



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/08018/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 12 November 2015
Determination given immediately
following hearing**

**Determination Promulgated
On 28 January 2016**

Before

**UPPER TRIBUNAL JUDGE LORD TURNBULL
UPPER TRIBUNAL JUDGE CRAIG**

Between

**RAED MOHAMMED ZUHAIR QTAISHAT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Symes, Counsel, instructed by Lawrence Lupin Solicitors

For the Respondent: Ms K Bretherton, Counsel, instructed by the Government Legal Department

DETERMINATION AND REASONS

1. The appellant in this case was originally a Jordanian national of Palestinian descent who came to the UK in November 2009 as a visitor at the age of 23. His visa expired but he remained in this country and subsequently was arrested for theft on 10 August 2012. He then claimed asylum which claim was refused by the respondent on 24 August 2012. He was placed

in the Fast Track and whilst in the Fast Track his appeal against the respondent's refusal to grant him asylum was heard and dismissed by First-tier Tribunal Judge Turquet, on 7 September 2012. Subsequently the appellant sought permission to appeal in the First-tier Tribunal which application was refused by Upper Tribunal Judge Coker sitting as a Judge of the First-tier Tribunal on 12 September 2012.

2. The appellant renewed his application to appeal to the Upper Tribunal but permission to appeal was again refused this time by Upper Tribunal Judge Gill on 21 September 2012. Thereafter the appellant brought an application seeking judicial review of the refusal by the Upper Tribunal to grant permission to appeal and although permission to bring this application was initially refused on paper the application was renewed before Ingrid Simler QC as she then was on 21 January 2013 and permission to bring the application was granted.
3. Subsequently in a substantive hearing before Phillip Mott QC sitting as a Deputy Judge of the High Court the Deputy Judge granted the application for judicial review and quashed Judge Gill's decision of 21 September 2012 refusing permission to appeal. The very lengthy and considered judgment of the Deputy Judge is contained within the file. Subsequently and unsurprisingly the Upper Tribunal granted permission to appeal to the appellant against Judge Turquet's decision and the appeal accordingly comes before us to consider at this stage whether Judge Turquet's decision should be set aside as containing a material error of law.
4. This case was originally before the Upper Tribunal as long ago as last February when for procedural reasons the case could not proceed. It is right to say that at that stage the papers had not been properly organised and on that occasion I gave directions as to the future conduct of the proceedings which included a direction that the respondent should state whether or not she intended to argue that there had been no error of law in Judge Turquet's determination. I indicated that in the event that the respondent did intend so to argue, further directions would then be given.
5. Subsequently and in accordance with the directions which I had given a Rule 24 response was received on behalf of the respondent setting out the reasons why the respondent still sought to argue, notwithstanding the decision of the Deputy Judge, that there was in fact no material error of law in the determination of the First-tier Tribunal. Thereafter in April of this year I gave instructions that the appeal was to be listed at the first available opportunity when Counsel for both parties could be present, namely Ms Bretherton on behalf of the respondent and Mr Vaughan on behalf of the appellant. Regrettably although the hearing was listed for today's date it appears that the Tribunal did not first establish whether or not the parties' respective Counsel would in fact be available and the parties were not notified until last week of the date of the hearing. For this reason although Ms Bretherton was able to attend she in the time available was not able to prepare the case as fully as she would have liked had she been given more time, and Mr Vaughan was not available at all.

Consequently Mr Symes of the same chambers has appeared on behalf of the appellant before us. Both members of this tribunal are extremely grateful to both Counsel for the succinct and persuasive way in which both parties' cases have been presented before us.

6. Essentially, on behalf of the appellant Mr Symes argued as Mr Vaughan had before the Deputy Judge in the judicial review proceedings that the essential error of the First-tier Tribunal was the failure to allow an adjournment in order for the documents which were in Arabic and which supported the appellant's claim that he had in fact revoked his Jordanian nationality could be properly translated and also to enable proper instructions to be taken from the appellant in respect of this document.
7. It is undoubtedly the case and this Tribunal recognises that it is an unattractive aspect of the appellant's submissions, that he put a false case before the Tribunal with regard to the circumstances if his nationality had in fact been revoked. It is the case and it is accepted now on behalf of the respondent that as a matter of fact the appellant had revoked his Jordanian nationality but as recognised by the Deputy Judge in the judicial review proceedings he had done so by submitting false documents to the Jordanian authorities. As Ms Bretherton correctly points out, had this fact been put fairly before the First-tier Tribunal, that Tribunal may very well have found that this made it even more likely that an adverse credibility finding that would have been made with regard to the appellant's claim as a whole.
8. However, an adjournment was refused and in our judgment the main consequence of that is that the appellant's solicitors were not put in a position where they could given proper advice to the appellant based on a considered reading of all the papers in the case. It may well be that even had they had all the material that they should have had and had advanced the appellant's case as well as it could have been advanced, adverse credibility findings would still have been made. But in our judgment the appellant should at least have had that opportunity.
9. An unattractive feature of the appellant's submissions is that he is relying upon criticism of findings which had been properly based on evidence which was in fact untrue but which had been given by the appellant. However, one of the reasons arguably why the appellant may have given that evidence is because as a result of the judge's refusal to grant an adjournment he had not been properly advised as to how best his case should be advanced. This is, we recognise, a finely balanced case and it may well be that on a rehearing ultimately the same result is reached but like the Deputy Judge before us we are very mindful of the fact that this is an asylum claim which does demand the most anxious scrutiny and we feel that effectively the hearing was rushed through without giving the appellant a proper opportunity of having that case advanced. So notwithstanding the very persuasive reasons advanced before us on behalf of the respondent on balance we find that we are obliged to set

aside the decision of the First-tier Tribunal as containing a material error of law, the consequence being that this appeal will have to be reheard.

10. In our judgment it is appropriate for that rehearing to take place before the First-tier Tribunal and so we will remit the case back to the First-tier Tribunal to be heard by any judge of the First-tier Tribunal except Judge Turquet.

Decision

We set aside the determination of First-tier Tribunal Judge Turquet as containing a material error of law and direct that the appeal will be remitted to the First-tier Tribunal at Hatton Cross to be reheard by any judge other than Judge Turquet.

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig", is written over a light blue rectangular background.

Upper Tribunal Judge Craig

Date: 20 January 2016