



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/04892/2015

THE IMMIGRATION ACTS

Heard at Field House, London

Decision & Reasons

Promulgated

On the 21st April 2016

On the 4th May 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

DR MOHAMMAD K.H.M. ASSAF
(Anonymity Direction not made)

Claimant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant in the Upper Tribunal

Representation:

For the Claimant: Mr Ly (Counsel)

For the Secretary of State: Mr Duffy (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Adio promulgated on the 16th February 2016 in which he allowed the Claimant's appeal on asylum grounds and on Human Rights grounds pursuant to Article 3. For the purposes of clarity throughout this decision, although Dr Assaf was the Appellant before the First-tier

Tribunal, he will be referred to throughout this decision as “the Claimant” and the Secretary of State will be referred to as “the Secretary of State”.

Background

2. It is the Claimant’s case that he is a Palestinian national. His date of birth is the 15th March 1975. On the 15th April 2014 he claimed asylum. It is the Claimant’s case that he initially left Palestine at the age of 19 years old and lived in Romania as a student for 13 years, where he had a residency permit which has since expired. It is his case that he had had problems in Palestine when he applied for a job in the Ministry of Health and was asked to bring clearance from the security authority. Further, he encountered problems when a militant group demanded money from his cousin and accused his cousin of being an agent, working as an informer for the Israelis and ended up killing his cousin in July 2011.
3. The Claimant claims that he was very vocal and outspoken about his cousin’s death as those responsible were not held accountable and that around October 2011 he was assaulted and warned that if he carried on talking he would have the same fate as his cousin. He said that he went to the police but they advised him not to make a formal complaint. The Claimant’s case is that his father was assaulted and asked about the Claimant’s whereabouts.
4. The Claimant was granted a spouse visa for the United Kingdom between the 25th August 2011 and the 25th November 2013. On the 16th January 2012 he left Palestine, travelling to Jordan by bus and then left after 2 days, flying to Romania. On the 13th March 2012 he flew to the UK travelling on his own passport. He came to join his wife. His application for extension of his visa was refused and he separated from his wife in 2013. On the 15th April 2014 he claimed asylum. As at the date of the First-tier Tribunal hearing he had a Romanian girlfriend who he had been seeing for 5 years. It was said that he feared the al-Aqsa militants.

5. The Claimant's claim for asylum was initially rejected by the Secretary of State in a refusal letter dated the 4th March 2015. The Secretary of State noted that on his first 2 visa application forms for the United Kingdom the Claimant had stated that his nationality was Jordanian and that he had never held any other nationality and that his parents were Jordanian nationals and it was not accepted that he was a Palestinian national with no other nationality or entitlement to residency. Nor was it accepted by the Secretary of State that the Claimant's cousin was murdered as claimed or that the Claimant was threatened or would be at risk as a result on the basis that it was found that the Claimant had not mentioned his cousin being murdered at the screening interview and did not provide a reason pertaining to his cousin's murder for claiming asylum during his asylum interview. It was further found by the Secretary of State that the Claimant would be able to return to Jordan where he had previously lived without being at real risk of persecution or serious harm and it was not accepted that he had genuine subjective fear on return to the Palestinian Authority or to Jordan. It was found that there was sufficiency of protection for the Claimant in Jordan and that on his basis his claim for asylum, humanitarian protection and in respect of his Human Rights was rejected.

6. The Claimant sought to appeal against that decision to the First-tier Tribunal and that appeal was heard by First-tier Tribunal Judge Adio on the 18th August 2015, the 19th October 2015 and the 19th January 2016. Within his decision Judge Adio accepted that the Claimant is a Palestinian national. He found that the Claimant held a Jordanian passport was simply "as submitted by Mr Ly due to the fact that following 1988 new regulations were enacted that rendered the passports of Palestinians living in the West Bank temporary." at [33] of his decision and that the new temporary passports were only valid as a travel document and did not confer citizenship and did not have a national number at [34] and [35].

