



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02976/2018

THE IMMIGRATION ACTS

Heard at Field House
On 26 October 2018

Decision & Reasons Promulgated
On 22 November 2018

Before

UPPER TRIBUNAL JUDGE BLUM

Between

NS
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Colman, Counsel, instructed by S Satha & Co Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a remade decision following the setting aside of the decision of Judge of the First-tier Tribunal Malcolm (the judge) promulgated on 24 May 2018, in which he allowed, in accordance with Article 3 ECHR, the appeal of NS against the respondent's refusal, dated 19 February 2018, of NS's protection and human rights claim. In my 'error of law' decision promulgated on 30 August 2018 I described how the judge's decision involved the making of material errors on points of law. In very brief summary, the judge failed to apply the principles

established in **J v SSHD** [2005] EWCA Civ 629 and **Y & Anor (Sri Lanka Lanka) v SSHD** [2009] EWCA Civ 362 in determining whether the appellant was at risk of committing suicide, the judge failed to adequately consider the medical and background country evidence relevant to the appellant's risk of suicide, the judge failed to make necessary findings of fact, and the judge failed to give adequate reasons for accepting that the appellant had no family remaining in Sri Lanka.

2. Having set aside the First-tier Tribunal's decision I adjourned the appeal to be remade at a further hearing and gave permission to the parties to adduce further evidence relating to the applicant's Article 3 claim. Following the hearing on 26 October 2018 I directed that any further evidence of the presence of the appellant's mother in India was to be filed with the Upper Tribunal by 9 November 2018, and that any further submissions that the respondent considered appropriate to make in respect of the filed documents were to be served on the Upper Tribunal and the appellant's representatives no later than 14 November 2018. On 7 November 2018 the Upper Tribunal received a further bundle of documents from the appellant's representatives pursuant to my directions. The Upper Tribunal received no further submissions from the respondent.

Background

3. The appellant is a national of Sri Lanka, born in 1981. He arrived in the UK on 13 April 2009 and claimed asylum on 16 April 2009. His asylum claim was refused on 7 February 2011 and an appeal dismissed by judge of the First-tier Tribunal Baldwin on 31 March 2011.
4. I summarise the asylum claim advanced by the appellant. He feared the Sri Lankan authorities because of his involvement with the LTTE as a musician and because of his family's involvement with the LTTE. His father had been killed after having spoken out against the Sri Lankan government. One of his brothers was abducted and two other brothers, who were involved with the LTTE, went missing. He was arrested on 11 September 2008 at his home following an attack by the LTTE on an aircraft base. He was arrested because he did not register his name with the local police. He was placed in a small cell and beaten. After approximately 15 days he admitted that he had a brother in the LTTE. He was tortured for two days. He was released after his uncle paid a bribe. The appellant used false documents and an agent to leave Sri Lanka by air. After entering the UK he resided with his brother, J, who was a failed asylum-seeker. He also had a French national brother, Y, who was at that stage residing in France. He claimed his mother, another brother and a sister resided in India.
5. Judge Baldwin noted that the Adjudicator who dismissed J's asylum appeal found that J had worked for the LTTE on largely manual tasks but that J's claim to have more involvement with the organisation was not credible. Judge

Baldwin doubted the appellant's evidence concerning his three siblings who were said to be missing in Sri Lanka. Judge Baldwin expressed concern that a scarring report detailing scars on the appellant's body did not refer to the age of the scars. Judge Baldwin noted that the scars were found to be consistent or highly consistent with the claimed causation, but that they were "scars which may not have been caused at the time of his claimed detention." Judge Baldwin found that, if the appellant was arrested, it was not for his LTTE activity but because he failed to register with the police as required. Judge Baldwin found that, even if the appellant had been detained and ill-treated, he was released on payment of a bribe. It was unlikely that a record would have been maintained indicating anything untoward about the appellant's release from detention. If there was a record of the appellant's detention, Judge Baldwin found it likely that it would record that the authorities' concerns had been allayed. Judge Baldwin found the death of the appellant's father was unlikely to make the appellant of interest to the authorities, and that any such work as the appellant undertook in Sri Lanka for the LTTE was at an 'extremely low level'. Judge Baldwin was not satisfied that the appellant had proved that his brothers' whereabouts in Sri Lanka remained unknown, and that he had not proved that there was a real risk that he would be persecuted or seriously ill-treated in Sri Lanka.

