Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06734/2019 (V)

THE IMMIGRATION ACTS

Heard by way of a remote hearing	**Decision & Reasons Promulgated**
On 23 June 2021	**On 13 July 2021**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

A H
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Juss, Counsel on behalf of the appellant.
For the Respondent: Mr Avery, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge TR Smith (hereinafter referred to as the "FtTJ") promulgated on the 29 October 2019, in which the appellant's appeal against the decision to refuse her protection and human rights claim was dismissed.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The hearing took place on 23 June 2021, by a remote hearing conducted on Microsoft teams which has been consented to and not objected to by the parties. A face- to- face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video as did the appellant who could see and hear the proceedings being conducted. There were no issues regarding sound, and no technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

4. The appellant is a citizen of Jordan. The following immigration history is derived from the records provided by the Respondent.

5. The appellant claimed she lived in Iraq between 1997 to 2005.

6. She then moved to Jordan where she stayed for less than a year before moving to the United Arab Emirates.

7. The appellant applied for a visitor visa to the United Kingdom on 23 October 2018 which was granted on 04 November 2018. Under the terms of that visa the Appellant was permitted to remain in the United Kingdom until 04 May 2019.

8. The appellant left the UAE on 24 December 2018 arriving the United Kingdom that same day.

9. The appellant claimed asylum on 10 January 2019.

10. The factual basis of her claim was that the appellant contended she was born in Iraq and she was a Palestinian, originally living in Iraq. Her husband was a Jordanian Palestinian, but his Jordanian citizenship was removed from him in 1996. However, he remained in Jordan without documents until 2003. The appellant married her husband in Iraq on 26 September 2004, during which time she was living in Jordan. The appellant subsequently lived in Iraq but upon falling pregnant was told by the Iraqi authorities to leave the country.

11. On arrival at the border with Jordan the appellant was told to report the intelligence services where she claimed she was questioned about her paternal uncles' involvement with the PLO and what she had been doing in Iraq.

12. In 2005 the intelligence services told the appellant to leave Jordan. At this time the appellant's husband was already living in Iraq before leaving for the UAE. The appellant left Jordan and went to the UAE where she and her husband lived and worked. The three youngest children were born in the UAE, the eldest in Jordan. All the children are dependent upon the appellant's claim for asylum. The appellant's husband remains living in the UAE.

13. The appellant contended if returned to Jordan her family would be dispersed as her husband and children were stateless. She also feared the intelligence services in Jordan who questioned her about her paternal uncles' involvement with the PLO.

The decision of the respondent:

14. In a decision letter of 1 July 2019, the respondent refused her protection claim. The respondent considered the issue of nationality at paragraphs 19 – 27 and by reference to the documents provided by the appellant which included birth certificates and the documents submitted for her visa application. In respect of the children's birth certificates, it was noted that the nationality was stated "Hashemite Kingdom of Jordan" and thus based on that alongside the country information recorded at paragraph 22, it was considered that the appellant had shown suitable and valid identification documentation to the UAE in order for the children's birth certificates to have been issued. Further concerns were set out at paragraph 24 in relation to the eldest child's birth certificate and it had not been explained why the birth certificate stated her nationality was "Palestinian" given that it did not state the nationality of the mother or father.

15. At paragraphs 29 – 36, the respondent set out her reasoning as to why the appellant's claim that she would be of interest to the Jordanian authorities on return was rejected.

16. Paragraphs 37 – 44 considered the issue of statelessness but reached the conclusion that her claim that the children were stateless was inconsistent with the Visa applications for the children in which she had stated her children were Jordanian. The passport was said to be passports rather than travel documents as they have the code P upon them. For the reasons given in the decision letter, the respondent rejected the appellant's claim that her family members were stateless.

17. The remainder of the decision letter considered Article 8 of the ECHR noting that the appellant could not meet the requirements under Appendix FM or in relation to private life under the rules either on the basis of the short length of residence or on the basis that there would be very significant obstacles to their integration (see paragraph 75 – 79). The decision letter also considered the claim in respect of the appellant's eldest child and her medical condition but that the evidence provided did not indicate that her medical condition was at such a critical stage that it would be inhumane to remove the family from the United

Kingdom and it did not reach the threshold of severity to breach Article 3 or Article 8. Furthermore by reference to the country materials reference to paragraph 87, treatment for scoliosis was available in Jordan. In reaching the overall conclusion, section 55 of the 2009 act was fully considered within the decision letter.

18. Consequently her claim was refused on protection and human rights grounds.

The decision of the FtTJ:

19. The appellant appealed that decision, and it came before the FtT (Judge TR Smith) on 11 October 2019. In a decision promulgated on 29 October 2019 the FtTJ dismissed her appeal. The FtTJ had the opportunity of hearing the appellant's oral evidence and considered the claim made in the light of the expert report of Dr George and the country materials. He overall concluded that he did not find the Appellant to be a credible witness and made a number of adverse credibility findings in his overall assessment which included those under section 8 of the 2009 Act as regards the destruction of the passports which he found was a "deliberate and calculated act".

20. As to her claim that she would be at risk on return, at paragraphs 80-86 the FtTJ did not accept the Appellant faced a real risk of persecution from the Jordanian authorities if returned on the basis of her alleged family connection to a member of the PLO.

21. The issue of nationality was considered at paragraphs 87 – 107. The FtTJ made the following factual assessment:

    (1) the appellant is a Jordanian national who is entitled to reside in Jordan and has a Jordanian passport.

    (2) In Jordan a person's citizenship derives from their father's citizenship. and the Jordanian nationality laws are such that children born to Jordanian mothers and non-Jordanian fathers do not acquire Jordanian nationality.

    (3) It is plausible that the appellant's husband may have had his Jordanian nationality removed. The Jordanian authorities have such a power under Article 18 of its constitution. Further Dr George noted that in 1988 Jordan stripped many of its former citizens from the West Bank of their Jordanian citizenship. It is for this reason I give no weight to the respondent's contention as to the appellant's husband's birth certificate.

    (4) Whilst the children appeared to have Jordanian passports, the FtTJ stated "I am more persuaded by Dr George's opinion that the apparent Jordanian passports, which the children have, are designated *"T series"* which does not confer Jordanian citizenship but are in effect travel documents. This is evidenced by the letter "T" on the document which refers to the temporary

nature of the document and does not carry a national number which only appears on passports of those holding Jordanian citizenship".

(5) The appellant said in her statement dated 01 October 2019 that the children could live in Jordan but with very limited rights but in cross examination claimed that they could not, and this was a mistake when the statement was drafted. The FtTJ did not accept that the appellant would not have taken time to read her statement carefully and did not accept this contention. He also noted she said in her statement dated 04 June 2019 that the children were entitled to live in Jordan (paragraph 6).

(6) There is no suggestion from Dr George that the appellant possesses anything other than Jordanian nationality.

(7) The FtTJ accepted the evidence of Dr George that the passports issued to the children were akin to travel documents, rather than proof of nationality.

(8) When considering the decision in EB (Ethiopia) -v- SSHD [2007] EWCA Civ 809 he did not consider that it materially assisted the appellant citing Pill LJ that the mere deprivation of nationality in itself did not give rise to a right to refugee status. Neither did a voluntary departure, unconnected with persecution, followed by a refusal to allow re-entry necessarily give rise to refugee status (paragraph 54). The FtTJ also cited Longmore LJ who had adopted the same position and indicated that the loss of citizenship itself was not necessarily persecutory, it was the consequences in the particular case that might amount to persecution and this involved looking at the seriousness of those consequences.

(9) The FtTJ found no steps had been taken by the Jordanian authorities to deprive the appellant of her Jordanian nationality. Nor had it been suggested to him that she merely has a travel document. She is a Jordanian national. The FtTJ did not accept she would not be readmitted to Jordon.

(10) The FtTJ found that he reasons she left Jordan was to join her husband in the UAE. She was not removed by the Jordanian authorities. The appellant had not been subjected to persecution by the Jordanian authorities and she continued to have the rights and privileges of a Jordanian national if she was to return.

(11) The position of the children was that the eldest was taken outside Jordan with the appellant so she could join her husband. She was not forced to leave. The three younger children were born outside Jordan.

