Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/01419/2012

THE IMMIGRATION ACTS

Heard at North Shields Upper Tribunal
On 10 December 2012 and 19 August 2013

Determination Promulgated

……

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

FARID BELMIHOUB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Rasoul, instructed by Duncan Lewis & Co, Solicitors
For the Respondent: Mrs H Rackstraw, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Farid Belmihoub, was born on 29 August 1979 and is a male citizen of Algeria. By a decision dated 10 December 2012, I set aside the determination of the First-tier Tribunal promulgated on 27 February 2012. My reasons for doing so are set out below:

REASONS FOR FINDING THAT TRIBUNAL MADE AN ERROR OF LAW, SUCH THAT ITS DECISION FALLS TO BE SET ASIDE

1. The appellant, Farid Belmihoub, was born on 28 August 1972 and is a male citizen of Algeria. The appellant appeals, with permission, against the decision of the First-tier Tribunal (Judge Onoufriou and Mr R Baines JP) promulgated on 27 February 2012 dismissing his appeal against the decision of the respondent dated 9 January 2012 to refuse to revoke a deportation order made against the appellant. At the initial hearing at North Shields on 10 December 2012, Miss Pickering of Counsel appeared for the appellant and Miss Johnstone, a Senior Home Office Presenting Officer, appeared for the respondent.

2. Permission to appeal was originally refused by the First-tier Tribunal but granted in the Upper Tribunal by Judge Latter on 12 July 2012 in the following terms:

> "The grounds satisfy me that it is arguable that the First-tier Tribunal may have erred in law by proceeding on a misapprehension of the facts relevant to whether the appellant is able to meet the six-stage test established by **J v Secretary of State [2005]** or by leaving relevant matters left out of account when carrying out that assessment (sic)."

3. The respondent replied to the grant of permission on 9 August 2012 noting, correctly, that the "sole issue of the case … [is] the appellant's threat of suicide if deported to Algeria". The grounds of appeal [33] state that, "The appellant's case essentially turns or falls on whether it can be shown that he meets the six-stage test identified in the case of **J v Secretary of State for the Home Department EWCA Civ 629**, if so made out then his appeal must succeed under Article 3 ECHR." The grounds set out a chronology of the appellant's self-harm and suicide attempts, noting five such incidents between early 2004 and 5 June 2009. It noted also medical evidence that the appellant was "adamant that he would take his own life rather than returning to Algeria" from March/April 2012, that is after the date of the First-tier Tribunal's determination. At paragraph 22(1) of its determination, the First-tier Tribunal wrote:

> "However, in his long medical history, we are only aware of three attempts at suicide. One was when he was still in Algeria, the second was in 2004 and the third was in 2006. None of these attempts related to his immigration status and fear of return to Algeria. They all related to his personal problems. We therefore take the view, as taken by the Immigration Appeal Tribunal in the case of **J v SSHD** and accepted by LJ Dyson in respect of the appellants in that case that this appellant will take stock of his circumstances by reference to objective reality and that he will not commit suicide and his threats of suicide are merely an attempt to avoid deportation."

4. It is the appellant's argument that his attempts at suicide did not cease in 2006 but were clearly set out in the medical evidence as having continued on to 4 May 2009 (when the appellant self-harmed by cutting himself with a piece of glass whilst at HMP Stafford) on a date in June 2009 when the medical evidence (Professor Katona – 21 November 2010) recorded that the appellant was "noted to have taken an alleged overdose …" I note from Professor Katona's report that on 3 September 2009, the appellant was noted to have taken an overdose of fluoxetine, an anti-depressive. The grounds of appeal record that the respondent had written to the governor at HMP Stafford on 1 June 2009 requesting that the governor notify the appellant that he was liable for deportation. It is the appellant's case that

his attempted suicide by overdose on 5 June 2009 and subsequent attempt at hunger strike was a direct result of having been notified of his liability to deportation. Miss Johnstone, for the respondent, did not suggest that the governor at Stafford Prison had failed to notify the appellant of his liability to deportation in accordance with the request made to him.

5. As often in cases of this kind, the medical evidence was drawn from a number of different sources, the author of the main report drawing upon evidence and materials supplied to him or her by other health professionals previously concerned with the appellant's welfare and treatment. This perhaps explains a lack of detail in the account given by Professor Katona of the "alleged" overdose incident at the beginning of June 2009.

