



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/13895/2017  
PA/04385/2017

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 1 February 2019

Decision & Reasons Promulgated  
On 19 February 2019

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RN  
IP

(ANONYMITY DIRECTION MADE)

Respondents

**Representation:**

For the Appellant: Mr M Matthews, Senior Presenting Officer  
For the Respondents: Mr E Mackay, McGlashan Mackay Solicitors

**Anonymity Direction**

I make an order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 whereby the disclosure or publication of any matter likely to lead members of the

public to identify either of the respondents to these proceedings or their child is prohibited. Failure to comply with this order may result in contempt proceedings.

## DECISION AND REASONS

### **Introduction**

1. This is the Secretary of State's appeal against the decision of FtTJ Doyle who allowed the appeal by the respondents who are husband and wife and nationals of Sri Lanka where they were born respectively in 1982 and 1990. Their child was born in the United Kingdom in 2017. I shall refer to them as the claimants.
2. The first claimant entered the United Kingdom in September 2002 when he claimed asylum which was refused. An adjudicator of the Immigration Appellate Authority dismissed his appeal after a hearing on 22 September 2003. Another appeal was heard by First-tier Tribunal Judge Scobbie on 6 January 2014 following the rejection of further submissions by the first claimant. He dismissed the appeal on asylum and humanitarian protection grounds but allowed the appeal under Article 3 ECHR based in large part on medical reports by Dr Gillespie and Ms Marshall, a counsellor with the Medical Foundation on the basis that if the first claimant were returned to Sri Lanka, he posed a serious suicide risk. Although the first claimant may objectively have had nothing to fear from the authorities, taking account of his previous experience, Judge Scobbie considered that his fears were understandable. The judge also took account of the fact that several of his closest relatives were no longer in Sri Lanka to offer him support. Accordingly, the first claimant was granted discretionary leave to remain until 6 August 2016.
3. During the currency of that leave the first claimant applied for further leave to remain which was refused on 16 January 2017. This led to the appeal before Judge Doyle on 10 April 2018.
4. The second claimant arrived in the United Kingdom as a student in 2009 and following her return to Sri Lanka in October 2011, came back to the United Kingdom and made a protection claim. This was rejected and she appealed to the First-tier Tribunal who dismissed her appeal on all grounds for reasons given in a decision dated 18 August 2017. That decision was set aside by the Upper Tribunal on 4 January 2018 and the case remitted to the First-tier Tribunal where it was heard at the same time as the first claimant's appeal by Judge Doyle. By then the second claimant's appeal was confined to Article 8 only.
5. The first claimant's case before Judge Doyle was on grounds relating to the impact of his mental health and suicide ideation. In addition, both claimants relied on their marriage and their child in support of their family and private life in the United Kingdom.
6. Judge Doyle found that the first claimant's mental health and suicide ideation amounted to very significant obstacles to his integration into Sri Lanka and therefore concluded that he succeeded under paragraph 276ADE(1)(vi). He considered this

impacted on the decision to return the second claimant and decided that both appeals succeeded on Article 8 grounds. Judge Doyle ended his decision with the observation that neither claimant argued that Article 3 was engaged.

7. First-tier Tribunal Judge E Grant granted permission to appeal. She took into account of the Secretary of State's challenge that the judge had failed to apply the requirements of paragraph 276ADE(1)(vi) correctly and had failed to clarify the weight to be attached to medical reports provided, including a more recent report indicating that the first claimant's mental health had improved. In addition, she considered that the judge had erred in not taking the approach in *J v SSHD* cited below.
8. After hearing detailed submissions from the parties in relation to the error of law challenge, Mr Matthews confirmed that, in the event that I set aside the decision of Judge Doyle and remade the decision, he had covered all the points wished to rely on. Mr MacKay confirmed that he had no new evidence to rely on in such an event. He wished to obtain more medical evidence but acknowledged that application for legal aid funding would have been available for a new medical report prior to the hearing which had not been pursued. The directions were clear that any new evidence would need to be provided in advance of the hearing. By way of further submissions, Mr Mackay relied on grounds under Article 3 and contended that the evidence before me would not justify departure from the earlier decision by Judge Scobbie on this ground. He placed reliance on the approach by the Court of Appeal in *Y & Z v SSHD* [2009] EWCA Civ 362 as indicative of the approach I should take. I reserved my decision.

