said this:

> "19. In the context of his assessment of the [appellant's] case based on a false account and the nature of the limited evidence on the 'insult issue', I am not satisfied that the evidence was enough for the judge to conclude on the lower standard of proof that the [appellant] would be at risk simply by virtue of having applied for asylum abroad. Furthermore, the judge did not explain whether his risk evaluation included the fact of the claim having been rejected as not credible, and how the authorities would respond if they were alerted [to] this aspect. Accordingly, I set aside the decision of the judge only insofar as it relates to the 'insult' issue. All other findings are preserved. …
>
> 21. This leaves the matter of remaking of this decision on the single issue whether the [appellant] would be at risk because he made an asylum claim abroad which he would need to explain was fabricated. This case will remain in the Upper Tribunal and will be listed for a further hearing. It is open to the [appellant] to file any further evidence he wishes to rely on in relation to this aspect. At the very least, a copy of the relevant extract from the Criminal Code must be provided… . Any further evidence either party wishes to rely [on] is to be filed with the Upper Tribunal and served on the other party… "

There followed a series of adjournments and filing of evidence.

28. That is the basis on which this appeal comes before the Upper Tribunal today. We have heard oral argument from both representatives at two hearings, on 3 August 2021 and 8 November 2021.

Upper Tribunal hearing

29. It is for remaking on that narrow issue (the 'insult' issue) that the appeal now comes before the Upper Tribunal. The Tribunal has the benefit of skeleton arguments from both representatives, which in their electronic forms link to the relevant documents. We also have two bundles of evidence, the first running to 688 A4 pages, and the second to 534 pages. We have had regard to all relevant evidence in those bundles, and attached by hyperlink to the electronic skeleton arguments, but in particular to those documents to which our attention has been drawn by the parties.

30. The hearing to remake the decision has been significantly delayed, partly by reason of the Covid pandemic. No oral evidence has been offered or is necessary. The parties have had ample opportunity to introduce up to date country evidence on the 'insult' risk, and also on any risk arising out of the appellant's long absence from Turkmenistan and his particular circumstances as a disabled person. Accordingly, we are satisfied that the appeal can be determined justly today on submissions alone.

Dr Luca Anceschi's report

31. Dr Luca Anceschi's expert report was prepared on 23 April 2021 and is in the form of a sworn statement of truth. His teaching and research interests focus on the politics and international relations of post-Soviet Central Asia, with particular reference to Kazakhstan and Turkmenistan. Dr Anceschi has published a monograph and a number of scholarly articles on Turkmen foreign policy in the post-Soviet era.

32. Dr Anceschi obtained his undergraduate degree in Political Science and Asian Studies from the Istituto Universitario Orientale in Napoli, Italy, and his doctorate in Politics from La Trobe University in Melbourne, Australia, where he lectured and researched until 2013. His current academic post is as Senior Lecturer in Central Asian Studies at School of Social and Political Studies of the University of Glasgow.

33. Dr Anceschi's report is not sourced, nor does it indicate when (or indeed if) he has recently spent time in Turkmenistan to research his understanding of events there. He states that Turkmenistan has retained the Soviet *propiska* system, which requires an internal passport in order to move around within the country. In the event of any crisis management, the Turkmen authorities arbitrarily restrict all internal travel, particularly from the peripheral regions to Ashgabat, the Turkmen capital.

34. As regards exit visas, Dr Anceschi's understanding was that this system, which the regime never admitted to having, ended in 2004, some 4 years before this appellant travelled to the United Kingdom. There were 'widespread reports of travel bans imposed on individual travellers or groups of travellers who sought to leave Turkmenistan despite having valid passports, regular airline tickets and valid visas for their country of

destination'. This remark is unsourced and Dr Anceschi extrapolates from it a system of unofficial blacklists, arbitrarily enforced at the point of departure. The appellant was certainly not affected: he left and returned without difficulty in 2008.