7. Within his findings First-tier Tribunal Judge Adio found that the Claimant was afraid of non-state agents and that the Claimant had mentioned that he feared the outlaw organisation, specifically the al-Aqsa militants in his asylum interview and that he had given a consistent account regarding the beatings that he had received at the hands of the group and how the group had beaten and broke his cousin's leg in March 2010 and gone on to kill his cousin in July 2011 and how the Claimant himself had been beaten in the streets in October 2011 and that following attack in the Claimant's home in January 2012 he left and his father had been beaten. First-tier Tribunal Judge Adio found that there was a consistent account regarding the harassment and torture that the Claimant had received at the hands of the al-Aqsa group and that this was a case of imputed political opinion as the Claimant did state that his cousin was seen as an informant to the Israelis at [40].

8. The First-tier Tribunal Judge went on to find that internal relocation within the West Bank would be difficult for the Claimant at [43] and that it would be unreasonable to expect him to relocate in the West Bank where he had already suffered an attack on the streets and his father had suffered an attack at home and where the Claimant had not lived in Gaza for over 20 years and would have no means of supporting himself. The Judge therefore allowed the Claimant's appeal on asylum grounds and on Article 3 grounds. The Secretary of State has now sought to appeal that decision to the Upper Tribunal.

The Grounds of Appeal

9. Within the Grounds of Appeal it is argued that the First-tier Tribunal Judge has erred in law in finding that although the Claimant holds a Jordanian passport he does not have the right to reside in Jordan. It is argued that it is unsustainable that the holder of a country's passport would not be legally allowed to enter that country or allowed to live there and that it is the Home Office's intention to return the Claimant to Jordan.

The Grant of Permission to Appeal

10. Permission to appeal has been granted by First-tier Tribunal Judge Davidge on the 1st March 2016 who found that there was an arguable error of law in the assessment of risk in the country of intended removal, namely Jordan. It was on that basis that the case came before me in the Upper Tribunal.

Oral Submissions

11. In his oral submissions on behalf of the Secretary of State, Mr Duffy quite properly conceded that the ground of appeal upon which the Secretary of State had sought permission to appeal and had been granted permission to appeal in fact had no merit.
12. Mr Duffy conceded that the ground of appeal that argued that the Judge had erred in finding that the holder of a Jordanian passport did not have the right to reside in Jordan and that that was an unsustainable finding, was in effect an argument about perversity, but that on the evidence actually before the First-tier Tribunal Judge, that was a finding that was open to him. Mr Duffy on behalf of the Secretary of State referred me specifically to the letter from the Palestinian Mission to the UK dated the 31st March 2015 at page 11 of the Claimant's bundle in which the consular department had stated that the Claimant "holds a temporary Jordanian passport that the government of the Hashemite Kingdom of Jordan used to provide to the Palestinian citizens, before the creation of the Palestinian authority, in order to facilitate their movement and travel only. To the best of our knowledge and belief, the temporary Jordanian passport does not grant its holder the right to reside or work in Jordan.". He also referred me to the letter from the Embassy of the Hashemite Kingdom of Jordan at page 12 of the Claimant's bundle which stated that "This is to confirm that Mr Mohammad K.H.M. Assaf is the holder of a Jordanian temporary passport issued in Amman on 10/8/2011, valid for 5 years. Mr Assaf is not a Jordanian citizen and he doesn't have

a national number.”. Mr Duffy also said that the Judge did have before him the research article from Mr Gabbay in respect of the status of Palestinians in Jordan and the anomaly of holding a Jordanian passport, and that in light of all of this evidence the finding that “although the Appellant had completed application forms which showed that he stated that he was a Jordanian national, the reality of the matter is that this was only a travel document for the Appellant because of his Palestinian background” was a finding that was open to the Judge and that the Judge was also entitled to find that the Claimant was not a Jordanian citizen with full rights of citizenship.

13. However, Mr Duffy argued that one point that had not been raised by the Secretary of State within her Grounds of Appeal and also which Mr Duffy conceded in respect of which permission to appeal had not been granted, was whether or not the correct test which he said was the balance of probabilities had been applied by the Judge when considering the question of the nationality of the Appellant and in determining whether or not he was Jordanian and/or a Palestinian national. In this regard Mr Duffy referred me to the Court of Appeal case of RM (Sierra Leone) v The Secretary of State For the Home Department [2015] EWCA Civ 541 and the conclusions of Lord Justice Underhill at paragraphs 35 and 36 of the Judgment. He told me that he appreciated his difficulty in making that submission, as permission to appeal had not been granted in respect of that point, but sought to argue that it was a Robinson obvious point which the Tribunal should therefore consider.

