



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00412/2014

THE IMMIGRATION ACTS

Heard at Glasgow
on 8th March 2016

Decision & Reasons Promulgated
on 31st March 2016

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

T M

Respondent

For the Appellant: Mrs S Saddiq, Presenting Officer

For the Respondent: Miss L Irvine, Advocate; Drummond Miller Solicitors

DETERMINATION AND REASONS

1. The parties are as above, but for consistency and ease of reference the rest of this decision refers to them as they were in the First-tier Tribunal.
2. An anonymity order was made by the First-tier Tribunal, and is confirmed below.
3. In his decision promulgated on 21st December 2015 First-tier Tribunal Judge D'Ambrosio allowed the appellant's appeal "insofar as the appellant seeks protection

against breach of his Article 3 and 8 rights related to his private life (health issues including risk of suicide)” (paragraph 145(3)), and dismissed it on other grounds.

4. The SSHD appeals to the Upper Tribunal on the following grounds:

1. ... when considering the risk of suicide at paragraphs 132 to 141 the judge failed to address the six considerations expressed at paragraphs 26 to 31 in *J v SSHD* [2005] EWCA Civ 629 (the passage is quoted in the grounds).
2. The judge was directed to ... *J* ... by the Presenting Officer, specifically paragraphs 30 and 31. However the judge has failed to make any findings whether there are effective mechanisms in both the UK and Sri Lanka which would reduce the risk of suicide and his failure to do so is a misdirection in law.
3. ... this is especially pertinent given the finding that the appellant’s fear is not well-founded and at paragraphs 123 and 124 regarding the availability of treatment in Sri Lanka and the appellant’s ability to socially reintegrate.

5. Mrs Saddiq firstly drew attention to paragraphs 124 to 127 of the First-tier Tribunal decision:-

124. The Appellant’s depression is moderate. His depression and PTSD symptoms have been kept under reasonable control by drugs ... mentioned in the medical reports. There is no reliable evidence ... that such drugs are very difficult or very expensive to obtain in Sri Lanka. He should be able to obtain them via a GP in Colombo, where he normally lived since he was about 7 years old. His depression and PTSD symptoms are not in themselves life threatening.
125. If he were deported ... the medicines and medical treatment available ... would not be so inadequate that he would suffer the equivalent of Article 3 ill-treatment.
126. Provided there is not a real risk that he will commit suicide (which I later consider) the appellant’s general state of health related to his depression and PTSD symptoms is not of itself life threatening.

6. (The emphasis is in the original.) The judge then returns to the matter:-

136. I have considered the suicide claim very carefully ... I have reasonable cause to believe that there is a real risk that the appellant will commit suicide rather than be deported to Sri Lanka ... for the following reasons.

7. The judge goes on to consider a consultant psychiatrist’s report, dated 12th November 2015, describing frequent suicidal thoughts, despite a year of weekly psychological therapy and full therapeutic doses of antidepressants. The prognosis is that symptoms will continue and that absent regular skilled psychological and drug treatment his depression symptoms would considerably worsen. Paragraph 31 of the report says the risk of suicide would be “significantly increased if he was to be removed to Sri Lanka. This risk of suicide would be very likely increased from the time he received any news of removal to Sri Lanka”.

8. The judge next refers to two clinical letters from the appellant’s psychiatrist, dated 15th September 2014 and 26th May 2015, regarding the appellant’s fragile

psychological state, and the clarity and logic of his willingness to take his own life. A further medico legal report is to similar effect.

9. The judge then says:

140. Between them, those three medical sources show that their authors (all experienced and competent professionals) consider that the appellant has little motivation to live. His paternal family and his close friend ... have all disappeared and may be dead ... Three times he was kidnapped because he was wrongly suspected of being a Tamil separatist ... on each occasion he suffered agonising torture. Whatever this tribunal may decide about risk of future torture ... he is not prepared to take any such risk. He would prefer to die...he has told [his psychiatrist] that he has ... made plans for that eventuality.

141. ... the very severe adverse effects which his deportation is likely to cause...(intended suicide) and his mental health generally are sufficient to outweigh the public interest ... his deportation will breach his article 8 rights to the article 3 standard because it will cause a real risk of suicide.