35. Dr Anceschi's observations on the appellant's particular circumstances do not engage with the preserved findings and are wholly speculative. We are not able to place much weight on them. There is nothing in the report to assist us as to the operation of Article 176 and the 'insult' risk.

36. In an undated addendum, Dr Anceschi was asked about whether the offence of 'insulting the President' under Article 176 still exists, when it was created, and how it is interpreted, if it remains in force. Dr Anceschi in response said he was 'generally unfamiliar with the Turkmen legal system'. However, he considered it 'entirely possible' that the law did exist and was applied with repressive ends in mind.

37. Dr Anceschi was asked about other parts of the Criminal Code which might put the appellant at risk. It is only the Article 176 risk with which we are concerned in these proceedings. In any event, Dr Anceschi's response to this question is pure speculation.

38. In response to questions about the returns procedure at Turkmenistan's international airport and his immigration history, Dr Anceschi says he is 'almost certain' that the government would know about the appellant's protection application and his criminal activities in the United Kingdom. Again, his response to this question is mere speculation.

39. Dr Anceschi says that there is no rule of law in Turkmenistan and that if he left on a false document that would place him at risk. He repeats his concerns, expressed in the main report, about prison conditions in Turkmenistan and the treatment of disabled persons in prison. Dr Anceschi considers that 'Should he be forced to return, [the appellant] will simply disappear in the Turkmen prison system'. Again, there is no source for any of these observations.

Other country evidence

40. The respondent relied on a Response to an Information Request dated 22 July 2021 entitled *Turkmenistan: Human rights situation and the law on international travel.* Turkmenistan's 2005 Law on Migration established a right for Turkmen citizens to enter and leave Turkmenistan without hindrance, subject to valid travel documents and visas, to be verified at checkpoints at the State Border of Turkmenistan. A list of reasons for temporarily restricting the right to leave Turkmenistan is provided by Article 32 of that Law.

41. The Response cited the US State Department Report Human Rights Report for 2020, which confirmed that the Turkmen government did bar certain citizens from leaving the country 'if their exit contravenes the interests of

the national security of Turkmenistan' (Article 32(11)) and that any of the Turkmen law enforcement bodies could initiate a travel ban, for one of the reasons set out in Article 32. None of those reasons, on the settled facts, appears to apply to this applicant.

42. The 2021 Human Rights Watch World Report noted that the Turkmen authorities had a blacklist of 50000 people barred from foreign travel, including relatives of emigrés, and 'protest activists', and that 213 Turkmen citizens, mostly women and children, had been added to that list in August 2021. The Bertelsmann Stiftung Transformation Index Turkmenistan Country Report for 2020 was to similar effect. The blacklist was growing as the economic crisis deepened, with record numbers of Turkmen citizens seeking to emigrate with their goods and capital.

43. Freedom House Reports from 2020 and 2021 confirmed that it had been made more difficult for citizens to travel abroad, get passports, buy currency or sell property and that migration officers would often question those returning from overseas, as well as arbitrarily refusing citizens the right to travel abroad. Freedom House understood that officials 'are reportedly instructed to prevent Turkmenistanis under the age of 40 from leaving the country' as well as the families of dissidents and prisoners. Between 2008 and 2018, nearly 2 million Turkmen citizens had nevertheless managed to leave, 'to escape the dire situation': the remaining population was just over 6 million people.

44. The 2020 US State Department Report noted harsh and life-threatening prison conditions and reports of torture by police and prison officers. There was no recent country evidence, USSD relying on the 2017 UNCAT report.

45. In its 2021 report, Human Rights Watch noted that there were many disappearances of political prisoners in Turkmen prisons. The justice system was not transparent and it was impossible to know exactly how many had disappeared. Corruption was systemic and political dissent not tolerated.

RYABIKIN v. RUSSIA - 8320/04 [2008] ECHR 533 (19 June 2008)

46. Mr Ryabikin, an ethnic Russian and a Turkmen citizen, was detained in Russia for extradition to Turkmenistan, where there was a criminal charge of embezzlement against him, which carried a sentence of 8-15 years if he were to be convicted. As well as being charged with such a serious crime, Mr Ryabikin satisfied the Court that in 2001, a warrant had been issued for his arrest but the Turkmen authorities.