14. Mr Ly on behalf of the Claimant, sought to argue that there was no material error of law in the Judge’s reasoning and that the findings of the Judge were open to him on the evidence. He sought to argue that the Judge had applied the correct standard of proof, but even on the balance of probabilities, the finding regarding the Claimant’s nationality based upon the letter from the Palestinian Mission, the Jordanian Embassy, and the research article would have been the same.

15. In answer to my question as to the country the removal directions had stated the Claimant was due to be removed to, Mr Duffy confirmed that the removal directions only provided for the Claimant to be removed to Palestine, rather than Jordan. Mr Duffy also agreed that under the case of RM (Sierra Leone) v The Secretary of State for the Home Department, that a different standard of proof was to be adopted when considering nationality, depending upon the legal issue to which it was relevant and that if the question was relevant as to whether or not a Claimant would suffer persecution, the lesser standard would apply, but it was relevant to other issues, such as whether in fact it was possible for him to be returned and any rights that may accrue if it is not, the standard was then the balance of probabilities, as stated by the Court of Appeal at [35] of the Judgment in the case of RM (Sierra Leone).

My Findings on Error of Law and Materiality

16. Within the Grounds of Appeal it is argued that:

“It is submitted that the Immigration Judge has erred by making a finding that although the Appellant holds a Jordanian passport he does not have the right to reside in Jordan (see para 33 & 34 of the determination). It is submitted that it is an unsustainable finding that the holder of a country’s passport to which there is not any suggestion that it was false or wrongly obtained, is not a person that would legally be allowed entry to that country, in this case Jordan, or be allowed to live there. It is the Home Office’s intention to return the Appellant to Jordan.”.

17. However, as was quite properly conceded on behalf of the Secretary of State by Mr Duffy, that the Grounds of Appeal as drafted, in fact have no merit, despite the fact that permission to appeal is granted in respect of them. Mr Duffy himself on behalf of the Secretary of State, referred me to the letter from the consular department at the Palestinian Mission to the UK at page 11 of the Claimant’s bundle dated the 31st March 2015, that the Claimant does hold a temporary Jordanian passport

which the Hashemite Kingdom of Jordan used to provide to the Palestinian citizens, before the creation of the Palestinian authority, in order to facilitate their movement and travel only and that to the best of their knowledge and belief a temporary Jordanian passport does not grant its holder the right to reside or work in Jordan. He also referred me to the letter from the Embassy of Hashemite Kingdom of Jordan at page 12 dated the 8th June 2015 which states that Mr Assaf is not a Jordanian citizen and does not have a national number, despite having been issued with a Jordanian temporary passport.

18. Mr Duffy also referred me to the article regarding the status of Palestinians in Jordan and the anomaly of holding a Jordanian passport by Mr Gabbay at the University of Denver, Colorado, in which it was stated that “In Jordan, not all passports grant the same privileges. Following the 1988 judicial administrative disengagement from the occupied territories, new regulations were enacted that rendered the passports of Palestinians living in the West Bank temporary. In practical terms, this designation meant that the new temporary passports were now only valid as a travel document – it no longer conferred citizenship and it no longer had a national number. This situation created an anomaly ‘a counterintuitive result whereby the holders of a passport [with no national number] have far fewer rights (in fact none) compared to the holder of a mere [Jordanian] identity card which includes a national number’.
19. Mr Duffy quite properly conceded that in light of these documents the findings of First-tier Tribunal Judge Adio that the temporary Jordanian passport held by the Claimant was only a travel document, were open to him. He also conceded that the finding that the document did not confer full citizenship was open to the Judge on the evidence.
20. Although within the grant of permission to appeal it was stated that the Judge had arguable failed to appreciate the holding of a Jordanian passport meant the Claimant had a right to reside in Jordan and

accordingly he would legally be allowed to enter into the country, given the evidence from the State of Palestine consular department at page 11 that the holder of a temporary Jordanian passport did not have the right to reside or work in Jordan, I find that the Judge's findings in that regard were open to him. The Secretary of State has been unable to produce any evidence, as was conceded by Mr Duffy, to in fact show that the Claimant would have had a right to reside in Jordan, or that he would in fact have had the rights of full citizenship, without a national number.