10. Mrs Saddiq submitted that the two passages are self-contradictory, and that the judge artificially compartmentalised the issues. Having found the appellant's depression and PTSD not to be of sufficient seriousness, he went wrong on the specific point of suicidal risk. He had found that the appellant had only a moderate and controllable illness, not presenting a threat to his life, and that drugs were available. Applying *J*, the judge should have found that there was no suicide risk and the appeal should have failed.
11. A rule 24 response for the appellant argues that effective mechanisms for treatment cannot be limited to the availability of drugs alone. Country guidance, *GJ and others* [2013] UKUT 00319, shows that there is no appropriate care for the mentally ill in Sri Lanka. The appellant requires more than pharmacological treatment. The evidence about his intentions was clear and the judge was entitled to accept it.
12. The rule 24 response makes a second argument. The judge finds at paragraph 142 that the appeal is to be allowed under Article 8, framed separately from the outcome at paragraph 143 by reference to Articles 3 and 8 private life health and suicide issues. The respondent has not challenged the Article 8 finding, and that alone is a reason to dismiss the appeal to the UT.
13. In her submissions Miss Irvine took the latter point first. She said it was clear from the formulation of the Secretary of State's grounds that the challenge went only to the Article 3 and not to the Article 8 conclusion.
14. Miss Irvine said that the judge's findings were not self-contradictory. The first passage could not be read separately so as to show that the second could not stand. It was subject to the condition emphasised. The judge went on to reason out his conclusion that although there was no objective justification for the appellant's fears of torture and ill-treatment on return to Sri Lanka, those fears were subjectively genuine. The judge had been referred not only to *J* but also to *Y v SSHD* [2009] EWCA Civ 362, [2010] INLR 178. Once it was accepted that the appellant held a genuine subjective fear, the judge's conclusions naturally followed. The SSHD's

grounds complained of failure to refer to mechanisms available in Sri Lanka, but the evidence about medical treatment in Sri Lanka, including that set out in the country guidance, was such that the same result must have been reached.

15. Mrs Saddiq in response said that the thrust of the SSHD's grounds was clearly intended to cover also the separate conclusion under Article 8. The grounds should be understood as broad enough to incorporate that challenge. Alternatively, she sought permission to amend. She adhered to her submission that the passages in the determination were not capable of being reconciled. She accepted that the country guidance regarding dearth of facilities in Sri Lanka was before the First-tier Tribunal. However, she pointed out that *J* requires consideration of the effectiveness of mechanisms both in the UK and in Sri Lanka. The country guidance did not go so far as to justify the present outcome. This appellant's circumstances were different from those of *GJ*. Each case turned on its own facts, so there was material inadequacy in the determination.
16. As this was a developing debate, I permitted Miss Irvine another reply. She said that it was too late now to seek to construct cases about availability of care mechanisms in the UK or in Sri Lanka. Even if it were to be accepted that the respondent has adequate mechanisms for managing suicide risks through the removal process, that removal has to take place at some point. If there is a risk in Sri Lanka, management in the UK is not an answer. There was a clear absence of any such mechanism in Sri Lanka.
17. I reserved my determination.
18. The point for the appellant about the outcome on Article 8 grounds only is shrewdly taken, but I think it is over-acute. The decision at paragraph 142 in the appellant's favour on Article 8 does not explicitly say the reason for which that outcome is reached, but it is plain enough that it depends on the suicide risk which is the explicit reason for allowing the appeal under Articles 3 and 8 in the next paragraph; and compare the summing up of the decisions reached at paragraph 145. I do not think there is any basis on which the Article 8 outcome could stand separately. The respondent's attack is wide enough to present an overall challenge.
19. Alternatively, I would have permitted amendment to the grounds to state that they are directed also against the outcome so far as expressed in terms of Article 8 alone at paragraph 142.
20. I do not uphold the SSHD's analysis that the passages in the decision at paragraphs 123 to 126 and at 136 to 141 are self-contradictory. The judge has simply found that the appellant's mental ill-health, *absent* any risk of suicide, would not make out his case, and has then reached conclusions on the specific issue on which the appeal turned. There is nothing in the first passage which undermines the second. The second is based not on an artificial separation of the evidence but on close consideration of strong medical evidence from well qualified sources.

21. The judge did not go into any consideration of evidence about the mechanisms in the UK and in Sri Lanka to reduce suicide risk. However, it does not appear that he was directed in submissions to any evidence which might have led him to a different conclusion. Although it may be assumed without enquiry that the respondent has in place appropriate mechanisms to manage risk throughout the removal process, the evidence is that similar care is lacking in Sri Lanka. As Miss Irvine said, the appellant must in the end, if deportation proceeds, be exposed to that risk.
22. The SSHD's grounds and submissions do not disclose any error which requires the determination of the First-tier Tribunal to be set aside, and it shall stand.
23. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

15 March 2016
Upper Tribunal Judge Macleman