



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01498/2018

Heard at Bradford  
on 29 January 2020

Decision Promulgated  
2 March 2020

**THE IMMIGRATION ACTS**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MS  
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr G Brown instructed by BA Chambers Solicitors.

For the Respondent: Mr M Diwnycz Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. On 30 May 2019 Upper Tribunal Judge Hemingway set aside the decision of a judge of the First-tier Tribunal. None of the findings were preserved.
2. The matter comes before the Upper Tribunal today, following the making of a judicial transfer order, for it to substitute a decision to either allow or dismiss the appeal.

## Background

3. The appellant, MS, is a female citizen of Mauritius born on the 2 September 1978.
4. MS arrived in the UK and was granted entry clearance on 26 August 2004 as a visitor, with leave valid to 28 February 2005.
5. Further leave as a student was granted from 23 December 2004 which was extended on occasions so as to expire on the 30 September 2009.
6. On 12 October 2016 MS was referred to the National Referral Mechanism.
7. MS formally claimed asylum on the 22 November 2016.
8. The core of MS's case, summarised at [10] of the reasons for refusal letter, is that after three months of arriving in the UK she moved in with an aunt who was financing her studies but later ran away from her aunt's house and began a relationship with a man who said he would help MS to obtain a student visa. The man took the money from MS for the fees but attempted to pay the fee using a fake credit card, as a result of which MS claims the college told her she would have to pay double the original fee or she would be reported to the authorities.
9. MS claims the man took not only her money but also that raised from jewellery she was made to pawn and then left with MS's best friend.
10. In or around December 2010 MS's employer asked to see her visa which she confessed had expired as a result of which she was unable to work there. MS was threatened with eviction when she met two other people she names as [JP] and [SP] who said they would assist MS as a result of which she moved in with them in January. MS claimed she knew [SP] from Mauritius.
11. The family had three children. MS worked as a cleaner for them and other families. MS was paid by the other families and would have to pay bills for the [P]'s at times from her funds.
12. MS began an affair with [SP] which she states he instigated. He also claimed he would marry MS when he obtained his own immigration papers. MS claims she felt she had no other option.
13. In October 2016 [JP] learned of the relationship following which MS was forced to leave the house.
14. MS claimed a real risk on return from associates of [JP] and [SP] as a result of the affair.
15. The respondent accepted the appellants nationality but not the claim to face a real risk as claimed.
16. In her latest witness statement dated 22 January 2020 MS claims she fell pregnant twice as a result of the affair, having an abortion on both occasions.
17. At [8-15] of that statement MS writes:
  - "8. I have been tortured and hurt by those who I thought were going to help me. From my first boyfriend [SR] and Mr and Mrs [P]. My life has been destroyed by others and I am still being made to suffer, my mental health problems mean I cannot remember things I cannot sleep properly I live in fear all the time.

9. My life is broken I am all alone and have no one, if I was sent back where would I go? Once I get off the plane who will help me? I have nothing and no one to go back too, Mrs [P] told me she will have me killed once I go back. My life is not safe. My family do not speak to me I have lost all contact with everyone in my home country, my brother and aunty in the UK have disowned me.
  10. Mr [P] is a singer from Mauritius his wife is a promoter they do events and are very popular and well known with contacts with the government and are powerful, I have seen so many singers in their home when I used to live there, these rich people would take drugs at the house. Both Mr And Mrs [P] know all sorts of people and can get anything done. They will harm me no matter what.
  11. The only help I have is from my support workers who listen to me and support me, I am on medication and see my GP on a regular basis.
  12. I am not in a good place I have tried and tried to get evidence but I am alone what can I do on my own? Who can I turn to? Who will support me? Mr [P] and his wife will have people track me and find me to harm me.
  13. In respect of future fear, I confirm that if I was returned to Mauritius I will be Killed as [SP] has threatened me and my family. Also if I return back I will have no one to return to as my father has disowned me.
  14. In respect of Article 8. I can confirm that I have built my life here; I have studied and worked in the UK. I have started living my life the way I want and trying to enjoy life as much as I can. I know there have been issues with the couple however if I was to return I will be killed."
18. On 12 October 2016 MS was referred to the Competent Authority for it to consider whether there were reasonable grounds to believe she was a victim of modern slavery. On 17 October 2016 the Competent Authority informed MS there were reasonable grounds to believe she was a victim of human trafficking. Following the review process involving a careful consideration of the case it was concluded, in a decision dated 15 January 2018, that there are not sufficient grounds, on the balance of probabilities, to believe MS has been a victim of modern slavery resulting in her claim being refused in the Conclusive Grounds Decision.
19. MS's account was found to be inconsistent. It is written in the decision:
- "You state that you moved in with your Aunt's cousin in 2007 who was abusive to you. Following this you had to arrange to finance your own studies. You state that in 2009 your visa expired; you were struggling to pay the fees, your then boyfriend paid via a false card and so the college withheld your passport and charged you double (AIR Q36-62).
- However UKVI records note that the college stated you had paid the fees in full and had bank statements showing you had £1666.29 in your account. There was a sponsorship letter from your Uncle however this was not accepted as he was not your father or your official sponsor. This information is inconsistent with your account. It is considered inconsistent that the college did not inform the Home Office of non-payment of fees."

