



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

Appeal Number: PA/09098/2016

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 4 January 2019**

**Decision & Reasons  
Promulgated  
On 11 February 2019**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**H A**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr C Howells, Senior Home Office Presenting Officer  
For the Respondent: Ms E Rutherford, instructed by Migrant Legal Project  
(Cardiff)

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the respondent (HA-J). A failure to comply with this discretion could lead to Contempt of Court proceedings.
2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

## **Introduction**

3. The appellant is a citizen of Jordan who was born on [ ~ ] 1985. He came to the UK some time in 2013 as a Tier 4 (General) Student. On 15 February 2016, the appellant claimed asylum on the basis that he had denounced Islam. On 15 August 2016, the Secretary of State refused the appellant's claim for asylum and humanitarian protection and under Arts 3 and 8 of the ECHR.
4. The appellant appealed to the First-tier Tribunal. The appellant did not pursue his claim for asylum on the basis of his religious beliefs. There was expert evidence before the judge that the appellant suffered from paranoid schizophrenia which the judge accepted. The appellant had a litigation friend and was represented by Counsel. Before the judge, the appellant's claim was that if he were returned to Jordan he would be subject to persecution or serious ill-treatment because of his mental illness, in particular that he would be of interest to the Jordanian authorities (not least because of his expressed delusion to be linked to the royal family in Jordan) and would, as a consequence, be detained in circumstances amounting to inhuman and degrading treatment.
5. Judge A K Hussain accepted the appellant's claim on this basis and allowed his appeal under Arts 3 and 8 of the ECHR.
6. The Secretary of State sought permission to appeal. Permission was granted by the First-tier Tribunal (Judge Lever) on 31 July 2018.

## **Submissions**

7. Mr Howells, who represented the Secretary of State, submitted that the judge's decision was rather confused. He pointed out that at para 6 of his determination, the judge had found that there was "no credible evidence" that the appellant would be exposed to persecutory harm in Jordan as a result of his mental illness. However, at para 17, the judge had gone on to find that the appellant would, indeed, be at risk of being detained in circumstances breaching Art 3 of the ECHR because of his mental health problems. Those were, Mr Howells submitted, inconsistent findings.
8. In addition, Mr Howells submitted that in para 17 of his determination, the judge had provided no detail or explanation, based upon evidence, for his conclusion that the appellant's mental health would bring him to the attention of the authorities and result in his detention in circumstances breaching Art 3 of the ECHR.
9. Mr Howells acknowledged that the thrust of the written grounds were, less appropriately, directed to a claim based upon 'health' grounds when, in fact, the judge's decision in para 70 was focused on persecutory treatment arising from the appellant's behaviour as a result of his mental health.
10. On behalf of the appellant, Ms Rutherford sought (at least initially) to defend the judge's reasoning in para 17 leading to his favourable decision

in respect of Art 3. In response to enquiry from me, Ms Rutherford acknowledged however that the judge had not set out the evidence which led him to conclude that the appellant's mental health (paranoid schizophrenia) would manifest itself in Jordan in such a way as to bring him to the attention of the Jordanian authorities; in particular the judge did not consider what, if any, treatment would be available and what effect that would have upon the appellant's behaviour. In addition, apart from the reference to a report entitled "shouting through the walls", she accepted that the judge made no reference to the background material concerning the Jordanian authorities' attitude to a person suffering from mental health problems such as paranoid schizophrenia or the circumstances in which such a person might be detained.

## **Discussion**

11. It is clear that the substance of the appellant's claim to be at risk on return to Jordan did change to, and focus upon, a claimed risk of persecution because of his mental health (suffering from paranoid schizophrenia) and the delusional behaviour that he might engage in on return (see paras 4-6 of the determination).
12. At para 5 of his determination, the judge summarised that as the basis of his claim. Then, at para 6 he said this:
 

"Insofar as the new asylum and humanitarian protection claim relies upon the prospect of persecutory harm in Jordan because he suffers from a mental illness or mental disability, I am satisfied that there is no credible evidence to this effect and I dismiss those claims accordingly."
13. He then went on in para 6 to state that the appellant's claim was, in effect, therefore one relying upon Art 8 of the ECHR.
14. If one read no further, it would seem plain that the judge had, albeit in brief terms, rejected the appellant's claim on asylum and humanitarian protection grounds and under Art 3 of the ECHR.
15. However, the judge went on to allow the appellant's appeal under Art 3 of the ECHR notwithstanding what he had said in para 6.
16. At para 15 of his determination, having previously set out the expert evidence, in particular that of a consultant psychiatrist, Dr Law, the judge said this:
 

