



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

Appeal Number: AA/03577/2014

THE IMMIGRATION ACTS

Heard at Field House

On 29 September 2014

**Determination
Promulgated**

On 10 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

TA (LEBANON)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Jane Elliott-Kelly, Counsel, instructed by Harding Mitchell Solicitors

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing his appeal against the decision by the Secretary of State to refuse to recognise him as a refugee, or as otherwise requiring international protection.

2. The appellant is a Palestinian national, although he was born and raised in Lebanon. He came to the United Kingdom as a student in November 2010, and claimed asylum on 13 October 2011. The basis of his claim was that he had a well-founded fear of persecution in Lebanon at the hands of Hezbollah and/or Hamas.
3. The claim was rejected by the respondent, and the appellant's first appeal against the refusal of asylum was dismissed by Judge Abebrese on 25 April 2012. He found the appellant not to be credible. However, the appellant successfully challenged Judge Abebrese's decision on error of law grounds. In granting permission to appeal, Upper Tribunal Judge Peter Lane observed that it was highly arguable that Judge Abebrese had failed to make findings on core issues of the claim and had applied the wrong standard of proof. With the agreement of the parties, Upper Tribunal Judge Kekic found an error of law, such that the determination should be set aside, and remitted the appeal to the First-tier Tribunal for a full re-hearing de novo.
4. The appeal was listed for hearing before Judge Andonian in the First-tier Tribunal at Taylor House on 1 July 2013. Judge Andonian received oral evidence from the appellant and from a relative, M E. In a determination promulgated on 16 July 2013 Judge Andonian gave his reasons for rejecting the appellant's asylum claim on adverse credibility grounds.
5. The appellant was granted permission to appeal to the Upper Tribunal, and the error of law hearing took place before Upper Tribunal Judge Gleeson. At the outset of the hearing, Judge Gleeson queried the destination cited on the removal directions. Whereas the appellant had been born in Lebanon, the removal directions said the destination for removal was the Palestinian authority. Judge Gleeson apparently indicated that she considered this rendered the removal decision unlawful. The Presenting Officer left the hearing to take instructions, and on return announced that the removal decision would be withdrawn.
6. The Secretary of State did not just withdraw the removal decision, but also the decision refusing the appellant's asylum claim. She issued a fresh Reasons for Refusal Letter rejecting the appellant's asylum claim on 21 May 2014.

The Hearing before, and the Decision of, the First-tier Tribunal

7. The appellant's appeal against the fresh refusal of his asylum claim came before Judge Aujla sitting at Taylor House in the First-tier Tribunal on 2 July 2014. Mr Palmer of Counsel appeared on behalf of the appellant, and Mr Carroll of Counsel appeared on behalf of the respondent. The judge received oral evidence from the appellant. In his closing submissions on behalf of the respondent, Mr Carroll submitted that the determination of Judge Andonian should be his starting point under **Devaseelan**. The evidence presented to him was the same as that presented before Judge Andonian, and there was no reason to re-open the findings that he had

made. The respondent's decision to withdraw the original decision letter and to issue a fresh decision did not affect the findings made by Judge Andonian.

8. Mr Palmer in reply submitted it was unsafe to rely on the determination of Judge Andonian as permission to appeal against this determination had been granted. The decision on which his determination was based had gone, and his determination should therefore not be treated as valid. The respondent had not relied on the findings of Judge Andonian in the fresh refusal letter.
9. The judge's findings are set out in paragraphs 33 onwards of his subsequent determination. He resolved the issue of the status of the determination of Judge Andonian in favour of Mr Carroll. He agreed with Mr Carroll's arguments, and rejected those of Mr Palmer. At paragraph 36, he said the appellant had provided no new credible evidence to displace the findings made by Judge Andonian. His determination was not set aside, and therefore it stood. If the appellant had wanted the determination set aside, he had the option of opposing the respondent's decision to withdraw the first decision before Judge Gleeson, or later judicially reviewing the same to force the Upper Tribunal to determine the substantive appeal against the determination of Judge Andonian. Returning to the comments made by Judge Chohan in his grant of permission, even if some of the findings made by Judge Andonian could be regarded as unsustainable on account of the country material, the adverse credibility findings that he made against the appellant on the basis of the factual matrix put before him by the appellant could not be undermined by the country material. To that extent therefore he parted company with Judge Chohan.