6. It is apparent from my summary of Judge Baldwin's decision that the judge did not expressly reject the appellant's account of being arrested, detained and ill-treated by the Sri Lankan authorities. Indeed, there is no clear finding in respect of the appellant's claimed detention and torture. Mr Kotas, who represented the respondent at the 'error of law' hearing accepted this to be the case, a point lost on the author of the Reasons For Refusal Letter who inaccurately stated that Judge Baldwin found the appellant to be 'wholly incredible'.
7. After he became appeal rights exhausted the appellant applied for a residence card as the extended family member of his French national brother, NY, who was by then residing in the UK and exercising Treaty rights. The application was refused on 18 October 2013. In a decision promulgated on 2 October 2014 Judge of the First-tier Tribunal Naphthine dismissed his appeal against this refusal. Judge Naphthine rejected the appellant's claim that he was dependent on Y while he resided in Sri Lanka. There was no evidence of any financial support, and there was a discrepancy in the evidence in respect of the person with whom the appellant had been living when the financial support was said to have been sent. Judge Naphthine was not satisfied there was evidence that the appellant needed the assistance of his brother to undertake everyday tasks. Although there was a psychiatric report from Professor Lingham indicating that the appellant was suffering from PTSD, there was no mention that he was dependent on his brother and there were no records from his GP or local mental health services. While Judge Naphthine found that the appellant may be suffering PTSD but that did not mean he needed his brother's daily care. Judge Naphthine

found that the appellant "... has family in Sri Lanka who helped him before he left and no doubt they would support him upon his return."

8. Although the appellant was granted permission to appeal to the Upper Tribunal his appeal was ultimately dismissed by the Upper Tribunal on 23 February 2015 and he became appeal rights exhausted in March 2015.
9. The appellant made further submissions in support of a fresh asylum/human rights claim which, following the initiation of judicial review proceedings, led to a refusal of his further protection/human rights claim, but which attracted a right of appeal which he exercised, and which is the subject of the present appeal.

Documentary evidence

10. I had before me the decision of Judge Baldwin, promulgated on 31 March 2011, and the decision of Judge of the First-tier Tribunal Naphine, promulgated on 2 October 2014.
11. The bundle of documents prepared for the First-tier Tribunal hearing included, *inter alia*, a statement from the appellant dated 16 March 2011 (prepared for the appeal before Judge Baldwin), photographs of the appellant playing musical instruments at several events, photographs of scarring on the appellant's body, an ICRC letter dated 20 April 2009 confirming that a tracing request had been made in respect of one of the appellant's brothers before he was detained, documents confirming that NY is a French national, a death certificate stating that the appellant's father was shot dead, a psychiatric report by Dr Raj Persaud dated 18 May 2016, a Medico-Legal report prepared by Dr John Joyce of the Medical Foundation dated 27 August 2009, a letter from Dr Navaratnam of the Sangam Surgery, dated 30 January 2018 and supporting medical notes, several earlier letters written by the surgery, a letter dated 10 March 2016 from the Institute of Psychotrauma indicating that the appellant was being seen by Dr Katy Price and was attending weekly appointments, letters from Dr Price of the Institute of Psychotrauma dated 11 and 12 April 2016, letters dated 27 November 2014 and January 2015 from Dr Timothy White of the East London Community Mental Health Team, a letter from the Waltham Forest Access and Assessment Team dated 22 August 2014, several medical notes dating from 2011, and several documents relating to the appellant's gastro-oesophageal problems.
12. A further bundle of documents prepared for the First-tier Tribunal hearing included a supplementary statement from the appellant dated 4 April 2018, a statement from NY also dated 4 April 2018, and a psychiatric report by Dr Saleh Dhumad dated 31 March 2018.

13. Prior to the remade decision I received an Addendum Psychiatric Report from Dr Dhumad dated 23 October 2018, a letter from Dr rajarathnam of the Sangam Surgery, a letter from the East London NHS Foundation Trust Assessment & brief Treatment Team dated 9 October 2018, a Discharge Summary from the Whipps Cross University Hospital dated 13 September 2018, and a letter from a Psychiatric Liaison Nurse of the Whipps Cross Psychiatric Liaison Team also dated 13 September 2018. The documents provided pursuant to my directions at the end of the remade hearing included a copy and translation of the Unique Identification Authority of India card issued to RN, the appellant's mother, and outpatient cards relating to RN issued by the Tagore Medical College in Chennai, India, a letter from Dr R Raja confirming that RN is his patient at the Tagore Medical College, an affidavit from RN, and confirmation from DHL that RN sent a package from India to the appellant.