(12) The FtTJ addressed the expert evidence of Dr George whose report and the opinion he accepted. From the material, the FtTJ found that children of female citizens married to noncitizens receive the nationality of their father. However, since 2016 the Ministry of Education has announced that all children, regardless of nationality or status are entitled to be enrolled in

formal education. Children of Jordanian mothers and noncitizens fathers may gain access to certain services enjoyed by citizens including subsidised healthcare, the ability to own property, invest, and obtain a Jordanian driver's licence and to have employment priority over foreigners. The FtTJ considered that the 2018 report went on to indicate this ruling affected thousands of children where their fathers lost Jordanian citizenship, of whom over 55,000 were Palestinian. Originally there was a requirement of a mother to have five years residency, but this apparently was removed in 2016 according to Dr George.

(13) He concluded that the appeal did not "falls squarely within the parameters of EB (Ethiopia) -v- SSHD [2007] EWCA Civ 809 "as the appellant's counsel submitted.

(14) The FtTJ found that the appellant's children could return to Jordan. For example, the Jordanian authorities have been content to issue passports to all the children which allow them to travel freely, albeit they must be renewed from time to time. They can access services. They can own property.

(15) Whilst the FtTJ found that they may not enjoy exactly the same privileges as a Jordanian national until naturalised and accepted "there is a measure of discrimination", citing Dr George and the report of some discrimination against Palestinians with the majority of public sector jobs being retained by Jordanians whereas Palestinians tended to work in the private sector. There was also an element of discrimination in the private sector. There is a quota limits on the number of university admissions for Palestinian youths. The FtTJ concluded that "However, discrimination is not the same as persecution. Whilst I accept there are levels of discrimination and in very severe cases it might amount to persecution, I am not so satisfied here that it reaches such a level. Further in NA (Palestinians- Not at general risk) Jordan CG 2005 UKIAT 00094 the Tribunal concluded that the discrimination against Palestinians in Jordan related to third level rights and could not be said to be of such a nature as to amount to persecution or a breach of Article 3".

(16) The FtTJ placed weight on the report of Dr George where he stated at paragraph 69 it is possible to live permanently in Jordan even as a non-national, holding a Jordanian travel document. The FtTJ found that the children could remain in Jordan until naturalised.

(17) He also found that there was no suggestion that the Jordanian authorities would refuse the children's entry into Jordan and recorded that the appellant conceded this herself in her most recent witness statement. As Dr George had pointed out it is possible for the children to naturalise in accordance with the conditions set out by Jordanian state, as explained by

Dr George in paragraphs 70 and 71 of his report although this would depend on residency and could take some years.

(18) The FtTJ found "This is not a case where the children will for ever in their life carrying the psychological worry as to their status."

(19) He finally concluded at [107] "I therefore find, having weighed up all the evidence and with particular reliance on the report of Dr George, do not find either the appellant or the children would face a real risk of persecution if returned to Jordan."

22. At paragraphs [108 – 135] the FtTJ address the issue under paragraph 276 ADE (1) (vi) and whether there were "very significant obstacle to the applicant's integration" to Jordan but concluded having undertaken a broad evaluative judgement and holistic assessment of the factual circumstances that there would be no very significant obstacles. In undertaking that assessment, the judge took into account length of prior residence, linguistic and cultural ties, family ties that remained in Jordan on her husband's side, her ability to obtain employment taking account of her education, skills, and experience and that she would be able to obtain accommodation in Jordan and the children could access education and healthcare.

23. In relation to Article 8, he noted that the family unit had been ready fragmented by the appellant's decision to leave the UAE and to claim asylum and that the appellant's husband had made no attempt to join her but had remained in the UAE. The FtTJ concluded that the appellant would be able to develop a private life in Jordan; she was free to return there and that the evidence pointed to the fact that the children would also be allowed entry to Jordan. As to her husband circumstances, whilst it was said he had had his Jordanian citizenship removed, he had been granted a "T" passport thus would be able to travel. The judge also took into account that after the removal of her husband's Jordanian citizenship in 1996, it is accepted by the appellant that she and her husband were able to reside in Jordan as they obtained a permit to stay with her husband leaving in 2003/2004 and the appellant later. Thus he concluded "there is no cogent evidence before me as to why the appellant's husband could not obtain a permit to stay in Jordan.

24. He was not satisfied either that the appellant had any intention to live with her husband for the reasons set out at paragraph 151. The judge addressed the section 117 public interest considerations, and the best interests of the children but overall concluded that the refusal of leave to remain was not disproportionate having weighed all the evidence "in the round".

25. The FtTJ therefore dismissed the appeal.

26. Permission to appeal was issued and on 12 November 2019, permission to appeal was refused by FtTJ Manuell but on renewal was granted by UTJ Lane on 10 February 2020.

The hearing before the Upper Tribunal:

27. In the light of the COVID-19 pandemic the Upper Tribunal issued directions indicating that it was provisionally of the view that the error of law issue could be determined without a face- to- face hearing and directions were given for the parties to provide their written submissions.

28. The following written submissions were filed:

    (1) The appellant's skeleton argument filed on 10 July 2020.

    (2) The appellant's submissions filed on the 14 July 2020.

    (3) The respondent's submissions filed on 14 July 2020.

29. On the 16 April 2021 Upper Tribunal Judge Owens gave directions for the hearing to take place as a remote hearing and that this could take place via Teams. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties with the assistance of their advocates.

30. Mr Juss, Counsel instructed on behalf of the appellant relied upon the written grounds of appeal and the written submissions and skeleton argument.

31. On behalf of the respondent Mr Avery relied upon the written submissions dated 14 July 2020.

32. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions. I intend to set out those submissions by reference to the grounds advanced on behalf of the appellant.

The grounds of challenge:

33. The grounds of permission on the renewed application to the Upper Tribunal consists of three grounds of appeal.

Ground 1"*material misdirection of law: the principal in EB (Ethiopia)*

34. It is submitted on behalf of the appellant that it was argued that as her daughters were deprived of their Jordanian nationality to which they are entitled because of their father's Palestinian nationality, they had been deprived of nationality arbitrarily and were entitled to refugee status.

35. Mr Juss referred the tribunal to the decision of the FtTJ at paragraphs [88], [90] and [100] where the judge found that in Jordan a person's citizenship derives from their father's citizenship and the Jordanian nationality laws are such that

the children born to Jordanian mothers and non-Jordanian fathers do not acquire Jordanian nationality (at[88]) and that the children were not Jordanian nationals (at [90]) and that children of female citizens married to non-citizens receive the nationality of their father.

36. Mr Juss submitted that Longmore LJ at paragraph 60 recorded the submission made on behalf of the appellant in EB and at paragraph 66 recorded that the "Secretary of State's acceptance that if EB had, in fact, been deprived of citizenship by the arbitrary action of state employees, that would have prima facie been persecution within the terms of the Refugee Convention" and that at paragraphs[70] and [74] and [75] of the decision reached the opposite conclusion to that of the FtTJ.

37. Mr Juss submitted that if the appellant's husband had his nationality removed and as the children's nationality is consequent upon that, and they were given "T" nationality status, the appellant's husband and children do not have Jordanian citizenship and therefore would not be able to live together as husband and wife.

38. He therefore submitted that the FtTJ was confused when reaching his decision and whilst the issue was a narrow one, the judge made an error in his consideration of the decision in EB (Ethiopia) by taking into account only the minority decision and did not take into account that nationality had been taken away. The decision demonstrated that someone who had been deprived of their nationality because of race established refugee status. Mr Juss submitted that on that point alone it was an error of law which demonstrated that decision should be set aside and remitted to another judge to consider.

39. On behalf of the respondent Mr Avery relied upon the written submissions dated 14 July 2020.

40. As regards ground 1, the written submissions set out in detail the decision of MA (Ethiopia) v SSHD [2009] EWCA Civ 289 and the judgement of Elias LJ paragraphs 19, 20 and 50 and also the judgement of Stanley Burnton LJ at paragraphs 61 and 62 in which the decision of EB (Ethiopia) was discussed.

41. It is submitted on behalf of the respondent that there was no misdirection by the FtTJ by virtue of one comment at [95] and that the determination should be read as a whole. At [96] the judge also took into account the comments of Longmore LJ at [96] which are not inconsistent with paragraph [95] and simply sets out that proposition that the act of deprivation in and of itself is not persecutory.

42. It is submitted that on a fair reading of the FtTJ's consideration of nationality he considered the appellant's circumstances to be materially different to distinguish her case from that in EB :

(i) The Jordanians had not deprived the appellant of citizenship (at[97]).
(ii) Nor had the appellant been removed from Jordan but had voluntarily departed (at [98]).
(iii) the country position on Jordan based on recent background evidence was also contrasted with Ethiopia (at[100]).