The Grant of Permission to Appeal

10. On 12 August 2014 First-tier Tribunal Judge Lever granted permission to appeal for the following reasons:

The judge took the view that as the decision of Judge Andonian had not been set aside that he was entitled to use that determination as his starting point. It could be argued that the decision by the respondent to withdraw the refusal letter and the removal directions to the Palestinian authority effectively brought those proceedings to a close and the issue of a new refusal letter and new removal directions to a different country brought about a fresh case essentially. In those circumstances it is argued that the decision of Judge Andonian had no relevance to these new proceedings. The only relevance may have been whether or not the appellant provided a consistency of evidence as between the two hearings. It can also be argued that it would be inherently risky even to rely upon the earlier decision as a starting point if the judge was making findings of fact, credibility and risk on return to a different country. Whilst the position and indeed the rather regrettable history of this case is not entirely clear it is arguable that the judge may have made a procedural error of law even though the case appears at all times to be largely credibility based.

The Error of Law Hearing

11. At the hearing before me, Mr Deller informed me that he agreed with the error of law challenge made by the appellant. After reviewing some of the key documents, and receiving further submissions from both Mr Deller and Ms Elliott-Kelly, I was satisfied that an error of law was made out, and that I should remit the appeal for a de novo hearing in the First-tier Tribunal. My reasons for so finding are set out below.

Reasons for Finding an Error of Law

12. The concession made by Mr Deller was not determinative of the question which I had to decide, and I was initially reluctant to accept his concession. For it is by no means obvious that the judge has made an error of law in circumstances where (a) the determination of Judge Andonian has not been set aside on error of law grounds and (b) the judge has given reasons as to why he does not regard the determination of Judge Andonian as being unsafe.
13. But a case such as this turns on its own facts. While it may not be a general Rule that **Devaseelan** should be disapplied where the previous determination has been the subject of an unresolved error of law challenge, I am persuaded on the facts of this particular case that the judge was wrong to treat Judge Andonian's determination as a safe starting point. Furthermore, the judge did not in the event give adequate reasons for rejecting Mr Palmer's submissions to the contrary, having regard to the grounds of appeal to the Upper Tribunal and having regard to the grant of permission to appeal given by First-tier Tribunal Judge Chohan on all grounds raised.
14. Judge Aujla was entering into dangerous and undesirable territory in effectively challenging Judge Chohan's grant of permission. He was performing the reviewing function that would have been performed by Upper Tribunal Judge Gleeson if the error of law hearing before her had not been aborted. On that ground alone, it was procedurally more appropriate for the judge not to treat Judge Andonian's determination as his starting point.
15. In addition, as set out in paragraph 9 of Ms Elliott-Kelly's skeleton argument, the judge did not in any event engage with all of the original grounds of appeal. Judge Chohan only commented on the first ground, which was that Judge Andonian had failed to consider properly the situation in Lebanon and the standing of Hezbollah. The second ground was that the judge's findings on credibility were so extreme as to be irrational; and the third ground was the judge had failed to consider properly the corroborative value of the evidence given by M E.
16. In conclusion, I find that it was a procedural irregularity for the judge to treat the adverse credibility findings of Judge Andonian as his starting point. He could take into account the evidence that was put before Judge

Andonian, and he could compare it with the evidence that was put before him. But it was procedurally unfair for the judge to proceed on the premise that the adverse credibility findings made by Judge Andonian could be safely adopted as his starting point.

Decision

The decision of the First-tier Tribunal contained an error of law, such that it should be set aside and remitted to the First-tier Tribunal at Taylor House for a de novo hearing before any judge apart from Judge Abebrese, Judge Andonian and Judge Aujla.

Signed

Date

Deputy Upper Tribunal Judge Monson