"15. The incontrovertible evidence from the medical and other reports is that the appellant has a psychotic illness described as paranoid schizophrenia. He is delusional, obsessive, has delusions of connections to authority and is obsessive about his inheritance that he believes his family have kept from him. The appellant's behaviour would, according to Ms Owens, at some point be likely to create a conflict in the way that he interacts with people and the world and his idea of himself. She found him to be very assertive and that he challenged everything as well as believing that he was intellectually superior to everyone else. I am satisfied

these traits of character and his mental disability will bring him into adverse contact with the Jordanian authorities especially if he speaks of his thoughts on Islam and his connections to the Jordanian Royal family, be it through the *3 Husseins prophecy* or his claim to having been married to Princess Haya. He will not have the support of his family in the circumstances because he is in conflict with them because he says they are withholding his inheritance from his Kuwaiti father from him.”

17. In para 16, he referred to the Strasbourg Court’s decision in N v UK and then at para 17 he said this:

“17. In the premises, for the appellant to succeed under article 3 he must meet the ‘very exceptional circumstances’ criterion. I am satisfied that the appellant meets this criterion. He is delusional to a considerable extent and identifies himself as one of the *3 Husseins* linking him with the Royal family, also claiming that he was once married to Princess Haya as well as making his adverse views on Islam plain, all of which will bring him into adverse contact with the Jordanian authorities. If they view him to have a mental health problem, the country report on mental health provision in Jordan contained provided by the appellant does not make for pleasant reading; it shows that those with mental health problems, and I imagine, especially those who are viewed as anti-State because of their expressed views, may end up in unlawful detention and inhuman and degrading treatment possibly indefinitely. I am satisfied that the appellant faces a real likelihood of this happening to him if he is returned to Jordan. He is particularly at risk of being detained under Jordan’s laws on involuntary institutionalisation as identified in the report *‘Shouting through the walls’* in conditions which would contravene article 3.”

18. It would appear, therefore, that having initially concluded that there was “no credible evidence” to support the appellant’s claim on the basis that he would be persecuted because of his mental health, the judge nevertheless was satisfied that a real risk of persecution or, at least, serious ill-treatment contrary to Art 3 had been established.
19. Leaving aside this plainly obvious inconsistency in his determination, when paras 15 and 17 of his determination are read together, it is wholly unclear upon what basis he accepted that the appellant’s mental health problem would persist in Jordan such as to draw him to the attention of the Jordanian authorities. That could only be premised upon medical evidence that treatment was not available to alleviate his current symptoms or, even if available, would not adequately deal with those symptoms. As Ms Rutherford acknowledged in her submissions, the judge did not refer to any evidence to support such a premise (upon which he would be required to make a sustainable factual finding) and no such evidence is readily apparent from the papers before the First-tier Tribunal.
20. Equally, even assuming that the appellant’s paranoid schizophrenia would continue to manifest itself in the same (or similar) way as it has in the UK,

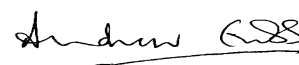
the judge did not identify and grapple with country background evidence which would support his conclusion that this would bring him to the attention of the Jordanian authorities such that he would be detained in circumstances breaching Art 3 of the ECHR. It was not, in my judgment, sufficient for the judge to simply state that “the country report on mental health provisions” did not “make for pleasant reading” (no further detail is given) or with a bare reference to the report “shouting through the walls” in the final sentence of para 17.

21. The judge’s failure to grapple with any relevant evidence (and it must be remembered that in para 6 he had previously said that there was “no credible evidence” to support the claim), together with a clear failure to provide adequate reasons and findings in para 17 for his ultimate conclusion that a breach of Art 3 was established, amounted to a material error of law.
22. For these reasons, the judge’s decision to allow the appellant’s appeal is legally flawed and cannot stand.

### **Decision**

23. For the above reasons, the decision of the First-tier Tribunal to allow the appellant’s appeal under Arts 3 and 8 of the ECHR involved the making of a material error of law. The decision cannot stand and is set aside.
24. The proper disposal of this appeal in these circumstances, as both representatives agreed, is that the appeal is remitted to the First-tier Tribunal for a *de novo* re-hearing before a judge other than Judge A K Hussain.
25. I would anticipate that the First-tier Tribunal would be assisted by relevant medical and other expert opinion relating to the treatment of the appellant’s paranoid schizophrenia in Jordan and the state’s response to a person suffering from this mental illness.

Signed



A Grubb  
Judge of the Upper Tribunal

16 January 2019