43. It was submitted that in any event the question of the appellant's assertion cannot be divorced from the leading authority of MA (Ethiopia) and that if someone has de jure nationality such as the appellant then the onus will be on her to show that she would be denied that stated in a manner constituting persecution on convention grounds. This could involve any contact with (or lack thereof from) the Jordanian embassy on the issue of applying for a replacement Jordanian passport given the appellant's destruction of her current passport.

44. It is further submitted that whilst the judge chose a quote from the dissenting part of the judgement in EB (Ethiopia) it has not been said why the citation at [95] is either wrong as a proposition of law in the light of MA (Ethiopia) or why this led him to a material error of law in light of the totality of the consideration of the decision.

45. In his oral submissions Mr Avery is submitted that when considering the point made about the children and their nationality that it was not clear that the judge conflated the issue. The judge looked at the children's situation at paragraphs [89] – [93] and after these paragraphs the judge considered the appellant's position. It was not argued that the children were deprived of their nationality as an act of the Jordanian state, and this is not the case. The law with respect to Jordan is that nationality is passed through their father there is no act by the state which deprives them of nationality; the fact that they do not have Jordanian nationality is a result of their father. In any event it had not been argued like this before the FtT.

46. Mr Avery further submitted that the interpretation of EB (Ethiopia) was on the basis of the judge looking at the position of the appellant and whether she was deprived of her nationality and the clear position was that she had not been so deprived. There can be no material error of law as the appellant has never been deprived of her Jordanian nationality. The children were not either and there appears to be some confusion about the interpretation of the FtTJ's decision and the arguments that were presented to the FtT.

47. By way of reply Mr Juss submitted that the issue of the appellant having Jordanian nationality was not in dispute but that the appellants were deprived of Jordanian nationality because of the father's Palestinian nationality and that this was supported by the judge at paragraphs 89 and 93.

Ground 2: *faulty/inadequate reasoning: the appellant's circumstances in Jordan.*

48. It is submitted on behalf of the appellant that the judge gave inadequate reasoning for discounting the appellant's submission that the cumulative impact of discrimination to the appellant's children would amount to persecution. In this respect the appellant relied upon reports in the appellant's bundle concerning the situation affecting stateless Palestinians in Jordan.

49. The grounds assert that Palestinians without citizenship are excluded from public health care services leaving them vulnerable and that such citizens are not allowed to be employed by the state or own land houses or shops.

50. It is submitted that at paragraph [79] the FtTJ made a passing reference to the country materials but otherwise did not engage with it. Therefore the judge was in error on the basis of a lack of reasoning.

51. Mr Juss submitted that at paragraph [100] reference had been made to the 2018 country report but that the judge referred to the circumstances in 2016. The judge did not deal with the circumstances set out in the 2018 US State department report which was 2 years after 2016 and which the expert Dr George relied upon. It is submitted that the judge erred in law by failing to engage with the evidence.

52. On behalf of the respondent it was argued that this was in essence a "reasons challenge "with the appellant arguing that the judge had not provided adequate reasons as to why the cumulative effect of discrimination amounted to persecution. At paragraph [60] the judge reiterates that a lack of mention of a particular document does not mean that it has not been considered and when considering the evidence in the appeal the judge took into account the expert report of Dr George at paragraphs 77 – 79 which the judge expressly attached greater weight to the background evidence which it was considered against and also the US State Department report on Jordan in 2018 at paragraph [100].

53. The judge considered the entitlement to be enrolled in education, access to subsidised healthcare, to invest in whole property, to drive and have preferential access to the labour market. The judge book ended his consideration by stating "I therefore find, having weighed up all the evidence and with particular reliance on the expert report of Dr George, do not find that either the appellant or her children would face a real risk of persecution if returned to Jordan."

54. It is further submitted that the background evidence that has been emphasised post decision in the grounds of appeal is predicated on a finding that the appellant does not have Jordanian nationality which has not been established (see paragraph [97]) and is also contradictory to the US State Department report

cited by the FtTJ. The grounds do not set out why the judge made a material error of law on the basis of adequacy of reasons.

55. Mr Avery in his oral submissions submitted that the judge looked at the evidence in detail including the evidence of Dr George which he gave considerable weight. The appellant is a Jordanian national and there was no specific evidence that she would face discrimination amounting to persecution and in respect of the children and the conclusion reached was that they could go back and acquire Jordanian nationality. He submitted that the points taken against the judge are a disagreement and it cannot be said that the judge did not go through the background material or failed to take into account.

Conclusions on grounds 1 and 2:

56. It is convenient to consider grounds 1 and 2 together. Dealing with ground 1, the central thrust of the submissions advanced on behalf of the appellant is that the FtTJ was referred to the decision of EB(Ethiopia) [2007] EWCA Civ 809 but that the FtTJ wrongly cited the minority speech of Pill LJ with which Longmore LJ and Jacob LJ disagreed. Therefore when the FtTJ stated at paragraph [95] that he did not consider that the case materially assisted the appellant by stating the view of Pill LJ the judge was in error. It is submitted that the judge misunderstood the effect of the judgement in EB (Ethiopia).

57. In support of his submissions Mr Juss on behalf of the appellant has cited part of the FtTJ's decision but in my judgment it is necessary to set out the factual assessment made by the FtTJ by refence to the issue of nationality and in the context of the decision of EB (Ethiopia).

58. The FtTJ stated as follows:

"Nationality

87. I find the Appellant is a Jordanian national who is entitled to reside in Jordan and has a Jordanian passport (AIR 53).

88. I find that in Jordan that a person's citizenship derives from their father's citizenship. and the Jordanian nationality laws are such that children born to Jordanian mothers and non-Jordanian fathers do not acquire Jordanian nationality.

89. It is plausible that the Appellant's husband may have had his Jordanian nationality removed. The Jordanian authorities have such a power under Article 18 of its constitution. Further Dr George noted that in 1988 Jordan stripped many of its former citizens from the West Bank of their Jordanian citizenship. It is for this reason I give no weight to the respondent's contention as to the Appellant's husband's birth certificate.

90. I reject that because the children appear to have Jordanian passports, they are Jordanian nations. I am more persuaded by Dr George's opinion that the apparent Jordanian passports, which the children have, are designated *"T series"* which

does not confer Jordanian citizenship but are in effect travel documents. This is evidenced by the letter "T" on the document which refers to the temporary nature of the document and does not carry a national number which only appears on passports of those holding Jordanian citizenship.

91. The Appellant said in her statement dated 01 October 2019 that the children could live in Jordan but with very limited rights but in cross examination claimed that they could not, and this was a mistake when the statement was drafted. I do not accept that the Appellant would not have taken time to read her statement carefully and do not accept this contention. I also note she said in her statement dated 04 June 2019 that the children were entitled to live in Jordan (paragraph 6).

92. There is no suggestion from Dr George that the Appellant possesses anything other than Jordanian nationality, although the position as regards the children is different.

93. I accept Mr Greer's submission that merely because the children have what appears to be Jordanian passports it does not follow, they are of Jordanian nationality and I am more persuaded by the evidence of Dr George that in effect the passports issued to the children were akin to travel documents, rather than proof of nationality.

94. Mr Greer took me to the case of **EB (Ethiopia) -v- SSHD [2007] EWCA Civ 809.**

95. With respect I do not consider that case materially assists the Appellant. As Lord Justice Pill stated the mere deprivation of nationality in itself did not give rise to a right to refugee status. Neither did a voluntary departure, unconnected with persecution, followed by a refusal to allow re-entry necessarily give rise to refugee status (paragraph 54).

96. Lord Justice Longmore adopted the same position and indicated that the loss of citizenship itself was not necessarily persecutory, it was the consequences in the particular case that might amount to persecution and this involved looking at the seriousness of those consequences.

97. The first point to make is that no steps have been taken by the Jordanian authorities to deprive the Appellant of her Jordanian nationality. It is not suggested to me that she merely has a travel document. She is a Jordanian national. I do not accept she would not be readmitted to Jordon.

98. The question is why is the Appellant outside Jordan? The reason she left Jordan was to join her husband in the UAE. She was not removed by the Jordanian authorities. On my findings of fact, the Appellant has not been subjected to persecution by the Jordanian authorities. She continues to have the rights and privileges of a Jordanian national if she was to return. The practical issue of lack of documentation is not a matter the authorities say I must take into account.

99. The position of the children is that the eldest was taken outside Jordan with the Appellant so she could join our husband. She was not forced to leave. The three younger children were born outside Jordan.