47. Mr Ryabikin resisted extradition under Article 3 ECHR on the basis of the danger of ill-treatment in detention in Turkmenistan, made worse by his non-Turkmen ethnicity. At [21], the Court held that:

> "21. The main argument raised by the applicant under Article 3 is the danger of ill-treatment in detention in Turkmenistan, exacerbated by his

> ethnic background. The Court observes that in Turkmenistan the applicant was charged with a serious crime (embezzlement), potentially entailing a heavy prison sentence of eight to fifteen years (see paragraph 31 above), and that in 2001 a warrant was issued for his arrest. If extradited to Turkmenistan, the applicant would almost certainly be detained and runs a very real risk of spending years in prison. In view of the information cited above about the conditions of detention, incommunicado detention and the vulnerable situation of minorities, the Court finds that there are sufficient grounds for believing that he would face a real risk of being subjected to treatment in violation of Article 3 of the Convention."

48. The *Ryabikin* decision is based on country evidence and international reports from 2003-2006 (the 2007 Human Rights Watch report concerned evidence about 2006), and the 2002 Code of Criminal Procedure. President Gurbanguly Berdimuhamedow, who remains the Turkmenistan President, became acting President on the death of President Saparmut Niyazov in December 2006, and was formally elected President in January 2007.

49. The country evidence in *Ryabikin* is of only limited assistance to the Tribunal today. The factual matrix before the Court was different, and there was no country evidence from President Berdimuhamedow's period in office. Nor was the Court considering the current form of the Code of Criminal Procedure, which has been amended on several occasions since 2002 (including in 2021).

50. As already stated, we cannot be certain whether the text of the 'insult to the President' article which we have been asked to consider remains in force, in that form or at all, today.

Appellant's submissions

51. For the appellant, Ms Cleghorn relied principally on her amended skeleton argument dated 10 September 2021, which replaced a skeleton argument filed by her instructing solicitor. The scope of our remaking was limited to a single issue: 'Would [the appellant] be at risk because he made an asylum claim abroad which he would need to explain to the [Turkmen] authorities was fabricated?'

52. After setting out the First-tier Tribunal's findings, Ms Cleghorn rehearsed the country evidence before the Tribunal. At [36] she relied on an assessment by Amnesty International as to why it was 'next to impossible' to obtain information about Turkmenistan. Amnesty International's evidence was that both exit and entry were monitored. There follows an invitation to infer that the appellant's long absence from Turkmenistan will draw attention to him.

53. Ms Cleghorn acknowledged that the publicly available country evidence is extremely limited. An excerpt from the 2019 report by the organisation 'Prove they are alive!' entitled *List of the Disappeared in Turkmenistan's Prisons* recorded that those convicted of an attempted coup in November

2002 had been the subject of Article 176 prosecutions; and identified three other categories, those charged with Islamic extremism, those charged with economic crimes and abuse of power, and two 'civil society activists'. There was no information at all about what had happened to most of those on the list, apart from details of their convictions and sentences.

54. The precise Article of the Turkmen Penal Code was rarely mentioned when people were charged and convicted. Ms Cleghorn submitted that no inference could be drawn from the limited references to specific provisions of the Penal Code and that should the government disapprove of the appellant's behaviour, they would either infer treason or force a confession. 'Rational application of law cannot be attributed to a man who builds gold statues of a dog'[1].

55. Ms Cleghorn relied on the expert report prepared by Dr Luca Anceschi, summarised above. The highest that Dr Anceschi had been prepared to put it was that Turkmenistan had a 'highly idiosyncratic system, one wherein laws are applied with regular inconsistency and easily manipulated to adhere to the regime's authoritarian agenda'. She acknowledged that appellant's evidence did not answer all of the relevant questions: however this should be treated as probative of the secretive and repressive nature of the Turkmen state and supportive of the appellant's case.

