Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00895/2012

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 29 August 2013	**On 25 September 2013**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE
UPPER TRIBUNAL JUDGE REEDS

Between

ALAUI MOSHARAF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Nicholson, instructed by Greater Manchester Immigration Aid Unit
For the Respondent: Mr Harrison, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Alaui Mosharaf, was born on 1 October 1976 and is a male citizen of Iraq. A decision was taken on 16 October 2012 to deport the appellant under the

provisions of Section 32(5) of the UK Borders Act 2007. The appellant appealed against that decision to the First-tier Tribunal (Judge De Haney and Dr J O De Barros) which, in a determination promulgated on 25 February 2013, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant had arrived in the United Kingdom on 6 November 2002. He claimed asylum but his claim was rejected and a subsequent appeal dismissed. His appeal rights became exhausted on 1 October 2003. The appellant did not leave the United Kingdom but remained and in August 2004 was convicted driving with excess alcohol, driving whilst insured and resisting or obstructing a constable and driving without a licence. The appellant was subsequently convicted of a number of offences (mainly theft/shoplifting) until, on 18 May 2011, the appellant was convicted at Manchester City Crown Court of having an article with a blade which was sharply pointed in a public place. He was sent to prison for that offence for thirteen months. In August 2006, the appellant made an application for his case to be reconsidered "in the light of **Rashid (A) (H) and (AH)** judgments" and asked to be granted indefinite leave to remain. On 19 January 2007, he was given indefinite leave to remain. We note that, having completed his criminal detention in or around September 2011, the appellant has remained in immigration detention. He was brought to the Upper Tribunal hearing from HM Prison Risley, Cheshire.

3. The grounds of appeal consist of 22 paragraphs which are not divided into numbered grounds of appeal but which challenge the adequacy of the reasoning of the Tribunal's determination and the Tribunal's alleged failure to take proper account of the evidence (in particular, the psychiatric evidence). We shall address the grounds of appeal in the order in which they are set out in the application.

4. The grounds submit that the Tribunal had underestimated the problems which would face the appellant on return to Iraq in accessing adequate healthcare. Both parties accepted the appellant has mental problems which are detailed in a psychiatric report of Dr Ros Tavernor, a consultant forensic psychiatrist, which is dated 17 December 2012. The report notes the appellant's persistent heroin abuse and "self-reported symptoms of post traumatic stress disorder (PTSD)". Dr Tavernor noted that the appellant suffered from "cultural and social isolation" and "adjustment disorder". The appellant is stressed and agitated and suffered from a chronic risk of self-harm.

5. Against that factual background, the Tribunal found that:

> "We also accept that whilst the healthcare available in Iraq is not anything like what it would be in the United Kingdom, and nor is the support; there is nevertheless some healthcare and medication which the appellant should be able to access on his return. This is the particular case given the fact that the appellant at some stages in his narrative appears to suggest he has been diagnosed with post traumatic stress disorder in Iraq following the explosion in 1998."

6. The grounds criticise the Tribunal for giving no details as to the healthcare or medication might be available to the appellant in Iraq. The Presenting Officer before

the First-tier Tribunal had produced a "compact essential drugs list" which the grounds state was claimed by her to be a "full list of medications and treatments in Iraq". Mr Nicholson asserted that none of the drugs currently prescribed to the appellant were found on the list. He also submitted there were only 70–100 psychiatrists in Iraq for a total population of 30,000,000 people.

7. The fact that the drugs currently prescribed to this appellant do not appear on the list produced by the Presenting Officer does not, in our opinion, necessarily mean that suitable treatment (albeit difficult to obtain and possibly at a cost) would not be available to this appellant in Iraq. There was no evidence to show that alternative drug medication which may be available in Iraq could not properly be used to provide adequate treatment for this appellant's condition. Conversely, there was no evidence to show that the appellant's medical condition can only be treated by the drugs which he is currently receiving. It is true that the Tribunal has dealt only briefly over the healthcare available in Iraq but even so it has identified a fact of particular importance, namely that medication and treatment for conditions such as the appellant's are available. The Tribunal rightly did not descend into a detailed comparison of the quality of healthcare available in the United Kingdom and in Iraq but reminded itself of the "very high threshold" in such appeals indicated by the jurisprudence [47]. We find that the Tribunal has dealt with the provision of healthcare services in Iraq in an adequate manner. No error of law has been established.

8. The grounds go on to acknowledge that the appellant's fear of returning to Iraq "may indeed not be objectively founded" [9]. However, Mr Nicholson submitted that the Tribunal had failed to consider whether the appellant had a subjective fear of returning such as to create a risk of suicide should he be forced to return. The grounds go on to assert that, "the risk of self-harm attested by the psychiatric expert emanated from both detention and the threat (an actuality) of deportation". The psychiatric report noted that the appellant had claimed that he was being "treated like a caged animal" and that he had "smashed his cell and cut his arms". Mr Nicholson submitted that the panel had further erred by failing to make a finding as to whether the appellant was suffering from PTSD.

9. This ground takes us to the heart of the appellant's challenge to the First-tier Tribunal's determination. We note that the Tribunal only reached its findings after a careful analysis of the psychiatric report [47]. It is true that the Tribunal has not made a formal finding as to whether the appellant is suffering from PTSD but it did note at [48] that the incident in Iraq which the appellant claimed had led to his suffering PTSD [the explosion of a fuel tanker in 1998] had been described in very different ways by the appellant at various stages in his asylum claim. It is clear from the determination that the Tribunal took a very poor opinion of the appellant's credibility describing him as a "poor historian". In our view, Dr Tavernor does not make a unequivocal diagnosis of PTSD although he acknowledged that the appellant had been treated for the symptoms of PTSD and noted also that a previous doctor (Dr Mann) had "indicated that [the appellant's] previous medical records would be helpful in clarifying whether he has presented with features of PTSD over time". In

the light of the fact that the psychiatrist has declined to give a firm diagnosis of PTSD, we do not find it surprising that the Tribunal has declined to make a finding also. Further, we find that the Tribunal's failure to make a finding on that issue simply does not affect the outcome of this appeal in any way; it is accepted the appellant is suffering from mental problems and the real question with which the Tribunal has properly grappled is whether the appellant would seek to harm himself or attempt suicide as a consequence of any deportation decision or process. Given that that was the question to be considered, the exact diagnosis of the appellant's condition was immaterial.