100. Dr George quoted extensively and approved in his report, a US State Department Country Reports on Human Rights Practices issued in 2018. I accept the report and

the opinion of Dr George. Children of female citizens married to noncitizens receive the nationality of their father. However, since 2016 the Ministry of Education has announced that all children, regardless of nationality or status are entitled to be enrolled in formal education. Children of Jordanian mothers and noncitizens fathers may gain access to certain services enjoyed by citizens including subsidised healthcare, the ability to own property, invest, and obtain a Jordanian driver's licence and to have employment priority over foreigners. The report went on to indicate this ruling affected thousands of children where their fathers lost Jordanian citizenship, of whom over 55,000 were Palestinian. Originally there was a requirement of a mother to have five years residency, but this apparently was removed in 2016 according to Dr George.

101. Thus, this is not a case that falls squarely within the parameters of **EB (Ethiopia) -v- SSHD [2007] EWCA Civ 809** as Mr Greer would urge.

102. The Appellant's children can return to Jordan. For example, the Jordanian authorities have been content to issue passports to all the children which allow them to travel freely, albeit they must be renewed from time to time.

103. They can access services. They can own property. Whilst they may not enjoy exactly the same privileges as a Jordanian national until naturalised, and I accept there is a measure of discrimination. For example, Dr George reported some discrimination against Palestinians with the majority of public sector jobs being retained by Jordanians whereas Palestinians tended to work in the private sector. There was also an element of discrimination in the private sector. There is a quota limits on the number of university admissions for Palestinian youths. However, discrimination is not the same as persecution. Whilst I accept there are levels of discrimination and in very severe cases it might amount to persecution, I am not so satisfied here that it reaches such a level. Further in **NA (Palestinians- Not at general risk) Jordan CG 2005 UKIAT 00094** the Tribunal concluded that the discrimination against Palestinians in Jordan related to third level rights and could not be said to be of such a nature as to amount to persecution or a breach of Article 3.

104. As Dr George noted in his report at paragraph 69 it is possible to live permanently in Jordan even as a non-national, holding a Jordanian travel document. The children can remain in Jordan until naturalised.

105. There is no suggestion that the Jordanian authorities will refuse the children's entry into Jordan and indeed the Appellant conceded this herself in her most recent witness statement. As Dr George has pointed out it is possible for the children to naturalise in accordance with the conditions set out by Jordanian state, as explained by Dr George in paragraphs 70 and 71 of his report although this would depend on residency and could take some years.

106. This is not a case where the children will for ever in their life carrying the psychological worry as to their status.

107. I therefore find, having weighed up all the evidence and with particular reliance on the report of Dr George, do not find either the Appellant or the children would face a real risk of persecution if returned to Jordon".

59. I am satisfied that there was no error in the FtTJ's consideration of the decision of EB (Ethiopia). The facts of that case concerned the process established by the Ethiopian authorities in 1998 for identifying ethnic Eritreans who might pose a risk to the national security of Ethiopia, following the outbreak of war between the countries, was not arbitrary or contrary to international law, in many cases people were arbitrarily expelled to Eritrea without having been subjected to that process. Those perceived as ethnic Eritreans, who remained in Ethiopia during the war, and who were deprived of Ethiopian nationality, suffered arbitrary treatment, contrary to international law. Those who left Ethiopia at this time or who were then already outside Ethiopia were arbitrarily deprived of their Ethiopian nationality. Also during this time, the Ethiopian authorities made a practice of seizing and destroying identification documents of those perceived as ethnic Eritreans in Ethiopia.

60. Against that background, the appellant in EB was a female Ethiopian national whose father was of Eritrean origin. On appeal, the Asylum and Immigration Tribunal found that EB had been deprived of her identity documents by the Ethiopian authorities, prior to her departure from that country, and that the reason for the deprivation had been to make it more difficult for EB to prove her Ethiopian nationality. The AIT concluded that EB was, consequently, stateless but dismissed her appeal on the ground that the removal of identity documents had not itself resulted in ill-treatment and she was not otherwise at risk of such treatment, if returned to Ethiopia.

61. Longmore LJ identified the issue between the parties as follows. EB contended that she had effectively lost her nationality or citizenship when her identity documents were removed by the action of the executive arm of the state of Ethiopia (albeit not in the manner described by the appellant). The Secretary of State, whilst accepting that deprivation of citizenship by arbitrary action would prima facie constitute persecution, submitted that the mere removal of identity documents did not constitute persecution. The AIT had found that EB suffered no ill-treatment whilst she was in Ethiopia and she would accordingly not have a well-founded fear of persecution if she were hypothetically returned there (albeit that this could not currently happen). Longmore LJ continued as follows:-

> "63. To my mind the important finding [of the AIT] is that the removal of EB's identity documents was not an activity which resulted in ill-treatment of EB while in Ethiopia. What the AIT do not appear to have considered is whether the removal of the documents was itself ill-treatment, done as it was with the motive of making it difficult for EB in future to prove her Ethiopian nationality. The reason why the AIT did not consider this is because they considered that even loss of nationality was not sufficient to constitute persecution. If that is right it would no doubt follow that for a state merely to make it difficult to prove one's nationality would not be persecution either. The AIT considered that the previous decision of the Immigration Appeal Tribunal in MA (Ethiopia) v Secretary of State for the Home Department [2004] UKIAT

324 compelled their conclusion. MA (Ethiopia) was itself based on the decision of the Court of Appeal in Lazarevic v Secretary of State for the Home Department [1997] 1 WLR 117."

62. In the light of Lazarevic, Longmore LJ considered that the Immigration Appeal Tribunal had erred in MA (Ethiopia) in concluding that an effective deprival of citizenship "does not by itself amount to persecution but the impact and consequences of that decision may be of such severity that it can be properly categorised as persecution" (paragraph 33). Longmore LJ explained that the reasoning in Lazarevic, properly interpreted, was that Yugoslavia's refusal of re-entry to draft evaders failed to be persecutory because it was not "persecution for a Convention reason, not because it did not lead to treatment constituting 'serious harm'". In EB's case, the removal of her identity documents was plainly for a Refugee Convention reason, whether categorised as "race" or "membership of a particular social group".

63. Longmore LJ explained that the reason why actual deprivation of citizenship by arbitrary action would prima facie amount to persecution was that such action "does away with that citizen's individual rights which attach to her citizenship. One of those most basic rights is to be able freely to leave and freely to re-enter one's country. (There may well be others such as the right to vote). Different considerations might arise if citizens were deprived of their nationality by duly constituted legislation or proper judicial decision but a deprivation by executive action would almost always be arbitrary and, if EB had in fact been deprived of her citizenship by the removal of her identity documents by state agents, it would certainly have been arbitrary" (paragraph 67).

64. Returning to the facts of EB's case, Longmore LJ considered that there could be "no difference between" the seizure of her identity documents to make it more difficult for her to prove nationality in the future "and an actual deprivation of citizenship. Her precariousness is the same; the 'loss of the right to have rights' is the same; the 'uncertainty and the consequent psychological hurt' is the same". The IAT in MA (Ethiopia) were in Longmore LJ's view "wrong to conclude that some further (presumably physical) ill-treatment was required" (paragraph 70).

65. At paragraph 71, Longmore LJ recognised that this did not conclude the question "since the hypothetical question whether EB would suffer persecution … on her return is the critical question which has to be addressed". This was so, notwithstanding that the matter was hypothetical because Ethiopia would not currently allow her to return to its country. "Once it is clear that EB was persecuted for a Convention reason while in Ethiopia, there is no basis on which it can be said that that state of affairs has now changed. I would therefore conclude that EB has a well-founded fear of persecution for a Convention reason and that she is now entitled to the status of refugee."

66. Jacob LJ agreed with the judgment of Longmore LJ. Notwithstanding the prima facie establishing of refugee status, the question still had to be asked, whether EB would have a well-founded fear of persecution if returned today. "But in the absence of contrary evidence, someone who has been deprived of nationality because of race would, if returned, be in a near-impossible position – unable to vote, to leave the country or even unable to work. They may well be treated as pariahs precisely because they had their nationality taken away. They have 'lost the right to have rights' (Warren CJ's vivid words). And they have already been put in the position that their home state will not let them in – they cannot even go home." There being "no rebuttal evidence showing that the claimant would not suffer from being stateless in the ways I have identified" and given the length of time that EB's appeal had been pending, Jacob LJ did not consider it necessary or desirable for her appeal to be remitted to the AIT (paragraph 75).