Oral evidence and submissions

14. The appellant did not give oral evidence. This was based on medical advice from Dr Dhumad, a Consultant Psychiatrist, in both of his Psychiatric Reports.
15. In his statement NY confirmed that the appellant had been living with him since 2011 and that he had moved to the UK to look after the appellant because of his state. NY explained that the appellant would become tearful and "close of completely" whenever required as to what happened in Sri Lanka. The appellant was described as being often withdrawn and distant and that most of the time he sat and stared like he was daydreaming. Whenever they discussed the appellant's immigration case started crying and became even more distant. The appellant said it would be better to die here than to die in the hands of the authorities in Sri Lanka. In his oral evidence before the First-tier Tribunal NY maintained that he was not in contact with his paternal uncle and his family and he had not been in contact since he tried unsuccessfully to call them in May 2009. Although the appellant stayed with J he 1st came to the UK, J's wife was not keen on caring for the appellant and this created ill feeling in the family. NY stated that his mother, his youngest brother and sister all lived in India. He produced an envelope said to originate from India which contained a photocopy of an Election Commission of India Identity Card relating to the appellant's mother and which was dated 19 April 2006.
16. In his oral evidence at the remade hearing NY confirmed that his mother's sister and younger brother India. He believed that one of the brothers who joined the LTTE had died, that the other brother who joined the LTTE was still missing, and that there was still no word on the brother who had been abducted. NY came to the UK in order to look after the appellant because J's wife found it difficult to look after him. NY described how, on 13 September 2018, the appellant attempted to kill himself by taking an overdose of pills. Although NY did not witness this himself, it was directly witnessed by J who telephoned NY when it happened. The appellant was immediately taken to hospital. In 2013 NY

had directly observed the appellant put a number of pills in his hand and attempt to swallow them. The appellant mentioned wanting to self-harm or die almost every day. At this point NY became quite distressed and tearful.

17. In cross-examination NY confirmed that he went to visit his family in India the beginning of 2018 and this was confirmed by stamps in his passport. His sister was married and lived close to their mother. NY confirmed he had no relatives in Sri Lanka with whom he was in contact. NY again became very emotional when asked about enquiries he made with the appellant about what happened to him in Sri Lanka. In response to questions from me NY confirmed that his wife remained in France and that he had no criminal convictions and had never been in trouble with the police in either the UK or France.
18. Both parties made submissions focusing on the issue of suicide risk. I reserved my decision.

Findings of fact and conclusions

19. Judge Baldwin did not reject the appellant's claim to have been a musician who played liberation songs for the LTTE, or that the appellant's father had been shot and killed, or that the appellant had two brothers who were involved in the LTTE. Judge Baldwin did not however accept that the appellant was detained because of these factors, or that these factors were capable of establishing a real risk that the Sri Lankan authorities would have an adverse interest in him if he were returned. Nor did Judge Baldwin find that the appellant had proved that the whereabouts of his brothers in Sri Lanka remained unknown. I approach Judge Baldwin's findings of fact as my starting point in line with **Devaseelan** [2002] UKIAT 00702.
20. There has been no appeal against judge Malcolm's finding that the appellant has no objective risk of ill-treatment by the Sri Lankan authorities. I adopt the judge's assessment and proceed on the basis that the appellant does not have a well-founded fear of persecution.
21. The appellant's diagnosis of PTSD and his assessed risk of suicide arise from his claimed fear of ill-treatment from the Sri Lankan authorities and the ill-treatment he claimed to have suffered in the past. It is therefore necessary to establish whether the appellant was indeed detained and ill-treated in the past, and whether he now holds a genuine subjective fear of torture, even if that fear is not well-founded.
22. The appellant's account of being detained and ill-treated at the end of 2008 and the beginning of 2009 is both inherently plausible and consistent with the then Country Guidance case of **TK (Tamils - LP updated) Sri Lanka CG** [2009] UKAIT 00049. The appellant's account of being detained because he had not registered with the police is measured and un-embellished, and his account of

being tortured is consistent with the background material before the Tribunal in TK. I additionally note that the appellant has consistently maintained his account over the years.

