



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

Appeal Number: DA/02404/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 16 March 2015**

**Decision & Reasons
Promulgated
On 27 March 2015**

Before

**MR JUSTICE MALES
DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**REGGIE OLIVER
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Mr P Haywood, Counsel, instructed by Wilson Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision by First-tier Tribunal Judge Moore which allowed the appeal of the respondent before us, Reggie Oliver, against the Secretary of State's decision to deport him. The First-tier decision was made on the ground that deportation would infringe Article 3 of the European Convention on Human Rights. Although there was reference at the hearing and in the determination to arguments under Article 8, it is clear that the decision

was that on the facts of the case, and in particular Mr Oliver's mental condition, deportation would infringe Article 3.

2. Although the Secretary of State's grounds of appeal include arguments under Article 8 those do not arise on this appeal. Mr Oliver did not succeed on Article 8 and it is clear that in view of the convictions which he has there is a strong public interest in his deportation. However, that deportation will only be lawful if it will not infringe Article 3 which is concerned with the infliction of inhuman and degrading treatment and which, where it applies, is absolute.
3. The First-tier Tribunal found that Mr Oliver is a national of Guinea born on 27 December 1969, and in so finding rejected his claim to be a Dutch national. He is liable to automatic deportation following a conviction for robbery for which he was sentenced to six years' imprisonment.
4. He came to the United Kingdom in 1995. The offences of which he was convicted were committed in September 2004 and April – June 2006 when he was sentenced to six years imprisonment. Subsequently in February 2007 he was sentenced to six months' imprisonment for an offence of assault occasioning actual bodily harm.
5. On the occasion of his sentence the sentencing judge referred to nasty offences involving robbery of people that Mr Oliver had targeted who had obtained funds and were in the process of taking them home. The youngest of the victims was 62. The oldest was something of the order of 87. The judge continued:

"So you targeted vulnerable people and were able to rob them without using extensive force because of the targets that you had chosen. You had followed them home and you have robbed them when they were at a vulnerable position."
6. Following the service of his sentence Mr Oliver was detained from January 2010 under powers contained in the Immigration Acts, although we understand that since the determination by the First-tier Tribunal he has been released on bail. This may be of some significance, as we shall explain at the end of this decision, although there is no evidence before us about any change in his circumstances and we must proceed on the basis of the facts as found by the First-tier Tribunal.
7. There was conflicting evidence before the First-tier Tribunal concerning Mr Oliver's psychiatric and medical condition. A number of psychiatric reports were provided on which the judge was addressed at some length. The reports conflicted. Some of them were to the effect that Mr Oliver was suffering from significant mental health difficulties and was at risk of self-harm or even suicide while other reports suggested that he was feigning these symptoms. The most recent report before the judge was a report of 6 May 2014 from Dr Maloney which the judge describes as being of a comprehensive nature and a report of particular significance. Dr Maloney described Mr Oliver's behaviour as "now highly disturbed and potentially

dangerous to self and others (self cutting, fire setting) requiring constant supervision". He said that overall it was "possible that he [that is Mr Oliver] may have had a schizotypal personality or schizotypal personality traits, not previously overtly manifest but now severely exacerbated due to stress. This picture is not unequivocal - and it is not my preferred diagnosis - but this needs to be part of the differential diagnostic diagnosis".

8. Dr Maloney rejected the suggestion that the symptoms were being manipulated by Mr Oliver. His preferred diagnosis was that Mr Oliver was suffering from schizophrenia, ought to be detained in a psychiatric hospital and was not fit for discharge to the community as he appeared highly disturbed and his behaviours were potentially dangerous both to himself and to others.

9. Having reviewed all of the medical reports the First-tier judge said this at paragraph 40:

"Taking into account all the medical reports before me, I am satisfied that this appellant is suffering from a schizophrenic mental disorder and that he is a risk to himself and to other members of the public. There appears to be a deterioration in his mental health condition."

10. Although the evidence was conflicting, it has not been suggested that the judge was not entitled to make this finding of fact.

11. The judge then turned to consider the situation which Mr Oliver would face if he were deported to his home country of Guinea. He reminded himself that the public interest requires deportation unless there are very compelling circumstances otherwise, although in fact that is a consideration which would be relevant in conducting a balancing exercise under Article 8. For Article 3 purposes the question is simply whether removal would infringe Article 3 by reason of inhuman and degrading treatment.

