



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

Appeal Number: DA/01220/2013

**THE IMMIGRATION ACTS**

**Heard at Sheldon Court, Birmingham  
On 23<sup>rd</sup> October 2014**

**Determination Promulgated  
On 31<sup>st</sup> October 2014**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**SAFEEN HAMAD**

Appellant/Respondent

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent/Appellant

**Representation:**

For the Appellant: Mr E Rutherford, counsel, instructed by  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. A First-tier Tribunal panel allowed the appeal of Mr Hamad on the grounds that his deportation was not proportionate. The panel dismissed his appeal on international protections grounds. Permission to appeal was granted to Mr Hamad on the grounds that it was arguable that the First-tier Tribunal judge failed to consider adequately the expert report by Ms Laizer and made erroneous findings with regard to the consistency of his account and failing to have adequate regard to the background material.

2. Ms Rutherford confirmed that Mr Hamad was not seeking to rely on the “political” element of his claim for international protection but relied on what could be termed his personal claim arising out of a fear from the family of his former partner. Before me Mr Mills conceded that the determination of the First-tier Tribunal judge as regards this claim for international protection could not be opposed.
3. This was in my view a sensible concession to have made and I am satisfied that the First-tier Tribunal judge erred in law in his consideration and findings of Mr Hamad’s claim for international protection.
4. The Secretary of State was granted permission to appeal the finding of the First-tier Tribunal that deportation was not proportionate on the grounds that it was arguable that the First-tier Tribunal may have erred in law for failing to give adequate reasons for their conclusion; had placed inordinate weight upon the low risk of re-offending and had failed to have adequate regard to the legitimate aim of deportation. Miss Rutherford contended that the First-tier Tribunal determination disclosed no error of law; the Tribunal had considered the evidence before it and had reached conclusions that were neither perverse nor inadequate nor unreasoned. I indicated an initial view that there were some difficulties in the determination in so far as article 8 was concerned, principally that in [39] although the First-tier Tribunal panel states that the ultimate question is whether the conviction and sentence outweighs family and private life the subsequent reasoning, and that set out earlier in the determination (notably [37]) does not appear to factor in the public interest in deportation. The reference to Judge Obhi’s determination in [41] as a starting point does not appear to appreciate that Judge Obhi allowed the appeal on the basis of the potential and possibly significant harm that would be caused to Mr Hamad’s child Ari if he were deported and yet Ari himself has now been deported.
5. Ms Rutherford further contended that the panel had been very aware of Mr Hamad’s status and his offending behaviour and that the conclusions reached had been in the full knowledge of this. [40] specifically finds that there are sufficiently compelling reasons to outweigh the public interest.
6. I do not agree with Ms Rutherford’s submissions. The determination plainly does not give adequate consideration of the public interest in deportation despite the findings made as to the relationship and risk of re-offending.
7. The First-tier Tribunal erred in law in its findings both as regards international protections grounds of appeal and Article 8.
8. The findings and conclusions that have to be made on a remaking of the decision require primary fact-finding. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal.
9. S12 (2) of the TCEA 2007 requires me to remit the case to the First tier with directions or remake it for myself. After discussion and agreement with the parties and in accordance with the Practice Statement dated 25<sup>th</sup> September

2012 of the Immigration and Asylum Chamber First-tier Tribunal and Upper Tribunal I remit this appeal to be heard before the First-tier Tribunal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the appeal to the First-tier Tribunal to be heard afresh.

Consequential Directions

The First-tier Tribunal may wish to consider listing a CMR hearing prior to the substantive re-hearing of this appeal given the recent serious accident sustained by Mr Hamad's son.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. There was no request for anonymity and I do not consider such an order is required.

Date 29<sup>th</sup> October 2014

Upper Tribunal Judge Coker