56. Ms Cleghorn contended that there was a risk of imprisonment if the appellant's previous asylum claim were to come to light, and that if imprisoned, he would be at risk because of the preserved findings as to his severe disability. Ms Cleghorn invited us to supply the absence of evidence by drawing a number of inferences, set out at [41] of her skeleton argument. She relied on the extradition decision in *Ryabikin v Russia* 8320/04 [2008] ECHR 533 (19 June 2008), which she contended was authority for there being an Article 3 ECHR risk of ill-treatment in detention in Turkmenistan, including inappropriate prison conditions, incommunicado detention, and the vulnerable situation of minorities in prison.

57. The European Court of Human Rights observed at [116] that accurate information about the human rights situation in Turkmenistan was 'scarce and difficult to verify, in view of the exceptionally restrictive nature of the prevailing political regime', in context the regime of the previous President, not the current one. Ms Cleghorn argued that the burden of proof was on the respondent, prima facie evidence having been produced 'to the extent that is possible given the limited information that is available for him to rely [on]'.

58. In her oral submissions, Ms Cleghorn said that most of what she was able to say on the appellant's behalf was in her skeleton argument. There was a limit to how much further she could assist the Upper Tribunal. Ms Cleghorn had been unable to find evidence of ill-treatment of returned asylum seekers, whether or not by reference to Article 32 and 'insult to the

[1] https://www.rferl.org/a/turkmenistan-dog-statue-berdymukhammedov/30947983.html

President'. She had some email contact with Radio Free Europe/Radio Liberty (RFE/RL) but that was not included in the bundle since, by reason of company policy, RFE/RL was not willing to provide written or oral witness evidence.

59. Ms Cleghorn continued to contend that in a country such as Turkmenistan, having claimed asylum abroad might very well be regarded as treasonous behaviour, despite the absence of any supportive country evidence.

60. Absence of evidence was not evidence of absence. The limited evidence before the Upper Tribunal did establish that there was increased scrutiny of those who left and returned, and that the appellant would be under scrutiny when returned. This appellant had been outside Turkmenistan for a long period, which should be given significant weight: there would, she submitted, be enquiries made on his return and he could not be expected to lie. There had been a real deterioration in the socio-economic climate in Turkmenistan since 2009, when the appellant had been willing to agree to a voluntary return. Ms Cleghorn relied on her skeleton argument for the evidence relevant to this assertion.

61. Amnesty International's evidence was that the penalty for unlawful exit or residence abroad would usually be a 5-year travel ban, rather than imprisonment, but Amnesty had not suggested that was a complete picture, nor that the evidence they had been able to obtain was exhaustive. Amnesty was a reliable organisation whose objectivity in reporting was evidenced by their unwillingness to speculate. Anyone who made more detailed enquiries would put themselves, and their family members, at risk.

62. Overall, Ms Cleghorn said that everything she had been able to find was in her skeleton argument. There were gaps, but what the appellant could find was there.

Respondent's submissions

63. For the respondent, Mr Melvin relied on his undated skeleton argument, as amended under cover of an email dated 21 October 2021. The respondent had served written observations on Dr Anceschi's report on 21 May 2021, and Mr Melvin relied on those observations, as well as on the deportation letters of 1 March 2016 and 24 January 2018.

64. In his May 2021 written observations on Dr Anceschi's report, Mr Melvin submitted that it would be of little assistance to the Tribunal: Dr Anceschi was a student of Turkmen politics but had very little knowledge of its legal system or of the issues with which the Tribunal was concerned in the present proceedings.

65. It was unclear whether Dr Anceschi was aware of his duties to the Tribunal as an expert witness: see *AAW* (Expert evidence – weight) Somalia [2015] UKUT 673. Mr Melvin submitted that Dr Anceschi's report did not meet the

requirements of the Practice Direction and should be given no, or very little, weight in our decision, because it was highly speculative and lacked any sources.

