



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11234/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11<sup>th</sup> May 2018

Decision & Reasons Promulgated  
On 31<sup>st</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MR KARAM MOHIDDIN BARAKA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of the Palestinian Authority whose date of birth is recorded as 20<sup>th</sup> September 1995. He was born in the United Arab Emirates (UAE) and was, until he came to the United Kingdom as a student, resident there with leave of the UAE. On his case, having been absent from the UAE for a period in excess of six months, his leave expired and the UAE will no longer admit him. He made an application for international protection as a refugee. His application was refused on 13 October 2017 and he appealed. The appeal was heard by Judge of the First-tier Tribunal Traynor at Hatton Cross on 7<sup>th</sup> December 2017. It was the Appellant's case,

not only that he could not return, or be returned to the UAE, but neither could he return to the country of his nationality. It was further part of his case that were he to be returned to the UAE he would be returned to Syria where he would be at risk.

2. Judge Traynor made various credibility findings against the Appellant, but principally rejected the claim on the basis that there was insufficient evidence of the Appellant's contention that he could not return to the UAE. Judge Traynor quite properly was guided by the dicta in **MA (Ethiopia) -v- SSHD [2009] EWCA Civ 289**, a decision of the Court of Appeal. Judge Traynor dismissed the appeal on all grounds.
3. Not content with that decision, the Appellant sought and obtained permission to appeal to the Upper Tribunal. Material to the Appellant's case to the Upper Tribunal was that he was effectively stateless and should have been recognised as such. I can only set aside a decision of the First-tier Tribunal if it contains a material error of law. The definition of a refugee taken from Article 1 of the definition in the Convention is as follows:

*"As a result of the events occurring before 1 January 1971 (now surplus), owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear is unwilling to return to it".*

4. The issue therefore, as a condition precedent to the Appellant succeeding in his application and in his appeal, was that he had to demonstrate that he was unable to return to the country of his former habitual residence, which in this case is United Arab Emirates. The question for me is whether it was open to Judge Traynor to find that the Appellant, who had the burden, albeit to the lower standard to prove his case, had established to that lower standard that he could not return to the UAE. The judge found that there was insufficient evidence. The judge did not err in coming to that finding. He was guided, as I have said, by the principles in **MA**.
5. At the hearing before me the Appellant made application to adduce further evidence going to the substantive issues which arose in the appeal before Judge Traynor, particularly going to whether or not the Appellant could return to the UAE and meeting other credibility issues which arose and in respect of which findings were made by Judge Traynor.
6. Mr Jarvis for the Secretary of State, reasonably in my judgement, took the view that that further evidence should form the basis of a fresh application to the Secretary of State. This is not a case in which the Appellant had not been represented. The Appellant had been represented by Counsel in the First-tier Tribunal and it would be unfair to the Secretary of State not to have an opportunity properly to consider all of the documentation now relied upon. Whilst, of course, the Secretary of State does not have to accept fresh evidence as the basis of a fresh claim, if it assists the Appellant, I would be very surprised indeed if evidence which the Appellant can now produce in

conformity with the guidance of MA, did not form evidence sufficient for the Secretary of State to accept this as a fresh claim, particularly when this is an international protection claim which would put the United Kingdom in breach of its international obligations. That is not to say, of course, that the Secretary of State is bound to grant the relief being sought, that will depend on the evidence, but for the moment, as matters stand, the Appellant's position remains as it was, and so I find as follows.

7. The decision of Judge Traynor did not contain a material error of law because whatever other findings of fact were made, the Appellant had not established that he could not return to the UAE. It is not necessary for me in those circumstances to examine the other findings of fact made by Judge Traynor, and it may be, in the light of the fresh evidence which has been put before the Secretary of State that the Secretary of State will not have the same concerns as did Judge Traynor.

**Notice of Decision**

8. The appeal is dismissed. The decision of the First-tier Tribunal is affirmed.
9. No anonymity direction is made.

**Signed**

**Date: 25 May 2018**



**Deputy Upper Tribunal Judge Zucker**