Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/17977/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 November 2017	**On 13 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

O G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Robinson, Counsel, instructed by Elizabeth Millar, solicitor
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal came before me for an error of law hearing on 11 September 2017, following which I found an error of law in the decision of First tier Tribunal Judge Sullivan and adjourned the

appeal for a resumed hearing before the Upper Tribunal. A copy of that decision is appended.

Hearing

2. The appeal came before me for a resumed hearing on 10 November 2017, on the basis of submissions only, the Appellant having been assessed by a chartered consultant psychologist, Dr Rachel Thomas, as not being fit to give evidence [second re-examination report dated 6.10.17 at [35] & [36]].

3. I heard submissions from both parties, which I have recorded in full in my typed record of proceedings. In brief, Ms Robinson argued that removal of the Appellant would be contrary: (i) to article 3 of ECHR due to the Appellant's very poor mental health and the high risk of completed suicide; (ii) paragraph 276ADE(vi) of the Immigration Rules, given that there are very significant obstacles to his integration in Ukraine and (iii) Article 8 outside the Rules and section 117 NIAA 2002 considerations. She sought to rely upon her skeleton arguments prepared for the hearing before the FtT on 2 November 2016; the error of law hearing on 11 September 2017 and for the hearing before the Upper Tribunal, dated 9 November 2017.

4. Mr Melvin argued that the high threshold in respect of Article 3 had not been met; that Dr Thomas is not a consultant psychiatrist and so is not sufficiently qualified to diagnose that the Appellant would be at a significant risk of suicide on return. He submitted that the Appellant has parents and a brother in Ukraine and there are no very significant obstacles to his integration there. In respect of Article 8 outside the Rules, whist the Home Office accepted that he has been in the UK for 16 years he has had no leave since 2008; he is not financially independent, he is accessing to a degree healthcare in the UK. The Home Office also accept the Appellant speaks English and that there is little in the way of criminality shown, but overall the interests of a firm, fair immigration policy outweigh his article 8 private life *cf. Jeunesse v Netherlands* and there are no exceptional circumstances.

5. In her reply, Ms Robinson stated that she was surprised Dr Thomas' expertise was being questioned, not least because her first report was before the Respondent but nothing was raised as to her expertise or diagnosis *cf.* [23] of the refusal letter. Dr Thomas at page 3 of her report clearly explains the difference between consultant psychiatrists and psychologists and fully acknowledges at [43] that medication is not her area of expertise. In each of her reports she has considered causation and the consistency of reporting and that the Appellant is psychiatrically credible. Ms Robinson further reminded me that, in respect of the assessment of

the Appellant's credibility, the
starting point is the determination of Judge Malins in 2008 *cf. Devaseelan* [2002] UKIAT 00702.

The factual background and evidence

6. The Appellant arrived in the United Kingdom in November 2001, with a student visa and studied English and subsequently, for a degree in Management. He then applied for leave to remain under the International Graduate Scheme but this application was refused on the basis that the Appellant's degree was not recognised in the UK as a qualifying degree. Whilst his appeal to the First tier Tribunal was unsuccessful, the Judge in the determination promulgated on 22 April 2008 expressly found the Appellant to be a "*sincere and credible witness*" [8] and that it was unjust that, although the Appellant's degree would be recognised for the purposes of the HSMP, it was not recognised for the purpose of the IGS. The Appellant then applied for a residence card based on his long term relationship with his EEA national partner, however, this was mishandled by his previous representatives an the relationship subsequently broke down, thus the Appellant became an overstayer. A subsequent relationship with a different EEA national also broke down.

7. On 19 February 2014, the Appellant applied for leave to remain on the basis of his length of residence and private life. A report from Dr Thomas was also submitted in which she opined that the Appellant was suffering from entrenched symptoms of a Major Depressive Disorder and although he presented a mild suicide risk, this would immediately increase to a severe risk in the event of deportation to Ukraine. In a decision dated 29 April 2014, the Respondent refused the application without a right of appeal. A request for reconsideration was made, due to the deterioration in the Appellant's mental health and a new decision with the right of appeal was made on 28 April 2015.

8. At the hearing before FtTJ Sullivan, the Appellant sought to rely upon a second report by Dr Thomas dated 7.8.16 and a letter dated 4.7.16 in which she opined that the Appellant's psychiatric symptoms were considerably worse than when she had first examined him in 2014; background evidence relating to Ukraine and letters of support from friends.

9. At the hearing before me, the Appellant sought to rely upon an additional bundle of background evidence in relation to Ukraine and a short second supplementary bundle contained a third report from Dr Thomas dated 28.10.17 and a short updating witness statement

from the Appellant dated 8.11.17. I have taken all the evidence into account in reaching my decision.

My findings

10. First, I turn first to the issue of the credibility of the Appellant's account and reasons for seeking to remain in the United Kingdom. I accept the submissions made by Ms Robinson that, following *Devaseelan* [2002] UKIAT 00702*,* the decision of Judge Malins and her finding at [8] that the Appellant is a sincere and credible witness is the starting point. The Appellant's credibility was not raised in issue in the Respondent's refusal letter of 28 April 2015 and the Appellant did not attend to give evidence or be cross-examined due to his poor mental health.