67. Although agreeing on the legal issues raised in the appeal, Pill LJ dissented on whether EB's appeal should be allowed outright or, as he considered to be appropriate, remitted to the AIT. This was because the question of whether the removal of documents constituted persecution "is essentially a question for a fact- finding Tribunal and this Tribunal should not assume facts, as Jacob LJ has done, contrary to the findings of the Tribunal. That would be to arrogate to this court the role contemplated by Parliament for the Tribunal" (paragraph 59).

68. When the appeal was before the FtT Counsel on behalf of the appellant made no reference to the later decision in MA (Ethiopia) [2009] EWCA Civ 289, which has been raised in the respondent's submissions. In that decision there were two reasoned judgments, of Elias LJ and Stanley Burnton LJ. Mummery LJ agreed with both. It is not necessary to consider the legal points raised in that appeal but what is relevant is that Elias LJ concluded by dealing with "two miscellaneous matters". It is the second of those matters which is relevant for the present appeal which concerned what the effect was of the decision of the court in EB.

69. For appellant MA, it was contended that the majority judgments "clearly establish that someone deprived of his nationality for a Convention reason thereby necessarily suffers persecution within the meaning of the Convention". Although Elias LJ accepted there were passages in the judgments in EB that supported that interpretation, he did not think it was possible to state as a universal proposition "that deprivation of nationality must be equated with persecution. Persecution is a matter of fact, not law. Whether ill-treatment amounts to persecution will depend upon what results from refusing to afford the full status of a de jure national in the country concerned." Treating someone less favourably than a person afforded the full rights and benefits of nationality "would be discrimination, but discrimination does not necessarily amount to persecution. That would be a matter of fact in each case depending

upon the nature and degree of the disadvantage suffered. Generalised references to 'deprival of nationality' will often tend to obscure rather than illuminate what is in issue" (paragraph 59).

70. However, an arbitrary refusal of the right to return to Ethiopia was of a different order:-

> "60. In my judgment, however, the correctness or otherwise of *EB* does not arise directly in this case since if the appellant were able to establish that she has been arbitrarily refused the right to return to Ethiopia for a Convention reason, that would in my view amount to persecution. It would negate one of the most fundamental rights attached to nationality, namely the right to live in the home country and all that goes with that. Denial of that right to abode would necessarily prevent the applicant from exercising a wide range of other rights – if not all – typically attached to nationality, as well as almost inevitably involving an interference with private and/or family life in breach of Art 8 for the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (European Convention)." (paragraph 60)

71. Stanley Burnton LJ began by noting the "unfortunate tendency in the law of asylum to treat findings of fact as decisions on points of law, and binding authority in subsequent cases". Such was the case with EB (Ethiopia), which was "regarded as authority for the proposition that the removal of a person's nationality by the authorities of his or her home state is as a *matter of law* sufficiently serious ill-treatment as to constitute persecution which, if done for reasons referred to in Art 1A(2) of the Convention Relating to the Status of Refugees 1951, entitles that person to refugee status" (paragraph 61).

72. Stanley Burnton LJ was "troubled by this proposition". What is meant by persecution is a question of law but whether ill-treatment in a particular case constituted persecution "is a mixed question of fact and law: it is the application of the denotation of persecution to the particular facts". He did not consider that a refusal to confer nationality could without more be regarded as persecutory; although it could do so "if the consequences are sufficiently serious" (paragraph 66). Furthermore, deprivation of nationality could be "one aspect of ill-treatment by the state that in its totality amounts to sufficiently serious ill-treatment as to constitute persecution".

73. At paragraph 74, Stanley Burnton LJ turned to analyse the judgments in EB. What had happened to appellant EB in Ethiopia, including the removal of her identity documents, meant that she had "in effect lost her Ethiopian nationality". Nevertheless, if effective nationality were restored, it was accepted that she would cease to be a refugee. It was submitted on her behalf "that the refusal of the Ethiopian Government to permit EB's return was itself persecution". Stanley Burnton LJ considered this submission was "impossible to reconcile … with the last sentence of the above citation from Hutchison LJ's judgment in *Lazarevic*".

74. At paragraph 76, Stanley Burnton LJ considered the concession made by the Secretary of State in EB, that deprivation of citizenship by arbitrary action "would have prima facie been persecution within the terms of the Refugee Convention", as a "curious concession". It was, nevertheless, the basis of Longmore LJ's judgment. The curious nature of the concession arose "because it is implicit in it that once a person claiming asylum has shown to the appropriate standard that she has in fact been deprived of her citizenship, it is for the Secretary of State to show that that deprivation did not amount to persecution. But it is trite law that it is for the claimant to prove persecution or a well-founded fear of it, not for the Secretary of State to prove that there has not been persecution" (paragraph 76). So far as Jacob LJ's judgment was concerned, Stanley Burnton LJ assumed that the serious consequences of the loss of nationality, such as inability to vote, leave the country or inability to work, "had either been found by the Tribunal as facts or assumed by him, subject to evidence to the contrary". If found as facts, there were "no comparable findings in the present case"; insofar as it was an assumption, it was based on the Secretary of State's concession "and in any event could not be binding on subsequent courts or Tribunals because, as I stated above, it related to questions of fact rather than law" (paragraph 76).

75. In MA's case there was no evidence that the appellant had been deprived of her Ethiopian nationality.

76. I am satisfied that there is no error in the FtTJ's consideration of the relevant principles set out in the decision of EB (Ethiopia). Whilst the FtTJ referred to the judgement of Pill LJ, he did not dissent on the legal issues of the appeal as the FtTJ stated at paragraph 104 when citing the judgement of Longmore LJ.

77. Therefore when the FtTJ stated at paragraph [96] that "the loss of citizenship itself was not necessarily persecutory, it was the consequences in the particular case that might amount to persecution and this involves looking at the seriousness of those consequences" was entirely consistent with not only the decision in EB (Ethiopia) but also what had been stated in MA (Ethiopia) at paragraphs 59, 61 and 66.

78. In my judgement the FtTJ was correct to consider the factual evidence in assessing whether the circumstances of the appellant or those of her children amounted to persecution for a Convention reason and that the assertion that there was a deprivation of nationality had to be considered in the context of the particular factual circumstances.

79. The FtTJ found as a fact that the appellant was a Jordanian national who would be entitled to reside in Jordan and had a Jordanian passport (at paragraphs [87 – 88]). He also found that no steps had been taken by the authorities to deprive her of her Jordanian nationality nor that she had been removed from Jordan but that she had voluntarily departed (at [98]). Earlier in his decision he had set out

his reasoning for rejecting her account that she would be of any adverse interest to the Jordanian authorities for the reasons given at paragraphs [80]-[86] of his decision. Therefore the assessment made by the judge that she would be admitted to Jordan as a national of that country was unassailable.

80. Mr Juss on behalf of the appellant submitted that the argument proceeded on the basis that the appellant's daughters were deprived of their Jordanian nationality and that this was an arbitrary act and it followed that they were entitled to refugee status.

81. Having carefully considered the decision of the FtTJ in the context of the material and the submissions made before him, I am not satisfied that the judge erred in law when addressing the decision in EB (Ethiopia) in this context either. As both the decision in EB (Ethiopia) and MA (Ethiopia) make plain, it is necessary to consider the factual evidence and that persecution is a matter of "fact and not law" and that treating someone less favourably than a person afforded the full rights and benefits of nationality would be discrimination, but "discrimination does not necessarily amount to persecution".

82. The FtTJ was aware that the children had Jordanian passports but that they were designated "T series "passports which in effect provided for travel but did not confer Jordanian citizenship (at [90] and by reference to the expert evidence). The judge also accepted the expert evidence that in Jordan a person's citizenship derived from their father's citizenship and that the Jordanian nationality laws was such that children born to Jordanian mothers and non-Jordanian fathers do not acquire Jordanian nationality.

83. This was not an arbitrary exercise by the executive, but a law passed in the country set out in the Jordanian constitution adopted in 1952 which states that citizenship is a matter to be regulated by law as reflected in the Jordanian Nationality Law-Law number 6 of 1954, as amended in 1987 : Jordanian citizenship applies to "any person whose father holds Jordanian nationality." This is not a unique position, and it is said that there are 27 countries which state that citizenship does not pass through the nationality of the child's mother (see page 108AB).

84. Against that background the FtTJ was required to consider the factual evidence concerning the ability of the appellant and the children being able to return and live in Jordan.