#### **Did the FtT err in law?**

9. Mr Mackay confirmed that the grounds of challenge to the Secretary of State's decision dated 29 August 2017 relied on Article 3 grounds. He had represented the claimants in the First-tier Tribunal and recalled making submissions on this basis, including reference to *Y & Z*. It is therefore unclear why the judge had observed that neither claimant had argued that Article 3 was not engaged. In the course of their submissions neither Mr Matthews nor Mr Mackay were able to explain why the judge had focused on paragraph 276ADE in the light of the first claimant's mental health grounds. Article 3 should have been his starting point as that was the basis on which the first claimant had put his case.
10. Paragraph 276ADE is an expression of the Secretary of State's policy in the Rules setting out requirements to be met by an applicant for leave to remain on the grounds of private life. Whilst paragraph 276 ADE(1)(vi) requires consideration of whether there would be very significant obstacles to the first claimant's integration into Sri Lanka having lived continuously in the United Kingdom for less than twenty years, the judge's reasoning for his conclusion that this provision was made out is also not entirely clear. He sets out the argument before him that the first claimant met the requirements of the rule because there were very significant obstacles to his integration, relying entirely on his mental illness. After considering the report by Dr

Gillespie that was before Judge Scobbie in 2012 and a more recent report dated 6 December 2017 by Dr Ramsay, the judge concludes at paragraph 12(i) and (j):

- “(i) The weight of evidence indicates that the treatment the first [claimant] has had for his mental illness in the last four years has reduced the severity of his illness, from severe depression to moderate depression, but the fact remains that the first [claimant] suffers from mental illness and still entertains suicidal ideation. The availability of psychiatric treatment in Sri Lanka is almost irrelevant. What is relevant is the first [claimant’s] mental state. The weight of evidence indicates that at the very least the first [claimant] will suffer a deterioration in his condition if he thinks that he will be removed to Sri Lanka. The first [claimant] previously had a severe depressive illness with significant suicidal ideation. He now has a moderate depressive illness, but suicidal ideation continues.
- (j) On those facts, it seems to me that there are very significant obstacles to the first [claimant’s] integration into Sri Lanka. He must, therefore, succeed under paragraph 276ADE(1)(vi).”

11. As Mr Matthews pointed out in his submissions, Dr Ramsay expressed her opinion on four aspects in her report. The first is that the first claimant “... has suffered with a moderate depressive episode”. She reports his description of low mood, feelings of worthlessness, bleakness about the future and a reduced appetite, accompanied by difficulties with self-esteem and confidence, with a loss of interest and poor concentration.
12. The second aspect expressed is that the first claimant is receiving “...appropriate treatment for his depressive disorder” by reference the anti-depressant medication that he is taking.
13. The third aspect relates to the first claimant’s descriptions of symptoms associated with traumatic experiences. However Dr Ramsay explained that it was “not [her] opinion that he currently would fulfil the diagnostic criteria for a diagnosis of post-traumatic stress disorder”.
14. The final aspect relates to the first claimant’s suicidal ideation. At [3] of her report Dr Ramsay refers to this being longstanding and the first claimant’s previous attempts at harming himself. She continues:

“He is very clear that due to his previous experiences should he be returned to Sri Lanka he would seek to harm himself fatally. He has no current plans, although has continued to be negative about his current situation. However he has thought of how he would harm himself if he were to discover he was to be deported. His relationship and recently becoming a father is protective currently. He is of the opinion that if he were forcibly separated from his wife and child, he would have little left which would protect him from harming himself.”
15. Significantly, Dr Ramsay does not provide any opinion or assessment on this aspect the suicide intentions and only records what she was told. She simply concludes the report with the opinion that the first claimant is currently receiving appropriate treatment for his mental disorder.