23. The Medico-Legal report prepared by Dr John Joyce on behalf of the Medical Foundation was considered by Judge Baldwin. The report contains a description given by the appellant of his detention and ill-treatment, including being burned with cigarettes, punched and struck with rifle butts, being beaten with a piece of wood, and burned with a metal bar causing a scar in the shape of the number '56'. The report then described 22 different scars on the appellant's body which were assessed in accordance with the Istanbul Protocol.
24. Judge Baldwin noted that some of the scarring was described as 'consistent' and 'very consistent' with the manner described by the appellant for their causation. In fact, 8 of the scars were described as being 'typical' of cigarette burns, and one scar, in the shape of a '56', was 'diagnostic' in that it could only have been caused by being deliberately inflicted. Under the Istanbul Protocol a classification of a scar being 'diagnostic of' means that the appearance could not have been caused in any way other than that described. It is the highest level in the assessment hierarchy. A scar that is 'typical of' means that its appearance is usually found with the type of trauma described, but there are other possible causes. This is a higher level in the hierarchy than a finding that a scar is 'very consistent' with the manner of its claimed causation. I must express my surprise that Judge Baldwin made no mention of these findings by Dr Joyce. Judge Baldwin found that the age of the scars was of "no small importance" and stated that Dr Joyce should have addressed this issue. Mr Tufan however accepted that it is generally very difficult to determine the age of a scar, a point that will be familiar to those with experience of scarring reports in this jurisdiction (and a point accepted in **KV (Sri Lanka) v Secretary of State for the Home Department** [2017] EWCA Civ 119). In his conclusion Dr Joyce stated that the appellant had a number of typical cigarette burns, and that the distinctive '56' scar could only have been deliberately inflicted and was consistent with recent patterns of torture for those coming from Sri Lanka. Dr Joyce stated, "With the above clinical findings I do not doubt that this man has been tortured as he describes." Mr Tufan did not challenge the standing of Dr Joyce as an expert and indicated that he did accept Dr Joyce's statement. Mr Tufan did not suggest that the scars were caused in a manner other than that described by the appellant.
25. In his Reasons for Refusal Letter the respondent accepted that the appellant was suffering from depression, PTSD, anxiety and suicidal ideation, and accepted that the condition of his mental health was 'fragile'. The respondent additionally noted that the appellant previously attempted to commit suicide resulting in his being admitted to hospital, and that he was previously detained under Section 3 of the Mental Health Act on an in-patient psychiatric ward. The large number of medical documents and reports, which I will soon consider in detail, confirm that the appellant is suffering from a serious mental health condition that can be

attributed to the trauma he claims to have experienced in Sri Lanka. This further supports the appellant's claim to have been tortured by the Sri Lankan authorities. Dr Persaud, a Consultant Psychiatrist who wrote a psychiatric report on the appellant in 2016, stated that the essential feature of PTSD is the development of characteristic symptoms following exposure to an extreme trauma. I am satisfied that the unchallenged and persistent diagnosis of PTSD supports the appellant's claim to have been detained and tortured, events that would, on any rational view, constitute extreme trauma.

26. I found NY to be a compellingly candid witness. He gave his evidence in a forthright and direct manner with little hesitation and no perceptible attempt at exaggeration. His evidence was measured and generally consistent with the appellant's evidence and with the documentary evidence before me, in respect of both the appellant's mental health issues and his account of his family's whereabouts. He became very emotional when questioned about his missing family in Sri Lanka and about his own attempts to probe the appellant's past, and there was nothing to indicate that he was feigning his emotions. There was nothing to indicate that he was anything other than a person of good character. I find I can attach weight to his evidence. I accept NY's evidence that he entered the UK to care for the appellant, leaving his wife in France. I additionally accept NY's description of the appellant's mental health and his care requirements.
27. Having cumulative regard to the aforementioned factors I am persuaded that the appellant was seriously tortured by the Sri Lankan authorities in the manner described. I am satisfied there is a sufficient basis for the appellant to hold a genuine subjective fear. I am satisfied, based on the appellant's statement, his brother's evidence and the photographs before me, that the appellant was a musician who played liberation songs for the LTTE. As such, he may genuinely believe that this, albeit low-level involvement with the LTTE, together with his previous detention and ill-treatment, could manifest an adverse interest in him by the authorities that would result in detention and ill-treatment. I am further satisfied, having found NY to be a credible witness, that two of the appellant's brothers were involved with the LTTE, and that his father was shot dead (supported by the unchallenged death certificate, which confirms the cause of death). I reiterate that these findings are not inconsistent with Judge Baldwin's conclusions, such as they were. I am satisfied that the combination of all these factors can establish a subjective fear of ill-treatment by the Sri Lankan authorities, and that the appellant does genuinely believe he will be tortured if he is removed to Sri Lanka.
28. The test for establishing a breach of Article 3 in the context of a suicide risk is a high one. In **J v Secretary of State for the Home Department** [2005] EWCA Civ 629 the Court of Appeal held, at [25]

"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."

