

**Attorney General****Case:** *In re J-F-F-*, 23 I&N Dec. 912 (A.G. 2006)**Date:** May 1, 2006**Tags:** CAT, Deferral of Removal, aggravated felony,**Question Presented:** Was Respondent eligible for deferral of removal under the CAT? (And what was the IJ thinking??)**Holdings:** “An alien's eligibility for deferral of removal under the Convention Against Torture cannot be established by stringing together a series of suppositions to show that it is more likely than not that torture will result where the evidence does not establish that each step in the hypothetical chain of events is more likely than not to happen.” 912

- Application for deferral denied.

**Rationale:** IJ based decision on irrelevant evidence and basically prompted respondent to say he'd be in danger (he originally had said he wouldn't be).**Facts:** (912) DR citizen convicted of rape and found removable because it's an aggravated felony. (also 914)**History of the Case:**

- **IJ:** More likely than not that he would be tortured upon removal to the DR, granted deferral of removal under CAT.

**Appeals to Statute & Precedent:**

- **8 C.F.R. § 1208.16(c)(4):** For deferral, IJ must determine whether FN is more likely than not to be tortured in country of removal.
- ***Nuru v. Gonzales*, 404 F.3d 1207 (9th Cir. 2005):** intentionally inflicted cruel and inhuman treatment, not lawfully sanctioned by country/CAT.
- ***Kamalthas v. INS*, 251 F.3d 1279 (9th Cir. 2001):** deferral under CAT

**Discussion:**

- “In granting respondent deferral of removal under the Convention Against Torture, the Immigration Judge strung together a series of suppositions: that respondent needs medication in order to behave within the bounds of the law; that such medication is not available in the Dominican Republic; that as a result respondent would fail to control himself and become “rowdy”; that this behavior would lead the police to incarcerate him; and that the police would torture him while he was incarcerated. The evidence does not establish that any step in this hypothetical chain of events is more likely than not to happen, \*918 let alone that the entire chain will come together to result in the probability of torture of respondent.” 917-18
- “While respondent did not request additional time to present evidence and did not attempt to supplement the record, the Immigration Judge's active role in the management of respondent's presentation of his own case and her immediate ruling in his favor could have led respondent to believe that no additional evidence was necessary.” 922

- “It is appropriate for Immigration Judges to aid in the development of the record, and directly question witnesses, particularly where an alien appears pro se and may be unschooled in the deportation process, but the Immigration Judge must not take on the role of advocate.” 922

**Commentary:**

- This is basically about how an IJ didn’t do a good job: first dismissing the case because she incorrectly found Respondent incompetent to testify about a waiver, then granting deferral of removal under CAT for the wrong reasons. (She fished for an answer to “will you be tortured in the DR,” because at first he said no! Based decision on the possibility that respondent would “get rowdy” if he didn’t have his meds, which would be hard to come by in the DR.)