66. In his main skeleton argument, Mr Melvin said that from information in the public domain he had been able to establish that there had been 6 applications for asylum from Turkmen citizens in 2016, including one with a dependant; four in 2017, no dependants involved; 7 in 2018, involving 8 dependants; 6 in 2019, with no dependants, and 3 in the first two quarters of 2020. In 2018, two protection applications had been withdrawn, two granted protection and two refused. No later information about protection decisions was available.

67. In 2016, there had been 146 student entry clearance applications, and 9 others; in 2017, 144 students and 14 others; in 2018 171 students and 11 others, in 2109, 161 students and 19 others and in 2020 32 students and 9 others. Again, further information was available only for 2018. The students could be divided into 52 who were sponsored and 119 who were not, and the non-student entry clearance applications comprised one 'high value' worker application, 6 other work visas and exemptions, two skilled workers and two temporary workers.

68. Enquiries had been made of the Inter-Governmental Consultations on Migration, Asylum and Refugees (IGC) about the number of failed asylum seekers returned to Turkmenistan in the preceding 5 years, the information being received under the Chatham House Rule. Ten of the eighteen IGC member states had responded to the enquiry. The number of failed asylum seekers actually returned between all ten of those states was less than 10 in any year: 9 in 2016, 9 in 2017, 5 in in 2018, 3 in 2020, and none so far in 2021. Mr Melvin submitted that despite the small number of returnees, this was evidence that Turkmen citizens could be, and are, returned there. There was no evidence of persecution on return of any of the known returnees.

69. The respondent noted the inferences proposed in Ms Cleghorn's amended skeleton argument at [41] but argued that her revised submissions did not advance the appellant's case beyond the evidence produced for the Upper Tribunal on 3 August 2021.

70. The respondent's case was that there was no evidence before the Upper Tribunal to support the contention that as a failed asylum seeker with his own passport, the applicant would face persecution or an Article 3 ECHR breach if returned to Turkmenistan. Country evidence indicated that in the previous decade, two million Turkmen citizens had left the country, for economic reasons. There was no country evidence indicating that on return such persons, or their families who remained behind, experienced persecution or serious harm. The appellant had family in Turkmenistan who could help him reintegrate when returned.

Analysis

71. Unlike Mr Ryabikin, this appellant has no criminal charges against him, no arrest warrant, and no evidence of previous detention. He has simply left Turkmenistan and overstayed abroad. The evidence around the 'insult to the President' charge is very sparse and there is no clear indication that this offence still exists, or how it is enforced.

72. It is the appellant who bears the burden of proof as to the country conditions and the risk on return, both under the Refugee Convention and in considering Article 3 ECHR. In the present appeal, on the evidence before us, he has not discharged that burden. In reality, the evidence points in the other direction. The respondent's evidence, albeit limited, shows that people do leave Turkmenistan and return there.

73. The appellant's brother is not said to have had any difficulty after his return to Turkmenistan, and the appellant himself came and went without difficulty in 2008, much closer to the claimed index events than now.

74. In 2009, the appellant was willing to make an assisted voluntary return to Turkmenistan, although he failed to progress that application and the respondent withdrew the offer, following her discovery that he had entered the UK on a false *spravka* identity document and was unavailable on the landline numbers he had provided on entry

75. These factors, we think, throw much more light on the appellant's claim than general hypotheses, particularly given that the evidential support for the later is so frail. There is no good reason on the evidence that the appellant would now, because of his movements and circumstances, be at risk of prosecution, detention or ill-treatment on a charge of 'insult to the President', which is the only matter with which we are now concerned. Nor does the evidence satisfy us that he would be at risk by reason of his long absence from Turkmenistan (14 years).

76. Given that we do not find that the appellant would be at risk for either of those reasons, the question of the risk being made worse by his disability does not arise.

77. This appeal therefore must be dismissed.

DECISION

78. For the foregoing reasons, our decision is as follows:

    The making of the previous decision involved the making of an error on a point of law.

    We set aside the previous decision. We remake the decision by dismissing it.

Signed Judith AJC Gleeson Date: 2nd February 2022

Upper Tribunal Judge Gleeson