IAC-UT

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/49927/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 February 2016	**On 18 March 2016**

Before

Mr H J E LATTER
(DEPUTY UPPER TRIBUNAL JUDGE)

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MSA
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr I Jarvis, Home Office Presenting Officer.
For the Respondent: Ms V Easty, counsel.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal (Judge Woolf and Mrs J A Endersby) allowing an appeal by the applicant on articles 3 and 8 grounds against a decision by the respondent made on 3 December 2014 refusing to revoke a deportation order. In this

decision I will refer to the parties as they were before the First-tier Tribunal, the applicant as the appellant and the Secretary of State as the respondent.

Background

2. There is a lengthy and chequered background to this appeal which can briefly be summarised as follows. The appellant claims that he was born on 11 November 1974 and is a former resident of the West Bank in the Occupied Palestinian Territories. He entered the UK on his account on 9 February 2004 and claimed asylum the same day as a Palestinian National. His asylum claim was refused and an appeal was subsequently dismissed. On 12 July 2007 the appellant was convicted at Grantham Magistrates Court of using a false instrument, a French identity document, and was sentenced to 12 months imprisonment. A notice of decision to make a deportation order was sent to the appellant on 9 January 2008, by which time the respondent had information suggesting that the appellant was in fact an Egyptian national. The appellant appealed against this decision but subsequently withdrew his appeal.

3. A deportation order was made on 25 June 2008. The appellant declined the offer of the facilitated removal scheme and remained in detention until 19 March 2010 when he was granted bail. Meanwhile, in November 2009 the appellant had been interviewed by the Egyptian authorities who advised the respondent that they could not confirm that he was an Egyptian citizen or initiate further checks in Cairo. An earlier attempt to obtain travel documentation from the Palestine Delegate's Office in February 2009 had also been unsuccessful as was a later application made in December 2009. On 30 July 2010 the appellant applied to revoke the deportation order. His application was refused on 17 October 2013 but this decision was withdrawn in May 2014 to consider the appellant's route of return and his medical condition but maintained in the further decision on 3 December 2014.

4. The appellant appealed against this decision and the history of the appeal proceedings prior to the full hearing on 21 July 2015 is set out at [10]-[14] of the First-tier Tribunal's decision. The respondent had been directed to provide written details of the route and method of proposed return of the appellant to the West Bank on the assumption that he was a Palestinian from the West Bank and having regard to his particular mental health problems. The respondent failed to comply with this direction and was unable to give any adequate explanation why [16]. Doubtless taking into account the previous difficulties set out at [11]-[13] in persuading the respondent to comply with the previous direction, the tribunal took the view that any further delay would not be in the interests of justice and the appeal proceeded on 21 July 2015.

The Findings of the First-tier Tribunal

5. The respondent's case is fully set out in the decision letter of 3 December 2014. She did not accept that the appellant was a Palestinian and took the view that he was only claiming to be so in order to frustrate the deportation process. It was her view that he was most likely an Egyptian national. However, she went on to consider whether removing him to the West Bank would lead to a breach of either article 3 or 8 but found firstly that the high threshold of showing a breach of article 3 was not reached and secondly, that he was not entitled to remain on article 8 grounds. It was the respondent's view that there were no sufficiently compelling circumstances justifying revocation of the deportation order. The appellant's case put simply was that he was a Palestinian National and that returning him there would be in breach of article 3 or 8 in the light of his mental health problems and the real risk of serious harm including suicide on return.

6. Having summarised the evidence at [19]-[28] and the submissions at [29]-[46], the tribunal then set out its findings on nationality at [53]-[73] and on returnability and mental health issues at [74]-[99]. It found that the appellant was in all probability from the West Bank. It summarised its finding at [73] as follows:

> "Whilst the appellant has not been consistent about his family circumstances and has been in many respects obstructive in relation to providing or obtaining sufficient information so as to facilitate his return, we are satisfied after considering the evidence in totality the appellant is in all probability from the West Bank in the Occupied Territories."