16. Some six years earlier Dr Gillespie examined the first claimant on three occasions and refers in respect of his past health history that in December 2011 he had self-harmed with a kitchen knife leaving a scar on his left arm. She observes that the incision was not sutured. After setting out the first claimant's own reports of his state, she expresses her opinion on the scars and physical lesions and thereafter on his psychological state. She considered that the first claimant undoubtedly met the criteria for a diagnosis of severe depression and she also concluded that he was at significant risk of contemplating suicide. She considered the first claimant would be at particular risk if told of planned removal from the UK. She considered it likely that his severe depression was a consequence of his experience of captivity in Sri Lanka, nevertheless did not consider that he met the diagnostic criteria for post-traumatic stress disorder.
17. Unlike Dr Ramsay who is a consultant forensic psychiatrist, Dr Gillespie is not. She reports that she completed her training in general practice in 2006 and works as a GP in an area of significant deprivation. In respect of her psychiatric training and experience, she explains that over 60% of consultations in general practice have a psychological element and GPs managed over 80% psychiatric patients. Psychiatric training forms part of the training of all GPs. She has also received specialist training at the Medical Foundation by consultant psychiatrists.
18. The judge correctly summarises the essence of Dr Gillespie's report at paragraph 11(f) of his decision. As to a summary of Dr Ramsay's report, whilst he is correct with reference to her diagnosis of a moderate depressive episode and the first claimant's receipt of appropriate treatment, he was not correct in observing that "Dr Ramsay was concerned that the [claimant] has had longstanding suicidal ideation ...". As acknowledged by Mr Mackay, no such concern is expressed in Dr Ramsay's report. As I have observed above, she gives no opinion on the strength of the first claimant's intentions or the likelihood of risk that he would, if confronted with removal, attempt suicide. Either Dr Ramsay was not asked to give an opinion on this aspect or considered that she was unable to do so. To this extent therefore it was necessary for the judge to consider what other evidence was available to assess the risk. This would have required examination of the credibility of the first claimant's assertions in the context of the changed medical evidence which included confirmation that he did not meet the criteria for PTSD.
19. Judge Scobbie had credibility concerns over the account by the first claimant of the events that gave rise to his flight. Reliance was placed on a statement before Judge Doyle dated 29 March 2018 in which the first claimant continues to refer to his escape from army custody despite the rejection by Judge Scobbie of this aspect. The 2018 statement also refers to the first claimant having received punishment from the LTTE as a result of not having killed himself once caught by the army. This aspect does not appear in a summary of the first claimant's claim in Judge Scobbie's decision.
20. Specifically in respect of his suicidal ideation, the first claimant explains in his 2018 statement his fears at [7]:

"I wish to explain that my circumstances remain the same as at the time of the last appeal hearing. I am not afraid to kill myself. If I am told that I am going to be sent back to Sri Lanka I will definitely kill myself. I do not wish to be tortured by the Sri Lankan Government again; I do not want to be killed by them I rather kill myself. I know that if I am returned I will be captured, brutally tortured and ultimately killed."

21. Although Mr Mackay argued that there might be questions over the way in which the judge undertook the assessment in this case, he obtained the right answer. I am unable to accept this submission. The Court of Appeal set out the test to be applied in *J v SSHD* [2005] EWCA Civ 629 in relation to the possibility that enforced return might bring about suicide:

"25. In our judgment, there is no doubt that in foreign cases the relevant test is, as Lord Bingham said in *Ullah*, whether there are strong grounds for believing that the person, if returned, faces a real risk of torture, inhuman or degrading treatment or punishment. Mr Middleton submits that a different test is required in cases where the article 3 breach relied on is a risk of suicide or other self-harm. But this submission is at odds with the Strasbourg jurisprudence: see, for example, para [40] in *Bensaid* and the suicide cases to which we refer at para 30 below. Mr Middleton makes two complaints about the real risk test. First, he says that it leaves out of account the need for a causal link between the act of removal and the ill-treatment relied on. Secondly, the test is too vague to be of any practical utility. But as we explain at para 27 below, a causal link is inherent in the real risk test. As regards the second complaint, it is possible to see what it entails from the way in which the test has been applied by the ECtHR in different circumstances. It should be stated at the outset that the phrase "real risk" imposes a more stringent test than merely that the risk must be more than "not fanciful". The cases show that it is possible to amplify the test at least to the following extent.