85. In this context at paragraph [91] the FtTJ referred to the evidence of the appellant herself that the children could live in Jordan although with limited rights. Whilst she sought to resile from this in cross examination, the judge was entitled to consider the appellant's evidence set out in 2 witness statements which had been to the same effect that the children were entitled to live in Jordan.

86. Not only was that the appellant's evidence but it was also the position supported by the expert evidence. At paragraph [104] the FtTJ recorded the expert evidence that it was possible to live permanently in Jordan even as a non-national holding a Jordanian travel document and that the children could remain in Jordan until they were naturalised. At [105] the FtTJ found that there was no suggestion that the appellant's children would not be granted entry to Jordan, based not only on the appellant's own evidence but that of the expert.

87. As to the circumstances for the children in Jordan, the FtTJ had regard to the expert evidence of Dr George and considered the circumstances of the children cumulatively at paragraphs [100 – 107] when reaching the conclusion on this issue and that neither the appellant nor the children would face a real risk of persecution if returned to Jordan.

88. It is in this context that ground 2 arises. As summarised above, it is submitted on behalf of the appellant the judge made a "passing reference" to the country materials and "did not engage with it" and therefore there was a lack of reasoning in his overall conclusion at [107].

89. The FtTJ had the benefit of considering expert evidence from Dr George and he was satisfied that in light of his expertise it was report which merited weight (see [77 – 78]).

90. At paragraph [100] the FtTJ cited the report of Dr George who had "extensively quoted and approved" in his report the US State Department report of human rights practices issued in 2018. That was an entirely correct observation made by the judge as the report contained quotes from the 2018 report at pages 9 – 14 and page 18.

91. When considering the circumstances of the children and accordance with the country materials the FtTJ accepted the expert opinion that whilst the children derived their nationality from their father, it was possible for the children to be naturalised in accordance with the conditions set out by the Jordanian State as set out at paragraph 70 and 71 of Dr George's report. Whilst this depended on residency and that it could take some years, the ability to naturalise was a course open to the children and was a relevant consideration as part of the holistic assessment the judge was required to undertake (see paragraph [105]).

92. Furthermore the FtTJ made a finding from the country materials that regardless of their nationality and status, the children would also have rights in Jordan. At [100] the judge considered the issue of education and that since 2016, the Ministry of education had announced that all children, regardless of nationality and status were entitled to be enrolled in formal education. I pause to observe here that Mr Juss's submission that the FtTJ had considered a 2016 report rather than the US State Department report of 2018 is wrong. Whilst the reference is

made to 2016, the FtTJ had directly taken the citation from the report of Dr George at paragraph 66 (page 21 of the report) which Dr George considered offered " a concise overview of the position of non-national residents in Jordan" and this was taken from the 2018 US State Department report. The evidence stated that children of noncitizen fathers and Jordanian mothers may be able to gain access to certain services enjoyed by all citizens including subsidised healthcare, the ability to own property, invest, and obtain a Jordanian driver's license and to have employment priority over foreigners. The ruling affected thousands of children when their fathers lost Jordanian citizenship, of whom over 55,000 were Palestinian. The judge went on to state "originally there was a requirement of the mother to have 5 years residency, but this apparently was removed in 2016 according to Dr George.

93. In so far as it is argued in the grounds at paragraph 5 that the FtTJ did not consider other evidence in the appellant's bundle, in particular the report referred to in the grounds entitled "responses to information request dated 9/5/14 page 84 – 97), it was open to the FtTJ to take the view that he should attach greater weight to the report of Dr George than the other objective evidence given that that had been prepared before Dr George's report and that Dr George's report was a "more comprehensive overall assessment" which "relied upon numerous external sources of information." The weight attached to the evidence was entirely a matter for the judge.

94. Furthermore the grounds are selective in their description of evidence and that report. The report does not say Palestinians without citizenship are excluded from public health services but states that Palestinians without citizenship face restrictions on their access to healthcare. It does not say that all healthcare is excluded, and reference is made to health care being available albeit at higher cost.

95. In my judgement the FtTJ undertook a proper assessment of the materials and was entitled to conclude at [103] that whilst noncitizens may not enjoy the same privileges as a Jordanian nationals until they are naturalised and that there was a measure of discrimination against Palestinians, and that in very severe cases it might amount to persecution, in light of the evidence in the circumstances of this particular appeal, it did not reach the threshold of persecution. In reaching that assessment the judge was entitled to take into account the country guidance decision in NA (Palestinians – not a general risk) Jordan CG [2005] UKIAT where the tribunal concluded that the discrimination against Palestinians in Jordan related to third level rights and could not be said to be of such a nature as to amount to persecution or a breach of Article 3. Whilst the decision is of some age, the judge properly considered the more recent evidence which he analysed within his decision but upon which he concluded did not lead him to depart from that view.

96. Consequently there is no error in the FtTJ's conclusion reached at paragraph [107] that having weighed up all the evidence and giving particular weight and reliance to the report of Dr George, that the appellant and the children would not face a real risk of persecution on return to Jordan.

97. I would also add that at [150] the FtTJ referred to the appellant's husband having his citizenship removed but that whilst that was the position, he was granted a "T" passport and was able to travel. Furthermore even after the removal of the appellant's husband's Jordanian citizenship in 1996, the appellant accepted in her 1st witness statement that she and her husband were able to reside in Jordan as they obtained a permit to stay, with her husband leaving in 2003/2004 and the appellant a couple of years later. Thus it was open to the judge to find there was no cogent evidence before him as to why the appellant's husband could not obtain a permit to stay in Jordan. Therefore it would not be correct to assert that the assessment made by the FtTJ would necessarily separate the family unit.

98. In my view there is no merit in the submission made that the judge erred in law by inadequacy of reasoning. Following Budhathoki (reasons for decisions) [2014] UKUT 341 (IAC) judges need to resolve the key conflicts in evidence and explain in clear and brief terms their reasons for preferring one case to the other so that parties can understand why they have lost. Reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by a judge: Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC), at [10]. In my judgment the FtTJ made a clear decision in which adequately reasoned findings were made and in accordance with the evidence.

99. As the respondent submits, the judge set out with a degree of care the material relied upon and the factual conclusions reached on that material giving adequate and sustainable reasons for reaching his overall conclusions. For those reasons grounds 1 and 2 are not made out.

Ground 3*: "mistake of fact".*

100. It is submitted on behalf of the appellant that the judge made findings of fact in respect of uncontentious matters over which there was no evidence and that he engaged in speculation and reached incorrect conclusions in respect of the following matters:

(i) At [35] it was not correct that the Iraqi authorities told the appellant to leave Iraq when she was pregnant.
(ii) At [37] it is not correct that the appellant's husband was already living in Iraq he was in fact in the UEA at that time.
(iii) At [86] the judge found "a further credibility point that goes against the appellant that she contended that to leave Jordan to the UEA with the

eldest daughter she arranged for her daughter's name he placed on her passport (AIR 45). Dr George indicated in his report, that the best of his knowledge, children of Jordanian mothers and foreign partners could not be registered on their mother's passport (paragraph 61)." It is submitted that this is not correct, and that the information recorded at the interview question 45 was corrected in the appellant's statement dated 4/6/2019 para 14 where she confirmed that her daughter's name had to be added to her husband's passport to allow her daughter to leave Jordan.

(iv) At [132] the judge appeared to misunderstand the appellant's chronology: the appellant has not lived in Jordan apart from 8 months at the time of the birth of eldest daughter and cannot said to have been assimilated there in the past. In his oral submissions Mr Juss submitted that the judge was wrong to speak about "re-assimilation" when she had lived only there for a period of 8 months.

(v) At [134] it is not correct as the judge stated that there was no medical documentation before him as to the appellant's daughters current condition. This was in error as there was medical evidence pages 48 – 74 of the appellant's bundle. Mr Juss submitted that the judge overlooked the evidence.

(vi) At [151] the judge expressed "grave concerns" as to whether the appellant had any intention deliver the husband. In fact the genuine and subsisting nature of the appellant's relationship with her husband is not in dispute and judge Smith did not put this matter to the appellant the hearing. In his oral submissions Mr Juss submitted that there could have been any number of reasons why her husband may not have felt able to leave and join them. By saying that it was a "grave concern" is not procedurally fair.

101. The written grounds assert that those errors may arguably be material as they speak to the circumstances of the appellant and her family may face an expulsion to Jordan.

102. On behalf of the respondent it was submitted that the grounds fail to advance how the purported errors are established by reference to the decision in E and R v SSHD (cited at paragraph 9 of the written submissions).