29. Those tests were developed in **Y & Anor (Sri Lanka) v Secretary of State for the Home Department** [2009] EWCA Civ 362 in this way:

"15. There is no necessary tension between the two things. 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.

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."

30. I must now consider whether the totality of the evidence before me, including the medical evidence and the background evidence relating to Sri Lanka, reaches the high test as set out in J and Y.

31. There is a substantial amount of evidence that the appellant's ongoing mental health problems extend over several years. A number of medical notes from 2011 indicated that the appellant has suffered from stress and anxiety since 2008 and that he also suffered panic attacks, with some Statement of Fitness for Work documents specifically referring to PTSD. A letter dated 27 November 2014 from Dr Timothy White of the East London Community Mental Health Team and SHO to Dr Wildgrube, a Consultant Psychiatrist, described a near overdose earlier in the year which was prevented by his brother, and that in August 2014 he was diagnosed by the Mental Health Team as suffering PTSD and placed on medication. A further letter from Dr White dated 22 January 2015 contained much the same information and indicted that the appellant's symptoms worsened when he had to report to an Immigration Officer or when he had a court case. A letter from the Waltham Forest Access and Assessment Team dated 22 August 2014 also referred to the attempted overdose that was stopped by the appellant's brother and noted that the appellant continued to have fleeting suicidal thoughts with no intent or plan.

32. Dr R Persaud is a Consultant Psychiatrist whose experience and expertise were specifically accepted by the respondent in the Reasons for Refusal Letter. In his May 2016 report Dr Persaud noted the lengthy history of the appellant's mental

health issues, commenting that the maintenance of symptoms over this time indicated that the appellant's condition was "particularly serious." Dr Persaud noted, *inter alia*, the appellant's admittance to the Homerton Hospital following a suicide overdose attempt, and that he had been referred to the Institute of Psychotrauma for further counselling. He noted that the appellant received a "high dose" of Sertraline, which was also a measure of severity of his illness, and that he was also prescribed medication for sedation and to help him sleep. Dr Persaud noted that, at the time of the Psychiatric Report, the appellant was detained under Section 3 of the Mental Health Act and was being diagnosed and treated for psychosis, which rendered him unpredictable and a danger to himself. Dr Persaud diagnosed the appellant as suffering from both PTSD and depressive illness at the sever end. His symptoms included flashbacks, nightmares, low mood, tearfulness, agitation, anxiety, insomnia, suicide ideation, the inability to concentrate, startle reactions and disassociation, and anhedonia. Dr Persaud noted the appellant's fear that, if returned to Sri Lanka, he would be detained, tortured and killed. The Consultant Psychiatrist was impressed with the vividness of descriptions of past traumas and the intensity of the appellant's emotional reactions and found it highly unlikely that the core parts of his account were fabricated or exaggerated.

33. Dr Persaud placed the appellant's risk of suicide as moderate to high, with the risk increasing if the appellant fears he is at imminent risk of being returned to Sri Lanka. The Consultant Psychiatrist noted that the appellant was "plotting in terms of means", and that "... forced removal to Sri Lanka could have terrible consequences for the [appellant's] mental health."
34. In his conclusions Dr Persaud found that the appellant suffered from serious psychiatric disorders including Psychosis, Major Depression and PTSD, which was most likely secondary to his claimed past trauma. The appellant required proper PTSD counselling and therapy and anti-depressant medication and monitoring. The appellant's risk of suicide was already elevated and would become more elevated should he find himself facing removal, and that there were likely to be further suicide attempts. He also found that the appellant was not fit to give evidence.
35. The March 2016 letter from the Institute of Psychotrauma explained that the Institute is a specialist psychological therapies service for people with complex and sever PTSD, and that the appellant was being seen by Dr Katy Price and was attending weekly appointments. In her letters dated 11 and 12 April 2016 Dr Price, Highly Specialist Clinical Psychologist, agreed with a diagnosis of PTSD previously made, and that the appellant exhibited symptoms of depression, including suicidal thoughts. The appellant's symptoms were supported by scores of psychometric measures. She found that the appellant's symptoms and presentation were consistent with someone who experienced multiple and severe trauma and that they were continuous with the genuine distress of PTSD and depression and in line with other of her clients who were