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.”
22. There is no indication that a less demanding test applies when suicide is considered in an article 8 context which however embraces other factors such as the availability of medical treatment. In the light of the improvement of the first claimant's depressive disorder and the absence any comment or opinion by Dr Ramsay it was incumbent on Judge Doyle to carry out an assessment of the evidence to establish whether the suicide risk that previously existed prevailed and to give reasons for his findings. It required an enquiry into the credibility of the claimed intentions in the 2018 statement and to assess these against the unchallenged finding by Judge Scobbie that the first claimant was not in need of protection. Implicit in that finding was that there would not be a repetition of the torture that had been accepted.
23. In error Judge Doyle did not carry out a proper assessment of the risk of the first claimant committing suicide and appears to have proceeded on the basis that the first claimant's intentions could be accepted as stated despite the absence of any opinion by Dr Ramsay and the concerns expressed by Judge Scobbie regarding the first claimant's credibility. With Dr Gillespie's report being some six years ago, that could not be a reliable basis for risk assessment today. Furthermore, I consider it significant that Dr Ramsay did not consider the first claimant's condition could fulfil the diagnostic criteria for PTSD. Judge Doyle failed to ask the important question whether the first claimant's fears were objectively well-founded having regard to the fifth test in *J*. He failed also to consider whether they were subjectively held which would have been relevant to the approach in *Y & Z*. In deciding that there were very significant obstacles to the first claimant's integration into Sri Lanka it was incumbent upon Judge Doyle to examine the evidence of the availability of treatment and the mechanisms whereby the first claimant might be assisted once the risk had been assessed. For these reasons I conclude that his conclusions under the Rules and on article grounds is marred by error and is set aside.

### **Re-making the decision**

24. As I have observed above Mr Matthews relied on the matters raised in the course of his initial submissions relating to error of law. Mr Mackay supplemented the points

that he had made with further submissions with particular reference to the decision by the Court of Appeal in *Y (Sri Lanka) v SSHD* and *Z (Sri Lanka) v SSHD* [2009] EWCA Civ 362. Lord Justice Sedley sets out the *J* test and develops a further aspect where it is factually appropriate as follows, at [16]:

“16. One can accordingly add to the fifth principle in *J* that what may nevertheless be of equal importance is whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return.”

25. The first claimant relies in his grounds on Article 3 and Mr Mackay urged in his supplementary submissions to accept that the first claimant came within the category envisaged by Sedley LJ on the basis that although the first claimant’s fear was not objectively well-founded, it was sufficient to create a risk of suicide.

26. Sedley LJ considered how this might come about in [15]:

“15. ... The corollary of the final sentence of [30] of *J* is that in the absence of an objective foundation for the fear some independent basis for it must be established if weight is to be given to it. Such an independent basis may lie in trauma inflicted in the past on the appellant in (or, as here, by) the receiving state: someone who has been tortured and raped by his or her captors may be terrified of returning to the place where it happened, especially if the same authorities are in charge, notwithstanding that the objective risk of recurrence has gone.”

27. In my judgment that is not the case for the first claimant. It is undisputed that there is no objective foundation to the first claimant’s fear of ill-treatment by the Sri Lankan authorities. There is no current medical opinion as to the intensity or genuineness of the first claimant’s suicidal ideation in the context of his mental health which is described as moderate depression for which he is receiving appropriate treatment. The opinion by Dr Ramsay that the first claimant does meet the criteria for a diagnosis of PTSD invites skepticism over the first claimant’s claimed suicide intentions as do the credibility doubts expressed earlier by Judge Scobbie. The fact of the improvement in the first claimant’s depression is also relevant.

28. Judge Scobbie found at [59]:

“59. My overall conclusion is that I do not accept everything the Appellant has said overall but I do accept that, as many Tamils were, he was held by the Sri Lankan army at one point and tortured in the manner that he described. I am not prepared to go any further with regard to the Appellant’s account in general terms because of the various unanswered inconsistencies in his account.”

