



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

Appeal Number: DA/00291/2012

THE IMMIGRATION ACTS

Heard at Field House

On 3rd June, 2013

Determination

Promulgated

On 11th June 2013

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Before

Upper Tribunal Judge Chalkley

Between

IRAKLI ERADZE

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Gaskin, Counsel, instructed by ROLI Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was born on 25th July, 1977 and is a citizen of Georgia. On 11th May, 2012 the respondent made a deportation order against him pursuant to Section 32(5) of the UK Borders Act 2007 following the appellant's conviction on 15th November 2011 for possession of identity

documents with intent. The appellant appealed the respondent's decision and his appeal was heard at Kingston Crown Court on 6th August, 2012 by a panel of the First-tier Tribunal Immigration Judge Carroll sitting with Mr D B Yates. They dismissed the appellant's appeal against the deportation order, but in doing so it appears that they failed to take into account a letter written on behalf of the appellant by his solicitors following an interview conducted with him by the Home Office and a statement which the appellant subsequently made dealing with the answers he gave to the questions put to him at his interview. Both documents were sent to the Home Office, but for some reason neither appear to have been placed before the panel of the First-tier Tribunal.

2. At a hearing before me on 3rd June Mr Tarlow suggested that there was more than sufficient information before the panel to enable them to make the decision that they did and that even if they had received the documentation it would have made no difference to the outcome of the appeal and was therefore not material.
3. I concluded that the panel had unwittingly erred in law. The panel may or may not have been aware of the appellant's comments on the conduct of the interview and his replies given at that interview, but they do not appear to have referred to the interview and it appears that they did not have the statement. I drew the representatives attention to paragraph 7 of the Senior President's Practice Statement which provides as follows:

"7. Disposal of appeals in Upper Tribunal

7.1 Where under Section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of a decision involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and if it does so must either remit the case to the First-tier Tribunal under Section 12(2b)(i) or proceed in accordance with the relevant practice directions to remake the decision under Section 12(2b)(ii).

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule

4. I am satisfied that this is a case which falls squarely within paragraph 7 of the Senior President's Practice Statement given the length of time the parties would have to wait for the matter to be relisted before me at Field House and it could conversely be heard relatively speedily by the First-tier Tribunal and in view of the overriding objective informing the onward conduct of the appeal I have decided that the appeal be remitted to the First-tier Tribunal for a hearing afresh before a judge other than First-tier Tribunal Judge Carroll with or without a non-legal member other than Mr D B Yates.

Upper Tribunal Judge Chalkley