assessed with similar experiences. According to the psychiatrist's report seen by Dr Price the appellant's presentation has been consistent over a number of years. Dr Price recorded a description of an attempt by the appellant to take an overdose around 2015 which was thwarted by NY.

36. A letter from the Sangam Surgery, dated 30 January 2018, indicated that the appellant had registered with the surgery in September 2014 and, since then, had been diagnosed with PTSD and Recurrent Depression. The letter confirmed that the appellant was still being prescribed the same dosage of Sertraline and Propranolol as a sedative for anxiety attacks. The appellant was also prescribed medication for acid reflux caused by stress and anxiety. The appellant was initially seen by psychiatrists in Walthamstow where he previously lived and that, on moving to East Ham, he has been under the care of the East London Mental Health Team. The appellant was seen by the Institute of Psychotrauma in 2015 and 2016 and was under the care of Dr Christine Wildgrube, Consultant Psychiatrist, with Newham CMHT North East. The GP described how the appellant found it difficult to cope with his trauma and that he also got disorientated. The GP believed the appellant would be unable to cope without his medication and suspected that he would need to be on them lifelong. Although his medication gave the appellant some relief he still had persistent low moods and thoughts of suicide which were indicative of moderate to severe depressive episodes. The appellant's mental state was described as being "very fragile" and the GP was concerned that any changes might tip the appellant "over the edge and it is highly likely that he will commit suicide."
37. A further letter from the same surgery, dated 19 October 2018, confirmed that the appellant had continuous suicidal thoughts and had attempted to overdose in September 2018 and in 2017. The appellant was currently waiting for specialist counselling from Waterloo Multi-Ethnic Counselling, and had been seen by the local community Assessment and Brief Treatment Team (ABTT) who had also agreed with further psychotrauma therapy. A letter dated 9 October 2018 from the ABTT referred to the suicide attempt thwarted by the appellant's brother in September 2018, and the appellant's claim that he would rather kill himself than face any further torture in Sri Lanka, although he did not at that time present any risk to self or others. An Emergency Department Discharge Summary from Whipps Cross University Hospital indicated that the appellant's diagnosis was 'suicidal', and a letter from the Psychiatric Liaison Team indicated that he was currently struggling with his sleep and that he felt someone was going to stab him and that, if returned, he would be arrested and possibly killed. The appellant continued to have fleeting suicidal thoughts with no intent or plan.
38. In his Psychiatric Report dated 31 March 2018, Dr Saleh Dhumad considered the previous medical documents and diagnosed the appellant as suffering a Severe Depressive Episode and PTSD, and that the most likely cause of his PTSD was the incident of torture in Sri Lanka. Dr Dhumad was of the opinion that the

appellant's risk of suicide was currently "significant" and that it was very likely to increase in the context of removal to Sri Lanka. The main risk factors in his condition were severe depression, hopelessness, and PTSD. Hopelessness had a serious and significant association with suicide risk, and the risk would be greater when the appellant felt that removal was close. The psychiatrist found that the appellant was not currently fit to give evidence. He was severely depressed, hopeless, and his concentration was poor. He was very anxious and scared of facing the Sri Lankan authorities. The psychiatrist specifically considered the possibility that the appellant might be feigning or exaggerating his mental illness. The psychiatrist indicated that he had not taken the appellant's story at face value but carefully examined his symptomology and his emotional reactions during the interview. In his clinical opinion the appellant's clinical presentation was consistent with a diagnosis of severe depression and PTSD. Dr Dhumad did not believe that the appellant was fit to fly given the state of his mental health and the risk of ending his life.