12. The judge reviewed the evidence about mental health facilities in Guinea. He found that those facilities were limited; that two of the three drugs which formed part of the medication regime for Mr Oliver were not available in Guinea; that research had been unable to locate providers for other drugs currently taken by him and that even a suggested alternative to one of those drugs, Mirtazapine, was something which the judge could not be satisfied would be appropriate. He found that Guinea had in the whole country only one mental health hospital with three psychiatrists and six nurses and that there was little available treatment for Mr Oliver based on the medication that he had taken and was required to take. He said that "Medical facilities are clearly very poor which would be likely to expose this appellant to a further risk of self-harm or harming others due to his mental health condition".

13. He referred then to the evidence from Dr Pierzchniak who had been unable to endorse a diagnosis of schizophrenia and commented that this

confirmed his view that this was a difficult case on which the views of professional psychiatrists and medical persons had been polarised.

14. We set out in full paragraph 43 of the judge's determination which encapsulated his essential reasoning on the Article 3 point:

"From all the evidence before me, I am satisfied that the appellant is likely to suffer from a mental disorder, namely schizophrenia, and that over time there has been a deterioration in his physical and mental condition. The appellant clearly needs a high level of support and at the present time is on a 'constant watch'. He cannot live in the community and requires treatment as an in-patient. He is at risk to himself and a risk to members of the public. If the appellant is removed to Guinea there is no reasonable likelihood of him receiving the treatment that he would require in order to address his mental illness. Furthermore, I am not satisfied that there would be effective mechanisms in place in Guinea, such as would reduce the risk of suicide for this appellant, or the risk of other self harm due to his disturbed unpredictable behaviour, and the further likelihood of a deterioration in his mental health and suicide risk if deported to Guinea."

15. It was for those reasons that the judge concluded that the deportation would infringe Article 3. He did so having set out at an earlier stage of his determination the relevant authorities. He recognised in accordance with the decision in **Bensaid v United Kingdom**, a decision of the Strasbourg Court (Application number 44599/98, 6 May 2001), that in principle an Article 3 claim could succeed in a case involving suffering associated with a relapse in an existing mental illness and that the risk of suicide could fall within Article 3, although the facts of that case where it was found that there was in fact no infringement of Article 3 are somewhat different from those in the present case. The judge referred also to the decision of the Court of Appeal in **J v Secretary of State [2005] EWCA Civ 629** where the court laid down a framework for the analysis of a suicide risk case, in particular setting out at paragraphs 26 to 32 six questions which ought to be asked, the answers to which would inform the question whether an Article 3 claim could succeed.
16. Those questions make clear that the treatment which an applicant will suffer must attain a minimum level of severity in order for Article 3 to be engaged, that in the context of what was referred to as a foreign case the threshold is particularly high and that a question "of considerable relevance" is whether the receiving state "has effective mechanisms to reduce the risk of suicide". The Court of Appeal observed that if there were effective mechanisms that would weigh heavily against an applicant's claim that removal would violate his Article 3 rights. It must follow that if there are no such effective mechanisms that will be a factor, and sometimes an important factor, in favour of a claim that removal will violate Article 3 rights. The judge recognised the importance of that factor.
17. He referred also to the case of **GS and EO (Article 3 health cases) India [2012] UKUT 397 (IAC)** a decision of the Upper Tribunal dealing with the issue whether and if so in what circumstances Article 3 would be

infringed by the removal of somebody from the United Kingdom to a country where they would be unable to receive life sustaining medical treatment which was available in the United Kingdom. That decision recognised that the fact that life expectancy would be dramatically shortened by a withdrawal of medical treatment in the receiving state was in itself incapable of amounting to a highly exceptional case that engaged the Article 3 duty. Since the First-tier decision in this case, **GS and EO** has gone to the Court of Appeal (see **[2015] EWCA Civ 40**) which has affirmed the decision and underlined the point that in cases concerned with the relative availability of medical treatment here and in the receiving state the absence of medical facilities will not amount to an infringement of Article 3 except in very exceptional circumstances and that the position remains as determined in the House of Lords case of **N v Secretary of State [2005] UKHL 31, [2005] 2AC 296**.

