



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal Numbers: UI-2023-003654
UI-2023-003655

On appeal from: PA/51619/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23rd of November 2023

Before

UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

The Secretary of State for the Home Department

Appellant

and

J S
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Alexandra Everett, Senior Home Office Presenting Officer
For the Respondent: Mr Vijay Jagadeshm of Counsel, instructed by Immigration Aid Unit Manchester

Heard at Field House on 19 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the claimant is granted anonymity. He will be referred to in these proceedings by the initials J S. No-one shall publish or reveal any information, including the name or address of the claimant, likely to lead members of the public to identify the appellant.

Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals, and the claimant cross-appeals, a decision of First-tier Tribunal Judge Cole issued following a hearing at Manchester on 3rd July 2023. The appeal and cross-appeals have been given separate appeal numbers. The First-tier Tribunal found the claimant to be a Tunisian citizen, despite his assertion that he is a citizen of Libya.
2. The First-tier Tribunal dismissed the claimant's Article 3 ECHR claim, asserting that he was at risk of inhuman and degrading treatment on return to Tunisia by reason of his mental illness. However, the First-tier Judge allowed the appeal on Article 8 ECHR private life grounds based on very significant obstacles to his integration in Tunisian society in light of his mental health difficulties.

Secretary of State's appeal

3. The Secretary of State advanced two grounds of appeal:
 - (1) **Ground 1.** The Secretary of State argued that the First-tier Judge had failed to give adequate reasons for finding that the claimant's mental health difficulties met the very significant obstacles threshold, given the evidence that there were various hospitals in Tunisia which could treat his mental health difficulties;
 - (2) **Ground 2.** The Secretary of State argued that the First-tier Judge had failed properly to apply section 117b of the Nationality, Immigration and Asylum Act 2002 (as amended), which required the First-tier Judge to give little weight to the claimant's Article 8 private life, as his immigration status was precarious.

Overall, the Secretary of State contended that the First-tier Judge had failed to give adequate weight to the public interest in maintaining effective immigration control.

4. Ms Everett for the Secretary of State acknowledged that on a complete and fair reading of the decision, Ground 1 was unarguable. It followed in respect of Ground 2 that as the Rules were found to be met in substance on mental health difficulties, the public interest in refusal fell away. While ground 2 was not expressly withdrawn, she accepted that she could not press it.
5. Given that sensible concession, the Secretary of State's grounds of appeal cannot succeed and her appeal will be dismissed.

Claimant's cross-appeal

6. We next consider the cross appeal by the claimant. In his grounds of appeal, Mr Jagadeshm argued that the claimant was entitled to upgrade his status from Article 8 ECHR to Article 3 ECHR.
7. The claimant challenged the First-tier Judge's decision in two ways:
 - (1) **Ground 1.** The claimant challenged the weight attached by the First-tier Judge to the use by the claimant of two Tunisian passports, which the claimant asserted were not genuine. Mr Jagadeshm submitted that the claimant's case should be distinguished from that in *Hussein and Another* (status of passports: foreign law) [2020] UKUT 250 (IAC), in which the passport in

question had been subject to scrutiny on numerous occasions in the context of cross-border travel. Here there was no evidence that the Tunisian passports had been used for international travel and the respondent had not undertaken any authenticity check; and

- (2) **Ground 2.** The claimant argued that the First-tier Judge's Article 3 ECHR assessment was flawed in failing to address his suicide risk in the UK, and during removal, by reference to the expert evidence of Professor Katona. The claimant had made suicide attempts and suffered very significant mental health deterioration in the UK, despite the superior treatment facilities here. The First-tier Judge had erred in failing to carry out a cumulative assessment under Article 3 ECHR, although it was accepted that he had done so in the Article 8 consideration.

Discussion

8. Ground 1 is a challenge to a finding of fact, that the Tunisian passports were genuine and that, applying *Hussein*, the claimant fell to be treated as a Tunisian citizen. The standard for interference with findings of fact was restated by the Court of Appeal in *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] in the judgment of Lord Justice Lewison, with whom Lord Justices Males and Snowden agreed. An appellate court may only interfere with a finding of fact where it is "rationally insupportable", which is a high standard.
9. The case of *Hussein* is, as the judge noted, authority only for what is stated in the judicial headnote:
- "1. A person who holds a genuine passport, apparently issued to him, and not falsified or altered, has to be regarded as a national of the State that issued the passport.**
2. The burden of proving the contrary lies on the claimant in an asylum case.
3. Foreign law (including nationality law) is a matter of evidence, to be proved by expert evidence directed specifically to the point in issue."
10. In this case the passport evidence provided a proper basis for the judge's nationality finding. The passports had been presented three times in entry clearance applications from Tunisia and had not given rise to any difficulties. The claimant's evidence was vague and generalised: see [34]-[60]. On a complete and fair reading of the judge's decision the grounds do not show the factual finding to be "rationally insupportable. Having considered the evidence in detail, the First-tier Judge was unarguably entitled to find that the claimant's Tunisian passports were genuine. The conclusion is not rationally insupportable and accordingly we do not propose to interfere with it.
11. Ground 2 is similarly misconceived. The judge's consideration of the medical evidence is at [66]-[91], over 2 A4 pages. The First-tier Judge accepted that the claimant is seriously ill, and that the relevant threshold of suffering would be met if medical treatment were not available in Tunisia. At [68], he makes it clear that he had regard to the psychiatric evidence of Professor Katona and the other medical evidence, as well as the country evidence of Mr Hugh Miles.
12. The judge assessed the medical evidence and country evidence, and found that despite the difficulties that the claimant may face in Tunisia and the limitations of the Tunisian mental healthcare system, the claimant would be able to access the

treatment he requires in order to avoid a breach of Article 3. The risk to him did, however, meet the Article 8 threshold and the appeal was allowed on that basis.

13. The First-tier Judge's self-direction was correct and his conclusions were properly, intelligibly and adequately reasoned. His rejection of the claimant's Article 3 ECHR argument was open to him on the totality of the evidence before him.

Notice of Decision

The making of the previous decision involved the making of no error on a point of law. Both the appeal and the cross appeal are dismissed.

We do not set aside the First-tier Tribunal decision but order that it shall stand.

E Davidge

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 November 2023