39. In his Addendum Report dated 23 October 2018, the most up-to-date of all the medical notes and reports, Dr Dhumad found that the appellant's presentation remained consistent with a diagnosis of severe Depressive Episode without psychotic symptoms, and PTSD. In the Consultant Psychiatrist's opinion, the appellant's condition had deteriorated since March 2018. The appellant was more anxious and hopeless and the risk of suicide, although currently moderate, would be significant in the event of removal to Sri Lanka. Once again Dr Dhumad was of the opinion that the appellant was unfit to attend court hearings or give evidence and he lacked the mental capacity to participate meaningfully in court proceedings.
40. Distilling the common elements from the above summary of the medical evidence leads me to conclude that the appellant has been highly traumatised by his torture in Sri Lanka and, based on the expert views of two separate Consultant Psychiatrists, he is likely to be at significant risk of suicide if he is returned to Sri Lanka because of his genuine subjective belief that he will be detained and tortured. I note the unchallenged evidence that the appellant has, on several occasions, attempted to overdose and that he has been admitted to hospital on two occasions after attempting to overdose. I find, applying the guidance established in both **J** and **Y** that the potential consequences for the appellant do attain the minimum level of severity and that the causal link exists between the act or threat of his removal and the commission of suicide. I bear in mind that the threshold is particularly high given that this is a foreign case, and that the appellant's fear is not well founded, but I have found that the appellant has a genuine fear of torture and that this fear was based on the intentional infliction of harm on the appellant by the authorities in Sri Lanka.
41. I must consider whether Sri Lanka has effective mechanisms to reduce the risk of suicide, and to determine the circumstances in which the appellant will find himself if returned.

42. Judge Baldwin was not satisfied that the appellant had proved that the whereabouts of his brothers were not known, noting that the appellant had not approached the Red Cross for an update in respect of his brother who was abducted, and that there were no attempts to trace his two brothers who were with the LTTE. Judge Napthine, in the short decision dated 2 October 2014 arising from the appellant's application for an EEA residence card as an extended family member, made brief reference to the appellant having "... family in Sri Lanka who helped him before he left and no doubt they would support him upon his return." There was however no evidence given as to the whereabouts of the appellant's brothers, and Judge Napthine was not asked to determine whether the appellant had any family in Sri Lanka. I approach the factual findings of both judge Baldwin and Judge Napthine as my starting point.
43. Judge Baldwin did not have the benefit of hearing evidence from NY. The evidence from NY post-dates Judge Baldwin's decision. I have found NY to be generally credible. NY explained that he has not had any contact with family in Sri Lanka since 2009 as a consequence of the dispersal of his family as the conflict escalated and concluded. NY's mother was an only child and NY has been unable to contact any family on his father's side, including his paternal uncle. I bear in mind the difficulties of proving a negative, and I note what appeared to be a genuine and spontaneous display of emotion by NY when asked questions about his missing brothers. Given the large number of people displaced and killed at the end of the conflict, it is inherently possible that the whereabouts of the appellant's siblings remains unknown. NY's evidence in respect of the presence of his mother, sister and younger brother in India is supported by the envelope containing the photocopy of his mother's Election Commission of India Identity Card (which has a barcode sticker from an Indian courier company), the Unique Identification Authority of India card issued to the appellant's mother (RN), outpatient cards relating to her issued by the Tagore Medical College in Chennai, India, a letter from Dr R Raja confirming that RN is his patient at the Tagore Medical College, an affidavit from RN, and confirmation from DHL that RN sent a package from India to the appellant. Having carefully considered the oral evidence from NY and having found NY to be a credible witness, and having cumulative regard to the totality of the evidence before me, I am satisfied that the appellant does not have any family in Sri Lanka with whom he or his brothers in the UK are in contact, and that, if returned, there would no supportive family network.
44. In **GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**, in the context of an appellant who had also been tortured, whose fear was not well-founded but who genuinely believed he would be targeted, and who was at high risk of committing suicide, the Upper Tribunal considered the evidence relating to the mechanisms for mental health treatment.

“454. The evidence is that there are only 25 working psychiatrists in the whole of Sri Lanka. Although there are some mental health facilities in Sri Lanka, at paragraph 4 of the April 2012 UKBA Operational Guidance Note on Sri Lanka, it records an observation by Basic Needs that "money that is spent on mental health only really goes to the large mental health institutions in capital cities, which are inaccessible and do not provide appropriate care for mentally ill people"

455. In the UKBA Country of Origin Report issued in March 2012, at paragraph 23.28-23.29, the following information is recorded from a BHC letter written on 31 January 2012:

"23.28 The BHC letter of 31 January 2012 observed that: "There are no psychologists working within the public sector although there are [sic] 1 teaching at the University of Colombo. There are no numbers available for psychologists working within the private sector. There are currently 55 psychiatrists attached to the Ministry of Health and working across the country."