29. Furthermore, he observed at [63]:

“63. I have borne in mind the low standard of proof with regard to this matter but I do not believe that the Appellant has done enough to demonstrate even to the



lower standard that either he or his family were people of high profile in the Tamil community in Sri Lanka. While his family members may now be in India that does not mean that they were high profile Tamils. Nothing in the evidence demonstrates to my satisfaction that the Appellant's father was at the high level. Photographs in my view do not show a great deal. Bearing in mind my concerns relative to the overall credibility of the Appellant I did not accept that his family were of a high profile nor that the evidence demonstrated they were."

30. In my judgment, having taken all these factors in the round, the first claimant has failed to demonstrate on the lower standard that he has credible suicidal ideation or that there is a real risk he would seek to commit suicide were he to be returned or on return. He has not demonstrated that his case reaches the high threshold in Article 3.
31. Before considering Article 8 it is necessary to examine the case under paragraph 276ADE which indicates where, in the Secretary of State's view the public interest lies. The rule is focused on the obstacles the first claimant may face to his integration. In the light of my finding that the first claimant does not have a credible intention to commit suicide at any point of the removal process or on arrival in Sri Lanka where he will be safe from harm, the factor I need to consider whether his mental health will pose difficulties in reintegration. There is no evidence to rebut the Secretary of State's case on the availability of treatment which is set out in the refusal letter dated 5 October 2017. This refers to the range of psychiatric care available in Sri Lanka with quotations from a MedCOI report dated 6 May 2016 and the World Health Organisation Mental Health Act 2011 in relation to Sri Lanka. There is no evidence that the medication the first claimant is currently receiving would not be available nor any indication that the Sri Lankan state would hold back treatment for the first claimant due to his adverse encounter with the army seventeen years ago. He has family in Sri Lanka as noted by Dr Ramsay whom he can turn to and he will be accompanied by his wife and child who will provide him with emotional and practical support. There is no evidence that he will be unable to continue with the medication for his depression. I accept that after such a long absence it will be challenge for the first claimant to adjust to life again in Sri Lanka but such difficulty falls well short of the demanding test in the rule.
32. As explained in *JS (Suicide risks, Articles 3 and 8)* [2005] UKIAT 83 at [34], a decision that was cited with approval in *J*,
- "...the answer under Article 8 as a whole will rarely be different from what it would be under Article 3 if the same factors are relied on. *Bensaid* reflects that same approach while considering Articles 3 and 8 separately".
33. Article 8 was considered in *R v SSHD ex parte Razgar* where it is explained how Article 8 is engaged by the effect of removal for mental health. Unlike Article 3 interference may be justified by immigration control. As observed by Lord Carswell in [74]:

"The precise extent of the interests which article 8 is capable of protecting still remains to some degree uncertain and, as my noble and learned friend Lord Walker of

Gestingthorpe pointed out in his opinion in the present appeal, the language of some of the statements in the Strasbourg jurisprudence must be treated with some caution. It does appear to be clear enough, however, from pp 219 - 220, para 47 of the judgment in *Bensaid v United Kingdom* (2001) 33 EHRR 205 that the preservation of mental stability can be regarded as a right protected by article 8. The issue therefore is whether the removal of the appellant to a third country Germany could arguably be said to amount to a flagrant denial of his article 8 right to the preservation of his mental stability."

34. Examination of first claimant's case under Article 8 does not lead to a different result. There is no basis on which removal would impugn his moral and physical integrity under article 8. Treatment be available for his moderate depression to maintain his mental stability. The evidence does not show that he was be unable to function in society with the help and support of his family and readjust to life in Sri Lanka. There will be no flagrant denial of his rights to private life.
35. Mr Mackay accepted that the second claimant's case stood or fell with the first claimant. They will be removed together. Their child's best interests are served by remaining in the united family. In my view Judge Doyle correctly reached the following unchallenged conclusion on this aspect at [16] of his decision:
  - "16. Family life exists because the two appellants are husband and wife and they now have a young baby. In the simplest of terms, if the first appellant's appeal does not succeed then the second appellant cannot succeed on article 8 ECHR grounds because it is the respondent's intention to return the entire family as one unit. They will not be separated."
36. By way of conclusion therefore the decision of the First-tier Tribunal is set aside for error of law. I re-make the decision and dismiss the appeals by the claimants against the Secretary of State's decisions.

Signed

Date 14 February 2019

*UTJ Dawson*

Upper Tribunal Judge Dawson