18. It may be thought that there is some tension between the two lines of authority, on the one hand the cases concerned with medical facilities here and elsewhere, and on the other the suicide cases. In the medical cases the absence of available treatment abroad will only very exceptionally engage Article 3, whereas in the suicide cases the availability of effective mechanisms to reduce the risk is at any rate a relevant consideration. That point was addressed in **GS** in the Upper Tribunal in a passage which does not appear to have been commented on in the Court of Appeal, at paragraph 85(9) of the Upper Tribunal decision. The Tribunal observed that in the suicide cases it may well be the case that “the removal of the individual creates or enhances the risk of suicide and so [those cases] are not concerned solely with a natural underlying disease or illness which, although treatable in the UK, would not be treated in the individual’s home country.” The Tribunal commented that that distinction might well justify a different approach in applying Article 3 in suicide cases, but that the appeals then before the Tribunal did not raise that question, being purely concerned with medical facilities. In view of the narrow factual point on which this appeal is brought, explained below, it is not necessary for us to grapple with this issue in this appeal either.
19. It was in the light of those authorities that the judge addressed in paragraph 43 the questions which the case of **J** requires to be addressed in suicide cases. Having addressed those questions he made the findings which we have set out more fully earlier that “there is no reasonable likelihood of [Mr Oliver] receiving the treatment that he would require in Guinea in order to address his mental illness” and that “there would [not] be effective mechanisms in place in Guinea, such as would reduce the risk of suicide ... or the risk of other self harm ... and the further likelihood of a deterioration in his mental health and suicide risk”.
20. The Secretary of State's grounds of appeal to this Tribunal contend that this case does not satisfy the very high threshold envisaged in Article 3 cases and that the decision to deport does not infringe the absolute rights protected by Article 3 of the Convention **because** “there is provision available to [Mr Oliver] in Guinea”, albeit “not of the same standard as in

the UK". The Secretary of State submits that while the facilities may not be of the same standard as in the United Kingdom there is no obligation upon the state to offer treatment indefinitely to those who are subject to immigration control.

21. In our judgment this submission fails to recognise the strength of the findings which the First-tier Tribunal has made. These findings are not to the effect that there is provision available to Mr Oliver in Guinea, albeit not of the same standard as in the United Kingdom, but rather that there is for all practical purposes no such treatment available to him at all. There is "no reasonable likelihood of him receiving the treatment that he would require in order to address his mental illness". This ground of appeal is essentially a challenge to a factual finding which the First-tier Tribunal Judge has made which, on the evidence, he was entitled to make. It does not disclose any error of law.
22. The Secretary of State's grounds of appeal go on to say that the judge has wrongly distinguished the present case from that of **Bensaid v United Kingdom** without an adequate basis for doing so. In **Bensaid**, however, the Strasbourg court acknowledged that return of a person suffering from long term psychotic illness could in principle breach Article 3, but found on the facts that it did not do so: despite the considerable difficulties which the applicant in that case might face in his home country in availing himself of treatment, it was ultimately speculative whether or not he would be able to do so. It was not proved, therefore, that treatment was not available. The position is different here where the judge has made the positive finding which we have set out. It follows that the grounds of appeal do not in our judgment demonstrate any error by the First-tier Tribunal Judge which would justify us in setting aside his determination.
23. It seems to us that in principle the cases recognise the possibility that a condition such as this individual has are capable of engaging Article 3 so that his removal would amount to an infringement of Article 3. Whether or not such arguments could be made, as to which we say nothing, no argument has in fact been addressed to us which would demonstrate that, on the particular findings of fact made in this case, the judge's conclusion that a removal would be an infringement of Article 3 is wrong in law. The only argument advanced was that the judge's factual finding was wrong.
24. For that reason we have to dismiss this appeal, but before leaving the case we should say this. There was an application to the First-tier Judge by the Home Office representative for an adjournment of the First-tier hearing on the ground that a further medical report was awaited which it was hoped might resolve definitively the disputed medical evidence. The First-tier Tribunal Judge refused that application for an adjournment.
25. In opening the appeal before us today Mr Walker sought permission to amend the Secretary of State's grounds of appeal to contend that the refusal of the adjournment was itself a material error of law. We refused that application to amend on the basis that it was made much too late,

and in any event that it was a matter for the discretion of the First-tier Judge. We record, however, that in the course of discussion of that amendment we were told that since the determination by the First-tier Tribunal, Mr Oliver has been released on bail and that there now exists a more up-to-date medical report. We have not been shown that report and do not know what it says but it may be, we say no more than that, that the fact that he has been released on bail would indicate that there is some improvement in his condition. At all events, there may be some ground for thinking that Dr Maloney's view that Mr Oliver was not fit to be released to the community in view of the danger which he posed to himself and others may no longer apply.

26. We make clear that the decision that we have given is concerned with the determination made by the First-tier Tribunal which is dated 19 October 2014. It is limited to a decision that on the evidence before the First-tier Tribunal and the findings made by the judge there is no error of law in the judge's determination that deportation would infringe Article 3. However, if it is the case that circumstances have changed materially and that Mr Oliver's condition now is in fact better than it appeared to be on the basis of that evidence, that is a matter which the Secretary of State may well wish to take into account in determining any period of leave that should be given to Mr Oliver in the light of our decision. Our decision, on the basis which we have explained, is simply that this appeal is dismissed.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained no error of law and stands.

Mr Oliver's appeal remains allowed on human rights grounds.

No anonymity direction is sought or made.

Signed

Date **16 March 2015**

Mr Justice Males