11. Whilst Mr Melvin sought to raise new issues *viz* that the Respondent does not accept that the Appellant would not receive support from his family in Ukraine or that the situation has deteriorated there, I do not consider that there is anything inherently incredible in the issues raised by the Appellant at [4] of his most recent witness statement to the effect that his brother has been seriously injured in a chainsaw accident and in unable to work and his father's condition, following a stroke, has worsened and his mother is exhausted trying to look after him. I also bear in mind that at [50] of her most recent report, Dr Thomas opines: "*I do not consider that in his current psychiatric condition with severe and recurrent suicidality, that the presence of Mr G's family members in Ukraine would have sufficient positive impact to mitigate the psychiatric risk caused to him by returning there … I consider that he is most unlikely to be able to seek help from family members to whom he is seemingly much less close than to his UK based friends and has not seen for many years."* And at [52] having had regard to the Appellant's witness statement and his comments in respect of his family: "*It does not seem likely, therefore, that his family members would be able to provide the level of considerable social and emotional support Mr G would require in the event of his return."*

12. I further accept Ms Robinson's submission in respect of the expertise of Dr Thomas. At page 3 of her most recent report of 28.10.17 she sets out clearly the distinction between a consultant psychiatrist and a consultant clinical psychologist and the fact that both are trained in making clear and accurate psychiatric diagnoses but whereas a consultant psychiatrist has medical training and can prescribe and evaluate the effects of psychiatric medication, a consultant psychologist cannot. It follows that I accept that Dr Thomas is properly qualified to make a diagnosis and I accept her diagnosis that the Appellant is suffering from entrenched symptoms of Major Depressive Disorder and that the risk of suicide may well

become acute with the imminent risk of a further suicide attempt in the event of a further negative determination and/or removal directions [56]. Dr Thomas also opined at [49] that if the Appellant is informed that his appeal is dismissed he is *"likely either to attempt suicide or to become so severely depressed that he will require hospitalisation to prevent the same."*

13. Assessing the Appellant's credibility in the round and in light of the expert medical evidence in the form of the reports of Dr Thomas, I proceed on the basis that the Appellant is a credible witness.

14. I have given careful consideration to whether the clear and reasoned concern set out by Dr Thomas that the Appellant would attempt to commit suicide if it is attempted to remove him to Ukraine reaches the Article 3 threshold. I have had regard to the relevant jurisprudence *viz J* [2005] EWCA Civ 629 per Dyson LJ (as he then was) at [26]-[31] and *Y & Z* [2009] EWCA Civ 362 per Sedley LJ at [15]-[16], [46], [47], [61] and [63]. Following the principles set out therein, I find that there is a causal link between the threatened act of removal and the feared treatment and I find that the Appellant clearly has a subjective fear of return. In respect of the question as to whether Ukraine has effective mechanisms to reduce the risk of suicide, whilst it is clear from the background evidence that there are psychiatric hospitals, I note from page 10 of the bundle of background evidence (Health systems in Transition: Ukraine: Health system review 2015) concerning the treatment of mental illness in Ukraine that the supply of psychiatrists varies significantly and there are very few working in the west (where the Appellant's parents live) and at page 11 that: "*the lack of a national system for supplying medication to psychiatric patients creates a heavy burden for the patients' families, reduces access to treatment, hampers compliance and decreases its efficiency*." At pages 12-15 of the bundle of background evidence, the report by the Association of Slavic East European and Eurasian Studies May 2016 makes clear that the war in Ukraine has not only disrupted existing services for already vulnerable populations and has created new forms and crises of vulnerability.

15. I bear in mind the fact that the Appellant has resided continuously in the UK for the last 16 years and that, although he is in contact with his parents and his brother, I accept and find that they are not aware of his poor mental health nor are they in a position to support him, not because of any lack of desire on either part but due to socio-economic factors. Whilst there is some psychiatric provision available in Ukraine, I accept and find that this provision is poor in the west of the country where the Appellant's parents reside and generally provision has worsened since the war began in April 2014. I further find that, applying the judgment in *Y &*

Z at [61] that, although some psychiatric care is available, particularly in eg Kiev or other major cities where potentially the Appellant could go, in light of the psychiatric reports he would not be capable of seeking the treatment he needs. Moreover, the chances of him finding a secure base from which to seek the palliative and therapeutic care that will keep him from taking his own life is remote and the fact that that there exists a local health service capable of affording treatment does not materially attenuate this risk, which is subjective, immediate and acute. Thus, whilst in the United Kingdom I accept that the risk of the Appellant committing suicide could be managed and that he could be removed with medical escorts, I find that, based on the reports of Dr Thomas, and the background evidence, that once the Appellant is returned to Ukraine that there is a serious risk that he would take his own life. There is no evidence before me that there exist sufficient mechanisms in Ukraine to prevent this taking place. Consequently, his appeal falls to be allowed on the basis that his removal would be contrary to Article 3 of ECHR.

16. It follows that the appeal also falls to be allowed, in the alternative, in respect of paragraph 276ADE(vi) of the Rules. I find that the Appellant's mental health and the very high risk of suicide constitute very significant obstacles to his integration into Ukraine both as factors on their own and cumulatively when considered alongside the fact that the Appellant has not lived in Ukraine since 2001, his qualifications have been obtained in the UK and are in English. In any event his mental health is preventing him from seeking and maintaining employment and would preclude him from being able to support himself and integrate. I find that this would be the case even if he were to reside with his parents or his brother, in light of [50] of Dr Thomas' most recent report, set out at [11] above.

17. In light of my findings above, it is not necessary for me to go on to consider whether or not there are exceptional circumstances justifying consideration of Article 8 outside the Rules.

Decision

18. For the reasons set out above the appeal is allowed both in respect of Article 3 of ECHR and paragraph 276DE(vi) of the Immigration Rules.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

12 December 2017