7. So far as mental health and returnability was concerned at [90]-[91] the tribunal said:

> "The prospect of his having to go through Israeli checkpoints is in our judgment a significant indicator that he is at risk of serious harm during any such encounter. We are satisfied that it is likely that he would present as rather threatening and strange if challenged about his movement through such checkpoints given that he believes the Israelis have planted something in his head in order to control him. We are also satisfied that it is extremely likely that the current situation in the West Bank would be likely to induce extreme distress and anxiety. We are not satisfied that the appellant would be in a position to avail himself of any assistance from medical health professionals in the West Bank.
>
> We have had regard to the guidance in J v SSHD [2005] mentioned by the respondent in the refusal letter. At paragraph 85 of the refusal letter the respondent said that escorts would accompany the appellant at risk to **the point of arrival in the country of return** (emphasis added). We have been given no information by the respondent that indicates that this will be practicable given that the appellant is undocumented. We are not satisfied that the risk the appellant would take his own life would be obviated by any measures the respondent would take in removing the appellant to the West Bank."

8. Accordingly, the appeal was allowed on article 3 grounds. The tribunal went on to consider article 8. In this context it said that it did not condone his offence but it was one which did not pose any threat of physical harm to the public and that the public interest in pursuing deportation was outweighed by the very likely severe consequences for his mental and physical welfare. The tribunal was also persuaded that the time had come when it was not possible to foresee that the respondent would ever be in a position to give effect to the deportation order and after considering the judgment of the Court of Appeal in Abdullah v Secretary of State for the Home Department [2013] EWCA Civ 42 held that this was a case where the continuing interference with the appellant's physical and moral integrity by maintaining a state of limbo in his immigration status was no longer justified or proportionate [98]. The appeal was therefore also allowed on article 8 grounds.

The Grounds of Appeal and Submissions

9. The respondent's grounds of appeal argue that the tribunal failed to give adequate reasons why a number of relevant matters were found not to outweigh the evidence that the appellant was Palestinian. These include the fact that the appellant had a willingness to use deception, his ability or inability to answer basic questions in relation to the West Bank, the acceptance at face value of the expert report from Dr Kelly that very few Palestinians could recall their identity card number, the failure to take into account the evidence supporting the contention that the appellant was Egyptian and the failure to take to consider the Occupied Palestinian Territories OGN that obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. It is submitted that for these reasons the tribunal materially erred by concluding that the appellant was from the West Bank and as a result the entire determination was contaminated.

10. The respondent then seeks to challenge the tribunal's assessment of the appellant's situation in the West Bank. It is argued that a holistic assessment was required. Reliance is placed on Bensaid v UK [2001] ECHR 82 where it was held that the risk that the applicant's condition would deteriorate and the fact that he would not receive adequate care in support would not be a breach of article 8. The tribunal had failed to explain how the appellant's circumstances reached the very high threshold set under article 3 and failed to take into account recent jurisprudence and in particular GS (India) [2015] EWCA Civ 40. The tribunal had placed too much weight on reports provided by the appellant and materially erred because the entire reasoning on whether the appellant would seek medical assistance in the West Bank was based on the assumption that he would be unwilling to avail himself of any assistance from medical health professionals there. Further, the tribunal failed to identify and explain the reasons why the appellant could not return to the West Bank and receive treatment there and, generally, had failed to give adequate reasons for disagreeing with the respondent's analysis in the decision letter.

11. Mr Jarvis submitted that there were concerns about the lack of documentation of the appellant's claim and lack of clarity in the tribunal's findings. He argued that the tribunal had been concerned about matters not arising out of protection issues. The question of travel documents amounted to a technical obstacle to return which did not affect the merits or otherwise of an asylum or human rights claim. The tribunal had failed to consider Bensaid. He submitted that the tribunal had failed to draw all the threads of the evidence together adequately both in respect of the issue of nationality and in the assessment of article 3.

12. Ms Easty relied on her rule 24 response. She argued that the tribunal had considered all relevant evidence as to nationality and had come to properly reasoned conclusions. In substance, the respondent's challenges amounted to asking for reasons for reasons or sought to challenge the weight given to particular aspects of evidence by the tribunal. The challenge to the tribunal's findings about the impact of the appellant's medical condition on return was an attempt to re-argue issues which had been resolved by the tribunal. She submitted that none of the arguments relied on in the grounds disclosed any error of law. The tribunal had analysed the evidence and reached a decision properly open to it.

Assessment of Whether there is an Error of Law

13. I must consider whether the tribunal erred in law such that its decision should be set aside. The respondent does not satisfy me that there is any such error. When considering the issue of nationality the tribunal noted that the position of the respondent had changed over time. In a letter to the appellant's solicitors dated 1 September 2011 it was said that a decision had been made to accept that the appellant was a Palestinian National and that a report of Dr Kelly had been considered in that decision. However, at the hearing the reports from Dr Kelly put forward in support of the appellant's case were put in issue. Dr Kelly's expertise is set out at [56] and he had concluded that the information given by the appellant about life in the West Bank was entirely consistent with his knowledge of the region and that in his experience only someone who had spent a considerable amount of time in the West Bank would be likely to know the level of detail given by the appellant.