10. Mr Nicholson submitted that the Tribunal had too readily accepted the "harsh but clever" submission of the Presenting Officer that the medical evidence of Dr Tavernor indicated that the appellant's stress and anxiety was a consequence of his continued detention rather than a fear of deportation. At [49], the Tribunal wrote:

> "What we find from the psychiatrist's report is that the appellant's self-harm and suicidal tendencies are related to his frustrations at being detained particularly after having served his criminal sentence. Given the fact that he had found that he would not face persecution were he to be returned to Iraq, we accept Miss Johnstone's submissions that upon release and return to Iraq these incidences of self-harm and suicidal tendencies should be decreased rather than increased."

11. Having ourselves considered the psychiatric report carefully, we find that the medical evidence is capable of supporting that conclusion reached by the First-tier Tribunal. Much of Dr Tavernor's report was in the form of answers to a number of questions posed to him by the appellant's solicitors. At question 7 ("*Do you consider Mr Mosharaf to be at risk of self-harm/suicide after deportation to Iraq. Please comment on the level of risk (i) with treatment (ii) without treatment*") Dr Tavernor wrote this:

> "In my opinion the risk of self-harm is chronic. Factors which may increase the risk include deterioration in his mental health including worsening of his post traumatic stress disorder symptoms and increased agitation, increased stress levels, non-compliance with or lack of availability of psychiatric treatments, being socially isolated and utilising drugs and/or alcohol as a coping strategy to deal with his difficulties. He appears to be socially isolated in the UK and also informed both myself and Dr Mann that he has no family in Iraq. He also informed me that he is fearful for his safety if he is returned to Iraq. He also has chronic physical ill health including chronic pain from his elbow and shoulder, [he is] a socially isolated, middle aged single man and these demographic factors are associated with increased risk. Treatment such as antipsychotic medications with mood stabilising properties and antidepressant medication to address PTSD symptoms to an extent ameliorate the risk. Other treatments which may be of benefit include psychological interventions to challenges and paranoid thoughts and psychosocial interventions aimed at reducing his isolation and providing support to reduce the likelihood of returning to substance or alcohol abuse would also potentially reduce the risk of self-harm."

12. That passage represents the psychiatrist's response to the central issue in this appeal; in line with the Court of Appeal decision in **J [2005] EWCA Civ 529**, there appears to be no dispute that the risk of this appellant harming himself or committing suicide

whilst in detention or in transit to Iraq may be effectively minimised below the Article 3 ECHR threshold. What is significant about the doctor's answer to the question is the emphasis upon the appellant's social isolation in the United Kingdom, his agitation and stress caused by continued detention, "demographic factors" including his single status, his age and chronic physical pain and his tendency to return to substance and alcohol abuse. Whilst the appellant told Dr Tavernor that he feared for his safety upon return to Iraq, the way that fear is described in the report does not, in our opinion, indicate that the appellant, in the absence of any objective reason for fearing return to Iraq, possesses any powerful or disturbing subjective fear of returning. The emphasis in the medical evidence is very much upon the distress cause to the appellant by his continued detention; earlier in the report the doctor had linked the current risk of self-harm/suicide to the thoughts which the appellant had "in his mind and voices telling him he was never going to leave prison". In the light of these observations, we find that the Tribunal was justified in concluding that the medical evidence indicated that the termination of the appellant's detention in the United Kingdom (by his deportation) was likely to reduce, rather than increase, the risk of self-harm. Mr Nicholson submitted that the Tribunal had failed to give details as to the exact extent of that decrease in risk but we find that it is entirely clear from the medical evidence that the risk which the appellant would face when he is removed from detention and deported would not approach the threshold which would engage Article 3 ECHR.

13. In conclusion, we find that (a) it was open to the Tribunal to conclude that the evidence supported a finding that the appellant would not be at Article 3 ECHR risk either in the United Kingdom or in Iraq as a consequence of his deportation from this country and; (b) appropriate medical treatment would be available to him in Iraq. The Tribunal did not make a firm finding that the appellant has friends and family in Iraq to whom he might turn but it is clear, in the light of the Tribunal's assessment of the appellant's poor credibility, the appellant has not proved that he does not have such individuals who may assist him.

14. At the outset of the hearing, we raised the matter of Article 8 ECHR. The grounds of appeal to the First-tier Tribunal make a brief reference to Article 8 and Mr Nicholson submitted that both Articles 3 and 8 were engaged in this appeal. At [47] the Tribunal wrote that:

> "After having carefully analysed the psychiatric report we do not accept that the appellant reaches the very high threshold set out in **D v UK** or **N v UK** and we do not accept that the Article 8 claim that he may commit suicide to be of real risk following **Bensaid**."

We are not entirely sure what that sentence means but we find that the Tribunal's analysis is sufficiently clear to dispose of the appellant's appeals under both Articles 3 and 8 ECHR. Mr Nicholson did not submit to us that, if the appellant failed under Article 3, he might yet succeed under Article 8.

DECISION

15. This appeal is dismissed.

Signed Date 24 September 2013

Upper Tribunal Judge Clive Lane