103. It is submitted that in relation to (v) this was not relevant to the protection claim and would only be relevant to article 8 (paragraph 276AD(vi) which is not the subject of a challenge in the grounds.

104. It is submitted that the grounds at (iv) is not a mistake of fact but a disagreement with the judge's conclusion on her ability to assimilate and the

appellant being in Jordan for 8 months at the time of the birth of the appellant's child is not inconsistent with the judge's comment that the appellant had not lived in Jordan for some years as set out at paragraph 132. On the appellant's own evidence, she speaks Arabic and has lived in the country of nationality for 8 months previously, is educated to degree level and has an employment history across the Arabian Peninsula and in the circumstances the decision appears to be entirely open to the judge bearing in mind the test set out in SSHD v Kamara [2016] EWCA Civ 813.

105. As to the appellant's husband, questions appear to have been put the appellant as to why her husband had not joined in United Kingdom but remained in the UAE (see [151) but the judge was not satisfied to the requisite standard with the burden being upon the appellant. Mr Avery submitted that the judge was entitled to draw an inference from the evidence given that the appellant's husband had not joined her and there had been no real reason offered for his absence. There is no requirement upon a judge to raise every issue. In any event it has not been established that the appellant's husband would not be able to go to Jordan and she would have to demonstrate by reference to Jordanian law that they would not permit him to enter or stay and that had not been provided in any evidence.

106. It is further highlighted in the respondent's submission that the appellant's claim continues to evolve in that it is now stated that her family will be broken up because the family are "stateless" however there is no engagement of family life for the purposes of article 8 -a finding which has not been challenged by the appellant at [153].

107. Mr Avery submitted that in relation to the medical evidence any error if there was one was not material given the findings of fact made by the judge. He was aware that in re-establishing herself in Jordan she chose to go there to have one of the children and therefore it was not an alien place for her and that the judge went through the factors to demonstrate that she would not have any substantial difficulty in establishing herself in Jordan and these were very valid points.

108. Furthermore even taking the grounds at their highest it is difficult to see why (i) and (ii) are material; whether the Iraqi authorities (as a country that the appellant has not been returned to) asked the appellant to leave that 3rd country and whether the husband was living in Iraq or the UAE in 2005 is not material.

109. By way of reply Mr Juss submitted that the report in the bundle at page 52 (repeated at paragraph 10 of the skeleton argument 10/7/20) referred to her scoliosis. He submitted that she could not obtain this in Jordan and would not be able to obtain treatment. When it was pointed out to him that there had been no claim made on the basis of a health claim (set out at paragraph [30] of the

FtTJ decision), Mr Juss submitted that it was a "Mibanga point" or put on an Article 8 basis.

Conclusions on ground 3:

110. I have carefully considered the matters raised in ground 3. It is submitted that

(i) at [35] it was not correct that the Iraqi authorities told the appellant to leave Iraq when she was pregnant and
(ii) at [37] it is not correct that the appellant's husband was already living in Iraq he was in fact in the UEA at that time.

111. Contrary to the submissions made by Mr Juss, paragraphs 35 and 37 are not findings of credibility. These paragraphs are part of the FtTJ's summary of the appellant's claim and taken from the evidence that was before him. The factual background of paragraph 35 is taken from the appellant's answers and interview at questions 28 – 29. When asked why she had left Iraq (at Q28) the appellant replied "after the war in Iraq, 2003 the invasion in Iraq, and people of Palestinian origin were being harassed and getting your documentation became very hard because the authority started to become very strict there too many restrictions, and because my husband was in Jordan, when he came back to Iraq in 2004, he had no residency permit. His application was refused. I don't know because I wasn't the one he was dealing with the application. When I got married I had to leave the family house, I had to carry my husband's name and the problem is my husband at the time he had no permanent residency in Iraq."

112. At Q 29, the appellant was asked "so you left in 2005?" (Referring to leaving Iraq) and the appellant replied "yes, and I spend the time, they told me to go and contact this department who are in charge of Arab affairs and that is why I was forced into leaving." The appellant's witness statement at paragraph 9 does not seek to correct what is set out at questions 28 and 29. Therefore there was no factual error made.

113. Similarly there is no factual error at paragraph 37. The judge's reference was taken from her asylum interview question 45 and that in 2005 she gave birth to her daughter and that "I was supposed to leave the country the beginning of 2006. At that time my husband was in Iraq, so he arranged to go to the Emirates…".

114. This is not inconsistent with what the FtTJ had stated at paragraph 37.

115. Even if it could be said that there were errors of fact (although in my view there were no such errors), they would be of no materiality given that they were not findings on credibility, nor has it been demonstrated that those 2 particular factual matters were ones which the judge later relied upon adversely.

116. Point (iii) in paragraph 6 refers to the FtTJ's decision at paragraph [86] where he stated:

> "[86] Finally, a further credibility point that goes against the Appellant is that she contended that to leave Jordan for the UAE with her eldest daughter she arranged for her daughter's name to be placed on her passport (AIR 45.). Dr George indicated in his report, that the best of his knowledge, children of Jordanian mothers and foreign partners could not be registered on their mother's passport (paragraph 61)."

117. The evidence in support of this was set out in the appellant's account giving in her interview at question 45 and related to the circumstances in which she left Jordan. She stated "at that time my husband was in Iraq, so he arranged to go the Emirates, so his only problem was how to get me out, so they were against granting my daughter the required document. They told me if I wanted to get out, I had to bring my countries passport, so we entered her name on my daughters passport which is how we managed to get out."

118. Whilst in her witness statement she sought to clarify her response to question 45 by stating "I wish to clarify that I was to bring my husband's passport (travel document) not my "countries" (at paragraph 14) that does not explain her account given in answer to question 45 that "we entered her name on my daughters passport which is how we managed to get her out." In my view the FtTJ was entitled to consider her earlier explanation at question 45 which was contrary to the expert evidence at paragraph 61.

119. In any event, as to a point of credibility it was only 1 of a number of credibility points that the judge found to be adverse to the appellant. They can be summarised as follows:

    (1) he did not find the appellant to be a credible witness (at [64]).
    (2) The appellant had destroyed both her own and her children's original passport after having arrived in the United Kingdom. The FtTJ considered her explanation for that conduct but having done so gave reasons for rejecting it at paragraphs [69 – 70], and further made a finding at [70] that she destroyed the passport because she felt it would prevent her removal to the UAE and at [71] the judge recorded that she had given "various inconsistent account of why she destroyed the passports." At [72] he found that she had no interest in attempting whatsoever to redocument and at [75] concluded that the destruction of the passport was a "deliberate and calculated act".
    (3) At [73] the judge found that she failed to make an asylum application at the 1st available opportunity.
    (4) At paragraphs [80 – 85] the judge rejected her account that she would be at risk of persecution from the Jordanian authorities if returned on the basis of her alleged family connection to a member of the PLO finding that her account of detention was vague and lacking detail and that she had been allowed to leave the country despite her claim to remain someone of interest

to the authorities. Her claim was also contrary to the expert evidence (at [85].

(5) At [91] the FtTJ did not accept her account of the differences in her evidence.
(6) At [124] the FtTJ set out his reasons as to why he did not accept her claim that she could not work in Jordan without a "good conduct" certificate.
(7) At [152] the judge did not accept her evidence that both her and her husband had lost their jobs in the UAE.

120. It therefore follows that even of there was an error of fact, which I do not accept), it has not been demonstrated that this finding undermined the FtTJ's overall credibility assessment made nor did this point undermine or otherwise affect the FtTJ's conclusions on the core issue of the ability of the appellant and her family members to be able to live in Jordan.

121. The grounds also challenge the FtTJ's finding at paragraph [151] where he stated:

> "[151]I also have grave concerns as to whether the Appellant has any intention to live with her husband. I say this because the Appellant's husband has been working in the UAE as a technical manager. When the Appellant was asked why her husband had not come to the United Kingdom to seek asylum she said it was because they were happy in the UAE. That does not explain why the Appellant's husband remains in the UAE when on her account he has lost his job and cannot work and is separated from his family. When the Appellant was interviewed at a screening interview on 11 January 2019, she said his employment had ended that he would be leaving in a maximum of two months, that is March 2019. Before the she said her husband remains in the UAE. I simply did accept the Appellant's evidence on this point that there is an intention to live together".

