



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

Appeal Number: DA/00547/2014

THE IMMIGRATION ACTS

Heard at Glasgow

On 19 December 2014

**Determination
Promulgated**

On 17 April 2015

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE DEANS**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS NEMAH SHEHADEH
(Anonymity order not made)**

Respondent

Representation:

For the Appellant: Ms R Pettersen, Home Office Presenting Officer

For the Respondent: Mr A Caskie, Advocate, instructed by McGlashan MacKay,
Solicitors

DETERMINATION AND REASONS

- 1) This is an appeal by the Secretary of State against a decision by a panel of the First-tier Tribunal comprising Judge of the First-tier Tribunal Wallace and Dr C J Winstanley. The panel allowed an appeal by Ms Nemah Shehadeh (hereinafter referred to as "the claimant"). The appeal was

brought against a decision dated 18 March 2014 by the Secretary of State refusing to revoke a deportation order.

- 2) The nationality of the claimant is disputed. She claims to be a stateless person originating from the Palestinian Territories but the Secretary of State considers her to be Jordanian. Her date of birth is recorded as 25 November 1954.
- 3) The First-tier Tribunal records that the claimant was recommended by a court for deportation following her conviction in 2005 for using a false instrument and attempting to obtain services by deception, for which she was sentenced to imprisonment for 4 months. An appeal against the deportation decision was unsuccessful, as was a subsequent judicial review. The claimant was removed to Jordan in January 2008 but was refused entry after she claimed to be Palestinian. She was returned to the UK.
- 4) The Tribunal further records that the claimant was born in the West Bank and lived there until her marriage in 1979. Following their marriage, the claimant and her husband lived in Saudi Arabia until they separated in 2002. The couple had 2 children, both born in Saudi Arabia. The claimant's right to live in Saudi Arabia was by virtue of her husband's work and she lost this right following the breakdown of the marriage. According to the claimant she came to the UK in August 2002 on a properly issued travel document issued to her by the Jordanian authorities as a Palestinian when she lived in the West Bank. The claimant had a visit visa but became an overstayer.
- 5) The present appeal arose from a claim by the claimant to asylum and humanitarian protection. She alleges that she would face mistreatment in Jordan due to her political opinion and her religious conversion from Islam to Christianity.
- 6) Notwithstanding the fears expressed by the claimant, the focus of the panel's attention was on the claimant's nationality. The conclusion the panel came to was that the Secretary of State had failed to demonstrate that the claimant was Jordanian and that there was a country to which she could be safely returned. The other issues in the appeal were said to be peripheral to this core issue and the appeal was allowed.
- 7) In the application by the Secretary of State for permission to appeal it was submitted that the panel was incorrect to place the burden of proof on the Secretary of State in respect of the question of the claimant's national origins. It was contended that the claimant never asserted that she was Palestinian prior to her deportation to Jordan. If she was Palestinian she should have made this clearer to immigration authorities at an earlier stage. Her son was removed to Jordan in 2006 on his own passport. It was the claimant who had asserted that she was of a nationality other than the one that she had presented to the Home Office and the burden rested on her to prove that she was Palestinian. The burden was also on

the claimant to show that she came within the protection of the Refugee Convention or that her deportation would breach her human rights. The panel had failed to make adequate findings and give adequate reasons on these matters. If the panel members had correctly directed themselves as to the burden of proof and had considered the evidence properly they would have found that the appeal should be dismissed. The evidence demonstrated on the balance of probabilities that the claimant was Jordanian and had claimed to be Palestinian simply to frustrate her deportation and make a false asylum claim. She had previously made an unsuccessful asylum claim on the basis of a fear of returning to Jordan.

- 8) In granting permission to appeal, the judge noted that the panel appeared to have allowed the appeal on asylum grounds but in so doing stated that the Secretary of State had failed to show that the claimant was Jordanian and that there was a country to which the claimant could be safely returned. This was arguably an error given that the burden was upon the claimant to substantiate her asylum claim.
- 9) At the hearing before us, Ms Pettersen referred us to evidence before the First-tier Tribunal indicating that the claimant was a citizen of Jordan. Ms Pettersen confirmed there was no finding by the First-tier Tribunal that the claimant was a refugee or that her removal would infringe her human rights. The panel did not find that the claimant was a Palestinian but only that the Secretary of State had not shown that she was Jordanian.
- 10) Mr Caskie submitted on behalf of the claimant that if she was not Jordanian then she was a stateless Palestinian. It was pointed out that this would require the Tribunal to assess her fear of persecution by reference to the country of her former habitual residence. Mr Caskie submitted that this was most likely Saudi Arabia. The Secretary of State was nevertheless proposing removal to Jordan. The claimant had only lived in Saudi Arabia for temporary purposes.
- 11) After some discussion it became apparent that both parties acknowledged that the First-tier panel had not made proper findings either in relation to nationality or in relation to the claimant's alleged fear of persecution or of a breach of her protected human rights. In view of the lack of relevant findings made by the First-tier panel we are satisfied that the extent of any judicial fact finding which is necessary for the decision to be re-made is such that it is appropriate to remit the case to the First-tier Tribunal, in terms of Practice Statement 7.2(b). The appeal is accordingly remitted for hearing before a differently constituted Tribunal with none of the findings of the First-tier Tribunal, such as they were, preserved.
- 12) We further noted that it was unclear which of the original grounds of appeal the claimant now relies upon and we direct the claimant to re-formulate her grounds of appeal for the remitted hearing.

Conclusions

- 13) The making of the decision of the First-tier Tribunal did involve the making of errors on points of law.
- 14) We set aside the decision.
- 15) The appeal is remitted for rehearing before a differently constituted First-tier Tribunal with no findings preserved.

Anonymity

The First-tier Tribunal did not make an anonymity order. No application has been made for such an order and we see no reason of substance for making such an order.

Signed

Date **16 April 2015**

Upper Tribunal Judge Deans