6. At paragraph 21 of its determination, the First-tier Tribunal sets out the six-stage test for "suicide cases" as set out in the leading case of **J**. The test is briefly stated but the summary is accurate. In my view, the problem with the determination of the Tribunal lies in the passage which I have quoted above containing paragraph 22(1). The Tribunal clearly drew a link between the suicide attempts of the appellant (which the Tribunal appears to accept did occur as claimed) and the reasons why the appellant attempted suicide ("we *therefore* take the view …"). The Tribunal was aware that the appellant had threatened to commit suicide if he was deported but the Tribunal discounted that threat (albeit made by the individual who had attempted suicide for other reasons) because there was no direct causal link between the suicide attempts and the threat of deportation to Algeria. I do not say that the Tribunal could not have reached such a conclusion. However, before doing so, the Tribunal should have engaged with all the evidence including that (somewhat vague as it was) of the overdoses taken in June 2009 by the appellant immediately after he had been informed of his liability for deportation. The need to grapple with that evidence is, in my view, all the more apparent because of the conclusions reached by Professor Katona in his report who wrote at paragraph 10(b):

> "Mr Belmihoub has in the past made life threatening attempts to kill himself. He is currently at high risk of suicide. I think he would be at very *high* risk if he faced imminent deportation to Algeria. His risk would be high in the UK once he lost all hope of being allowed to remain and would remain so during a deportation flight and after his arrival in Nigeria."

7. The Tribunal should have engaged with that expert opinion evidence and its failure to do so, coupled with a failure to deal with the June 2009 incidents, led it into error such that the determination should be set aside.

8. I stress, however, that a further determination of the appeal in the Upper Tribunal may not lead to a different result. What is vitally important is that the appellant adduces more detailed evidence of the events of June 2009 so that the Upper Tribunal may be in a position properly to apply the principles of **J**.

2. At the resumed hearing at North Shields on 19 August 2012, Ms Rasoul, for the appellant, explained that, despite enquiries having been made by her instructing solicitors to Brook House, no further records concerning the time spent by the appellant in that institution could be located and, as a consequence, there was no further evidence concerning the alleged attempted suicide of the appellant in June 2009 (see paragraph 8 above).

3. It is unfortunate that no further evidence regarding that incident has been forthcoming. As it stands, there was little to take the evidence beyond what the appellant himself has said about the incident and Professor Katona's comment that the appellant had allegedly sought to hurt himself.

4. The appellant attended the resumed hearing and gave evidence in English. He was mildly intoxicated but I am satisfied that he was able to understand the questions put to him and his answers were largely coherent. No application was made for the proceedings to be adjourned. The appellant told me that he remained in touch with his sister who lives in France. He is not in touch with his family in Algeria. He was asked about the incident in June 2009 and explained that he had split with his "girlfriend" in about 2005. He explained that he had "lost [my girlfriend], lost my house and had to go into hostel accommodation". At about this time, that he had begun smoking "heroin crack". He took an overdose over drugs in 2006 because he "hated" his life. Regarding the incident in 2009, the appellant said that he had "had enough", he did not like what he was doing in this country and the life he was leading, smoking crack cocaine and achieving nothing. He missed his parents and complained that his brother had been shot. When asked about what he feared in Algeria, the appellant replied, "the country is run by Al Queda". He said that, if he returned to Algeria now, he would have to "watch my back".

5. The six-stage test which the Tribunal should adopt in considering whether the appellant is at risk of committing suicide is set out in paragraphs 26-31 (inclusive) of *J* [2005] EWCA Civ 629:

> 26. First, the test requires an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case. But the ill-treatment must "necessarily be serious" such that it is "an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment": see *Ullah* paras [38-39].
>
> 27. Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. Thus in *Soering* at para [91], the court said:
>
> "In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which *has as a direct consequence the exposure of an individual to proscribed ill-treatment.*"(emphasis added).
>
> See also para [108] of *Vilvarajah* where the court said that the examination of the article 3 issue "must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka…"
>
> 28. Thirdly, in the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. This is made clear in para [49] of *D* and para [40] of *Bensaid*.

29. Fourthly, an article 3 claim can in principle succeed in a suicide case (para [37] of *Bensaid*).

30. Fifthly, in deciding whether there is a real risk of a breach of article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of article 3.

31. Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against an applicant's claim that removal will violate his or her article 3 rights.