14. The tribunal noted the challenges made by the respondent to Dr Kelly's conclusions and acknowledged that there were sophisticated and nefarious means by which a person could obtain assistance from others in preparing a witness statement. Dr Kelly had said that very few Palestinians could recall their identity card numbers whereas it was the respondent's case that the PGDO had advised that every Palestinian should know their ID number or be able to confirm it by extended families/contacts in Palestine.

15. The tribunal considered the evidence produced by the respondent to support the contention that the appellant was from Egypt. The respondent through the British Embassy in Cairo telephoned several Egyptian numbers on a mobile phone found in the appellant's possession [67] and was given details about a family member who had disappeared two years previously. The tribunal considered the appellant's explanation at [68] and was entitled to note that there had been no positive visual identification by any family member in Egypt.

16. When assessing the appellant's nationality the tribunal also took into account what was described as significant evidence in support of the appellant's claim to come from the West Bank set out in a transcript of an interview carried out by the respondent on 6 January 2015 where the interviewing officer recorded that he had concluded to a high degree of probability that the appellant was a Palestinian National as claimed.

17. It was for the tribunal to assess the varying strands of evidence and decide whether the appellant had discharged the onus of showing that he was a Palestinian. I am satisfied that it reached a conclusion properly open to the reasons given. This was a question of fact for the tribunal to assess. The respondent's grounds on this issue do not satisfy me with any relevant matters were left out of account or that there is any proper basis for a challenge on legal grounds to the tribunal's findings of fact.

18. I now turn to consider article 3. In summary, I am not satisfied that the grounds disclose any error of law undermining the findings of the tribunal. There is no substance in the argument that the tribunal erred by not considering Bensaid. Each case must be assessed on its own circumstances. The fact that in that case no breach was found of article 3 or 8 does not mean that it was not open to the tribunal to find a breach in this appellant's circumstances. The judgment in GS (India) does not affect the issue which was before the tribunal which was whether the appellant in his particular circumstances was able to meet the requirements set out in J v SSHD [2005] EWCA Civ 629.

19 The tribunal gave specific consideration to whether the appellant was either feigning or exaggerating his problems [75] but was entitled to comment that his case bore no resemblance to the type of case where the tribunal is presented with one psychiatric report based entirely on the applicant's account. There were a number of reports which led the tribunal to have no reason to doubt that the appellant had mental health problems as described and diagnosed by various medical professionals [76]. The evidence showed that the appellant had "florid delusional beliefs" and it was the opinion of Professor Katona that the fact that he revealed them in greater detail than he had done in previous assessments probably reflected the fact that his psychiatric condition was worsening rapidly and he was no longer able to hide his abnormal beliefs [78].

20. I am satisfied that in these circumstances the tribunal was entitled to conclude that there would be a risk of serious harm during any encounter with the authorities at Israeli checkpoints for the reasons given at [90]. It was required to take into account the guidance in J v SSHD and was entitled to find that the risk the appellant would take his own life would not be obviated by any measures the respondent would take when removing the appellant. In this context it should be noted that the respondent had been directed to the file information about the route and method of the proposed return of the appellant with particular regard to his mental health problems but had failed to do so. The respondent had had the opportunity of filing evidence on the issue but had failed to do so. The practicalities of return were matters the tribunal had to consider when assessing article 3 in this case.

21. The grounds relied on by the respondent are in substance an attempt to re-argue the appeal. They do not satisfy me that there is any error of law on the part of the First-tier Tribunal in its assessment of the findings under article 3. In any event, the appeal was also allowed on article 8 grounds but the grounds of appeal made no challenge to those findings which were on the discrete ground of granting article 8 on limbo grounds in accordance with the judgment of the Court of Appeal in Abdullah. Mr Jarvis did seek to raise a challenge but I was not prepared to permit this. It was a late challenge raised at this hearing not having been raised in the grounds. In any event I was not satisfied that the tribunal had erred in law when considering article 3.

Decision

22. For these reasons I am not satisfied that the First-tier Tribunal erred in law and its decision to allow the appeal stands. . No application has been made to vary or discharge the anonymity order made by the First-tier Tribunal. Accordingly, it remains in force.

Signed H J E Latter

H J E Latter Date: 2 March 2016
Deputy Upper Tribunal Judge