21. In any event, although within the Grounds of Appeal it was stated that it was intended that the Claimant be removed to Jordan, as Mr Duffy conceded on behalf of the Secretary of State, in fact the removal directions simply refer to the Claimant being removed to Palestine. Any suggestion, therefore, within the grant of permission to appeal that the Judge had arguably wrongly failed to take into account as to whether or not the Claimant would be entitled to enter Jordan, was not in fact the basis of any of the findings made by First-tier Tribunal Judge Adio, and there was no error in the Judge's findings between [33] and [35] in respect of whether or not the Claimant was a Jordanian national and/or a Palestinian national. The Judge did not make findings as to whether or not the Claimant could safely live in Jordan, as that was not being argued before him, what was being argued, was whether or not he could safely be returned Palestine.

22. In respect of the argument raised by Mr Duffy that the Secretary of State should be allowed to argue that the wrong standard of proof was adopted by the Judge when considering the question of the Claimant's nationality and that the standard of proof that should have been applied was a balance of probabilities rather than the lower standard of proof, I find that this argument was not raised by the Secretary of State, nor was permission granted on such a basis to raise such an argument before the Upper Tribunal by First-tier Tribunal Judge Davidge. This is an entirely

new argument that was not previously raised, and in respect of which permission to appeal has not been granted.

23. I do not consider that in the circumstances of this case, the question as to whether or not the Judge had applied the correct standard of proof in respect of the nationality of the Claimant for the purposes of considering the claim under the Refugee Convention or the ECHR was an obvious point for the purpose of being “Robinson obvious”, following the case of R v Secretary of State for the Home Department ex parte Robinson [1997] 3WLR 1162, given that as was stated by the Court of Appeal in the case of RM (Sierra Leone) v The Secretary of State For the Home Department at [35] the standard of proof should be applied to the question of an applicant’s nationality depends upon the legal issue to which it is relevant. If it is relevant to whether or not he will suffer persecution (whether by reference to the Refugee Convention or Article 3) the lesser standard will apply but if it is relevant to some other issue – such as whether it is in fact possible in practice for him to be returned, and any rights that may accrue if it is not – the standard is a balance of probabilities. Given that the standard of proof in such circumstances depends upon the issue to which it relates, I do not consider that this is an obvious point when reading the decision of First-tier Tribunal Judge Adio. This is a technical legal argument and is not a Robinson obvious point.
24. I therefore find that the Secretary of State should not be allowed to argue this new argument, not having relied upon this argument within the Grounds of Appeal and not having been granted permission by the First-tier Tribunal Judge or the Upper Tribunal to argue the point.
25. However, even if I am wrong in this regard, in my judgment, the argument in any event has no merit, given that First-tier Tribunal Judge Adio was clearly considering the question as to whether or not the Claimant was a Jordanian and/or a Palestinian national between [33] and

[35] before then going on to consider immediately thereafter, the question as to whether or not the Claimant's claim that he would be at risk upon return to Palestine should be accepted. He has therefore considered it as part of the overall credibility consideration, when determining whether or not the Claimant would be at real risk of persecution upon return to Palestine. The Judge has not considered whether or not the Claimant could be returned to Jordan, as the removal directions, as conceded by Mr Duffy, did not provide for him to be returned to Jordan, they only provided for him to return to Palestine. Therefore, the Judge has correctly applied the correct standard of proof being the lower standard of proof, when considering the question of the Claimant's nationality for the purposes of determining the question of whether he would suffer persecution either under the Refugee Convention or Article 3.

26. However, even if I am wrong in this regard, and the Judge should have applied the balance of probabilities, any error in this regard was immaterial, given that on the evidence presented from the Palestinian Mission, the Jordanian Embassy and the research article regarding the status of Palestinians in Jordan, even if the Judge had considered the evidence in that regard on the balance of probabilities, his decision would inevitably have been the same. The Secretary of State had no evidence to put before the Tribunal, to say that that evidence should be disregarded or was in any way wrong. The findings of the Judge would therefore inevitably have been the same on this issue, irrespective of the standard of proof adopted, as to whether that should have been to the lower standard or on the balance of probabilities.

27. In such circumstances the decision of First-tier Tribunal Judge Adio does not disclose any material error of law and is maintained.

Notice of Decision

The decision of First-tier Tribunal Judge Adio does not contain any material error of law and is maintained.

Signed

Rob McGinty

Deputy Judge of the Upper Tribunal McGinty
2016

Dated 23rd April