122. In my judgement there is no error in that factual finding made by the FtTJ. The judge had the opportunity to hear the evidence of the appellant and for that to be the subject of cross examination. From a fair reading of paragraph 151 questions were put to the appellant as to why her husband had not joined her in the UK but had remained in the UAE. Her response in evidence was recorded by the FtTJ as stating, "because they were happy in the UAE". In my view it was entirely open to the judge to reach the conclusion that the answer given that he had remained in the UAE and that the explanation given that they were happy there was inconsistent with her account that he had lost his job and could not work and was separated from his family. The judge also took into account her evidence in the screening interview where she said that he would be leaving the UAE after a maximum of 2 months (that would be in March 2019) but at the date of the hearing in October 2019, well in excess of the period of 2 months, her husband remained there.

123. In my view the judge was entitled to draw an inference from the evidence given that the appellant's husband had not joined her and that there was no proper reason given in her evidence which stood up to any scrutiny. Consequently, that was a finding properly open to FtTJ to make.

124. The remaining points raised relate to the following:

(iv) At [132] the judge appeared to misunderstand the appellant's chronology: the appellant has not lived in Jordan apart from 8 months at the time of the birth of eldest daughter and cannot said to have been assimilated there in the past. In his oral submissions Mr Juss submitted that the judge was wrong to speak about "re-assimilation" when she had lived only there for a period of 8 months.

(v) At [134] it is not correct as the judge stated that there was no medical documentation before him as to the appellant's daughters current condition. This was in error as there was medical evidence pages 48 – 74 of the appellant's bundle. Mr Juss submitted that the judge overlooked the evidence.

125. In relation (iv) the grounds assert that the judge misunderstood the chronology in his finding at paragraph [132] that she could "quickly re-assimilate to Jordan" and that the judge failed to take into account that she had only lived in Jordan for a period of 8 months.

126. In my judgement paragraph [132] should be read in the context of the overall findings made at paragraphs [108 – 135] which were relevant to the assessment of paragraph 276 ADE (1) (vi) and whether there would be "very significant obstacles to the applicant's integration into the country to which she would have to go if required to leave the United Kingdom".

127. I am satisfied that the judge did not misunderstand the appellant's chronology. At [132] the judge was plainly aware that it had been some years since she had lived in Jordan and expressly said so in that paragraph but was entitled to reach the conclusion based on the overall findings that he had made and set out at length at paragraphs [108 – 135] that irrespective of her last length of residence, the cumulative effect of her circumstances demonstrated that it had not been shown that there were such "very significant obstacles to her integration" to Jordan.

128. No challenge is expressly raised in the grounds to the FtTJ's conclusion on the issue of "very significant obstacles" and paragraph 276 ADE (1)(vi). However Mr Juss sought to argue that paragraph [132] failed to properly consider the issue of integration to Jordan.

129. I accept that at paragraph 7 of the grounds it is said "that the error may be material as it speaks to the circumstances that the appellant and her family members may face on expulsion". However that is far removed from an actual challenge to the assessment of paragraph 276 ADE (1) (vi).

130. Even if I accepted there was a challenge raised on this basis relying on the finding made at paragraph [132], in my judgement such a challenge would be bound to fail.

131. The FtTJ properly directed himself to the test set out in SSHD v Kamara [2016] EWCA Civ 813 at paragraph 14 and it is plain in my judgement that he undertook a "broad evaluative judgement" based on the evidence before the tribunal.

132. The FtTJ considered the issue of language and that the appellant and the children spoke Arabic and also spoke some English and the situation appeared to be the same in respect of the children. Arabic being the principal language spoken in Jordan (paragraph 112 – 115). As to the issue of religion, the judge took into account that the appellant spent the last 12 years of her life in the UAE and that she was of the Muslim faith.

133. As to the issue of education, at [117] he recorded that no cogent evidence had been placed before him that the children's education (other than the contention that it was not available in Jordan, which he did not accept) would be disrupted to a significant level or the particular friendships formed in the UAE would be broken. The judge noted at [118] that their length of residence in the United Kingdom had been for a short period of time and that they would not have formed "significant roots within the United Kingdom".

134. He concluded that the family had cultural and linguistic ties with Jordan and that the appellant and a husband whom the FtTJ both described as "intelligent people" and would take every step to ensure that the children's integration to Jordan was successful.

135. The FtTJ considered the issue of employment and that there was no medical evidence to suggest she could not work; she was highly educated to degree level and had a degree in computer science. At [123] the FtTJ found that she had worked for a number of years in the field of human resources/payroll and that her abilities "may well extend beyond human resources" by reference to her evidence about an offer of employment in public relations. At [124] the judge gave reasons for rejecting her claim that she could not work in Jordan without a "good conduct certificate" and was satisfied overall that given her education, skills and experience she would be able to earn a living to provide accommodation for herself and her family and thus he did not find she would be destitute . Also in this context, he found that if she returned voluntarily she would be entitled to financial assistance under the Home Office reintegration scheme which would address issues such as short-term accommodation (at [129]) and in any event she had access to money based on her own evidence in a Visa application.

136. The judge also took into account that she had relatives on her husband's side living in Jordan and that no evidence was before him that they would not be prepared to offer some support to the appellant and the children, at least on a short-term basis. That assessment led to paragraph [132], the paragraph under challenge, where the judge having accepted that the appellant had not lived in Jordan for some years, was entitled to reach the conclusion based on the factual findings made in the preceding paragraphs that her knowledge of customs and traditions, the linguistic background, religious background, and ability to work and the relatives present in Jordan, would demonstrate that she would be "enough of insider in terms of understanding how life in the society and that other countries carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, and operate on a day-to-day basis" thus applying the decision in Kamara, and Parveen v SSHD [2018] EWCA Civ 932 and AS v Secretary of State the Home Department [2017] EWCA Civ 1284 at paragraphs 58 and 59).

137. The last point relates to paragraph 134. Whilst the grounds refer to this as a factual error that may not necessarily be the case. The judge was aware that the appellant's daughter had scoliosis. The appellant's daughter had treatment for corrective surgery in 2018. The operation was a success save that a few days after the operation she was readmitted for post-operative wound discharge. This was done on 24th of July 2018. Following the surgery and post-operative procedure no further medical treatment was undertaken in the UAE and she left the UAE a few months later in December 2018 and entered the UK on a visit visa.

138. Mr Juss referred the tribunal to the medical evidence at page 52. However this was the earlier medical evidence relevant to her surgery in 2018 and was not current material. The current evidence was at page 50 which made reference to a review of the appellant's daughter and her condition. However on the evidence before the judge no firm plan had been made as to any future treatment and it was stated that this would be considered after an assessment.

139. The issue relates to the materiality of any error. In my judgement even if the judge was in error the material did not support the appellant's assertion of "serious consequences" of scoliosis. The medical evidence as it stood referred to the lack of infection and whilst reference is made to surgery as an option for further treatment by way of choice, this had not been substantially accepted and was still subject to further assessment.

140. Whilst Mr Juss sought to argue that the appellant's daughter would not be able to obtain treatment in Jordan, no such argument was advanced in the grounds nor can I see that such an argument was advanced before the FtT. The appellant was previously represented by different solicitors and different counsel before the FtT and at paragraph 30 the judge recorded as part of the summary of the issues he had to decide, that there was no medical health claim made or

advanced under article 3 in relation to the appellant's daughter. When addressing article 8 at paragraph 27 under "issues in the appeal" it reflected the case advanced on behalf of the appellant that she was unable to develop a private life in Jordan.

141. In the light of the way the claim was argued, it has not been demonstrated that any error, if there was one, was material to the outcome. Furthermore, the objective material does not demonstrate that the appellant's daughter would be unable to obtain any medical treatment and even if it was at a cost to the appellant and it had not been demonstrated that the appellant, in the light of the factual findings made by the judge of her ability to obtain employment and have the support of her husband's family relatives, that the cost of treatment and support would not be available to her. Nor that she would be unable to access such treatment outside of Jordan as she did when resident in the UAE.

142. Drawing together the issues raised, I am satisfied that the FtTJ undertook a careful analysis of the claim but was entitled to reach the conclusions that he did on the evidence and the material that was before him. The grounds are no more than a disagreement with the conclusion that he reached and do not demonstrate in my judgement any error of law in his approach in either law or fact which would have led to any other outcome.

143. Consequently for the reasons given above, I am satisfied that the decision of the FtTJ did not make an error on a point of law and the decision of the FtT stands. The appeal is dismissed.

Notice of Decision.

144. The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtT stands.

Signed *Upper Tribunal Judge Reeds*

Dated 8 July 2021

I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.