6. I am not persuaded that the appellant faces any ill-treatment should he return to Algeria. Successive Tribunals have found that the appellant is at no risk whatsoever either from the State authorities, terrorist groups or other individuals or groups within Algeria. His fear has no objective basis. That fact was underlined by the oral evidence which the appellant gave at the resumed hearing. When asked to explain what he feared in Algeria, he could only say that he was unhappy that the country was, in his opinion, run by Islamist extremists, an assertion which is not borne out by the background evidence. He could not explain why extremists within Algeria would wish to target him. I have to say that I was struck by the clear insight which this appellant has, despite his mental difficulties and, on the day of the hearing, his intoxication. He gave the clear impression of being capable of "thinking on his feet" when asked questions in cross-examination; I find that his response regarding Al Queda [4 above] was an example of his mental acuity. I find that the appellant not only lacks any objective well-founded reason for fearing persecution or ill-treatment in Algeria but that he is also himself well aware that he has no reason to fear returning there. I do not find that he is labouring under any misapprehension that he will be ill-treated in Algeria. Further, when given the opportunity to describe the 2009 incident (which the appellant had previously said was connected with the outcome of an appeal concerning his immigration status) he made no reference at all to immigration matters but instead spoke of the self-disgust which he was feeling at that time having become addicted to crack cocaine. I have considered all the evidence carefully and, in particular having regard to the oral evidence which the appellant gave at the resumed hearing, I am not satisfied that, if an incident of self-harm did occur in June 2009, it was directly or indirectly related to a genuine fear of being removed to Algeria. I find that, by the appellant's own admission, any incident which did occur was effectively the culmination of a downward spiral in his mental health which had been initiated by breaking up with his girlfriend and losing his home.

7. I have reached these findings following a careful consideration of all the evidence, including the reports of Dr Katona and the statement of Miss McKinney. I have reached the very firm conclusion that the appellant, who has suffered from mental illness from a relatively young age, tends to harm himself for reasons largely

unconnected with any fear of being returned to Algeria. I find that it is reasonably likely that the appellant, upon returning to Algeria, will continue to experience the emotional "highs and lows" which have characterised his time in the United Kingdom. Whilst I accept that the "lows" might lead the appellant to seek to harm himself, he has failed to produce any evidence which would indicate that he could not access drug or other therapy (albeit at a cost) to ameliorate his condition. Whilst he remains in the United Kingdom (and whilst he is in transit from this country to Algeria) I find that adequate steps can and will be taken by those charged with his care and conduct to ensure that he does not harm himself.

8. I have considered what Professor Katona has said in his report, including the conclusion which I have quoted above. In the preceding paragraph, Professor Katona wrote:

> Mr Belmihoub has spent most of his adult life in the UK. He has no close family left in Algeria. He appeared unshakably convinced that if he were forced to return to Algeria "I'd be dead. I'd be tortured first." He added that I'd hang myself rather than go to Algeria.

9. As I have recorded above, I do not find that the appellant has a subjective fear of returning to Algeria. He may have given the appearance of being "unshakably convinced" that he would be tortured in Algeria, but not only is that conviction completely unfounded from an objective point of view, I also do not find that the appellant actually believes that he would be ill-treated. Professor Katona's conclusion that the appellant is at high risk of suicide if he faces imminent removal to Algeria is founded upon his acceptance of the appellant's claim that he possesses a powerful, subjective fear of returning to Algeria. For the reasons I have given, I find that Professor Katona's conclusion is based on a false premise.

10. In the same paragraph, Professor Katona goes on to express his belief that the appellant would have a restricted capacity to work and support himself if he were forced to return to Algeria. Without support or income from work, the appellant would resume his abuse of opiates and alcohol and subsequently "revert to a life of crime to fund his substance dependence". I consider it likely that the appellant's material circumstances will suffer if he returns to Algeria but, as the Court of Appeal noted in *J*, as this is a "foreign case" the Article 3 ECHR threshold is set particularly high. The threshold is raised further by reason of the fact that the appellant is not at risk from ill-treatment inflicted by the public authorities of the receiving State. If the appellant remained in the United Kingdom, I consider it likely, having regard to the medical evidence and his past history, that he would drift in and out of periods of mental illness and drug dependency. The fact that his life is likely to follow a similar pattern in Algeria is not, however, sufficient grounds for allowing his appeal under Article 3 ECHR.

11. In the circumstances, I find that the appellant has failed to establish that Article 3 ECHR would be breached if he were to be returned to Algeria. I find that the appellant has sought to exaggerate his likely reaction to being required to return to Algeria. I find that Professor Katona, whilst he no doubt had the appellant's best

interests in mind when he prepared his report, has placed too much reliance upon the appellant's misplaced fears of returning to Algeria. Whilst I accept that the appellant has attempted to harm himself in the past, none of those attempts have been shown to be related to a fear of removal and the evidence concerning the 2009 incident, in particular, remains very vague. I accept that the appellant has spent a lengthy period of time living in the United Kingdom but he has not shown that the particular private life ties which he has established here may not be replicated in Algeria, the country of his nationality. The public interest concerned with his removal, given that he has no right at all to remain here, is a strong one. In all the circumstances, I find that his appeal should be dismissed.

DECISION

12. This appeal is dismissed.

Signed Date 20 October 2013

Upper Tribunal Judge Clive Lane