Post Traumatic Stress Disorder (PTSD)

23.29 The BHC letter of 31 January 2012⁴⁶⁸ observed that:

"Post Traumatic Stress Disorder (PTSD) was first recognised in Sri Lanka in patients affected by the 2004 tsunami. Many of the psychiatrists and support staff in Sri Lanka have received training in Australia and the UK for the treatment of the disorder. A Consultant Psychiatrist from NIMH said that many patients often sought ayurvedic or traditional treatment for the illness long before approaching public hospitals, adding that this often resulted in patients then suffering from psychosis.""

45. The Upper Tribunal then concluded,

“456. We note that the third appellant is considered by his experienced Consultant Psychiatrist to have clear plans to commit suicide if returned and that he is mentally very ill, too ill to give reliable evidence. We approach assessment of his circumstances on the basis that it would be possible for the respondent to return the third appellant to Sri Lanka without his coming to harm, but once there, he would be in the hands of the Sri Lankan mental health services. The resources in Sri Lanka are sparse and are limited to the cities. In the light of the respondent's own evidence that in her OGN that there are facilities only in the cities and that they "do not provide appropriate care for mentally ill people" and of the severity of this appellant's mental illness, we are not satisfied on the particular facts of this appeal, that returning him to Sri Lanka today complies with the United Kingdom's international obligations under Article 3 ECHR.”

46. The Reasons for Refusal Letter provided extracts from “Sri Lanka – medical issues – mental healthcare (18 Aug 2016)” noted, with reference to a bulletin published in 2013, that there were 60 consultant psychiatrists (amounting to 0.3 psychiatrist for 100,000 inhabitants), that there were 90 medical officers with a diploma in psychiatry and 150 medical officers in mental health, that private

healthcare services offer mostly ambulatory services, private GP practitioners, specialist centres and hospitals providing outpatient services. There were some NGOs working with the government services in mental healthcare, and reference was made to a WHO Atlas from 2010 outlining a mental health plan. The WHO Atlas noted that prescription regulations authorised primary healthcare doctors to prescribe psychotherapeutic medicines but with some restrictions, but that the department of health did not authorise primary healthcare nurses prescribing such medicines, and primary healthcare nurses were not permitted to independently diagnose and treat mental disorders within the primary care system. The same 2010 report indicated that the majority of primary healthcare doctors and nurses had received official in-service training on mental health within the previous 5 years. A MedCOI* report from May 2016 noted that inpatient and outpatient treatment was available in Jaffna from a psychiatrist, and that there was psychiatric treatment in the form of daycare, psychiatric counselling, psychiatric crisis intervention in case of suicide attempt, and psychiatric treatment of PTSD. Some of this treatment was available in Vavuniya, but the crisis intervention was not mentioned. There were no additional details of the number of psychiatrists, and no details or assessment was provided as to the efficacy of such treatment.

47. Much of the background evidence relied on by the respondent to show the availability of mental health treatment pre-dates the decision in GJ and suggests that the resources available are very limited. The May 2016 report describes treatment in Vavuniya but does not indicate that there is any psychiatric crisis intervention. There is no reference in the more recent information about the restrictions on psychiatric nurses prescribing medication. I additionally note that the appellant will be returned to Colombo and not Vavuniya, and would presumably have to make his own way to his home area, having to first confront Sri Lankan officials at the airport. The appellant will be returning to a place where he has a strong fear of the authorities and would be without any family support. The information provided by the respondent post-dating GJ is limited and suggests, given the limited number of professional qualified in mental health services, that there will not be appropriate care for someone such as the appellant who is an extremely vulnerable individual, who suffers from severe mental health issues, who has already attempted suicide on several occasions, and who has a strong fear of the authorities. I am satisfied that Sri Lanka does not have effective mechanisms to reduce the risk of suicide for this particular appellant given the nature and seriousness of his mental health condition. I am therefore satisfied that the appellant's removal would render him at high risk of suicide and, in the absence of effective mechanisms, his removal will breach Article 3.

Notice of Decision

The appeal is allowed on human rights grounds under Article 3

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.



15 November 2018

Signed

Date

Upper Tribunal Judge Blum