20. It is also noted MS reported Mr [P] to the police for rape but later retracted the statement. In the decision, in relation to this aspect, it is written:
- “Weight is attached to the information received from the Metropolitan Police on 12/01/2017. This provided details as to why the allegations you made against the couple were closed with no charges made; you were free to come and go from the property, had a key and later stated you had not been raped. It is considered this adds weight to the view that you were not subjected to actions amounting to modern slavery.”
21. It was not accepted MS had been subjected to an active transportation/recruitment/harboursing/receipt and faced an abuse of power whilst in a position of vulnerability. Her claim was not found credible by the decision-maker.
22. In relation to the question of whether MS had been recruited/transported/transferred/harboured/received for the purposes of sexual exploitation, it was not considered that MS was subjected to sexual exploitation. The decision-maker, in the alternative, reports that even if MS’s claim that her aunt’s husband tried to influence her to sleep with him and threatened her if she ever told her aunt, MS chose not to enter into such a relationship and was not exploited by the aunts husband in any way, which did not therefore constitute sexual exploitation.
23. The decision maker accepted that if MS’s claim that she voluntarily entered into a relationship with her aunt’s nephew who lived in the same house and whom she went to live with in Brighton around 2007 was true, in which MS claimed the man used her for sex and was occasionally violent, this indicates MS faced domestic violence but that the same was not sufficient to amount to sexual exploitation.
24. The decision-maker was not satisfied MS had established domestic servitude on the facts of the case.
25. In relation to the alleged abuse by Mr and Mrs [P], the decision-maker notes MS’s claim that she met Mr [P], a former school friend, on the street and agreed to go and stay with him and his wife. The decision maker noted MS’s claim to have been raped by Mr [P], a claim she later retracted having admitted she was having an affair with him; although she claimed he took advantage of her situation and told her he would marry her when he obtained his papers which he obtained via his relationship with Mrs [P]. MS told the decision maker that Mr [P] was violent and that she feared being abused by him.
26. The decision-maker was not satisfied MS had established she was subjected to sexual exploitation. MS entered into a relationship voluntarily with a promise to marry but that when Mrs Prem learned of the affair there was an argument in which Mr Prem blamed MS and her keys were removed from her after which she never returned to the household.
27. On the basis of the evidence as a whole the decision-maker was not satisfied MS met the three constituent elements of the trafficking definition or two constituent elements of slavery, servitude and forced/compulsory labour on the balance of probabilities.

28. MS also seeks to rely upon evidence by way of a witness statement from Rachel Winterbottom of the City Hearts Integration Support Programme based in Sheffield, dated 22 January 2020. MS was referred to this organisation having exited the NRM following the negative Conclusive Grounds decision. Support from the programme commenced in February 2019. Ms Winterbottom states that MS has presented with low mood frequently and being stressed, anxious and emotional and gets confused and is incoherent if stressed and anxious. The letter refers to MS seeing her GP about her mental health as a result of which she was referred to the mental health services and to the Doncaster Rape Sexual Abuse Counselling Service (DRSACS). Due to there being a six-month wait for counselling City Hearts referred MS to their counselling service as a result of concerns about her declining mental health. Ms Winterbottom states in the letter:

“[MS’s] symptoms are symptomatic with trauma, which are likely to have been caused by the previous exploitation and sexual abuse that she has been subjected to in the past and exasperated by the prospects of returning to Mauritius and not being safe. I have witnessed these same symptoms in other victims of human trafficking and modern slavery and am of the opinion that [MS] is indeed a victim of human trafficking and modern slavery. She is a vulnerable adult with poor and fragile mental health who would suffer upon return to her country. This should be taken into consideration in the making of a decision on her asylum claim.”

29. A report from a counsellor of Gardenia Counselling Services, dated 22 January 2019 (assumed to be a dating error which should have read 2020), refers to MS beginning counselling on 25 October 2019 where she presents with symptoms of PTSD, high levels of anxiety and overwhelming fear.

30. The counsellor in the letter records:

“[MS] was trafficked by people within her own tight knit cultural community and feels very betrayed by them. After being forced into domestic servitude, she was then repeatedly raped by the man she was employed by. This has had an extremely detrimental effect on [MS’s] psychological and emotional well-being.

[MS] lives in fear that she will be found by her traffickers and fears for her life and that of her family back home, as she has received death threats by a message for both herself and her parents.”

31. The counsel’s opinion is that further counselling/therapy will be required.

32. There is also a report from bpas (British Pregnancy Advisory Service) confirming MS had an abortion on 14 May 2014 and a second document with a different reference, from the same organisation, dated 1 November although the year of its issue is not specified. It is assumed MS provides the same as evidence of the two abortions.

33. A letter from MS’s GP addressed to her solicitors dated 22 January 2020 is in the following terms:

“I have been reviewing MS since September 2019. I have reviewed her with multiple problems including both physical and psychological. These comprise of muscle and joint pains which are possibly due to fibromyalgia. She has also been struggling with psychological symptoms including low mood and anxiety. She

also has symptoms in keeping with PTSD which includes flashbacks and nightmares about previous experiences of abuse prior to being in the United Kingdom. She has been referred to a specialist counselling service called DRASACS she is also currently on medication for her psychological problems. This is Citalopram 20mg once daily which is an antidepressant. She also uses a number of eyedrops.

MS has clearly been under an enormous amount of stress for the period of time that I have been reviewing her. She has often talked about the significant impact that her asylum case is having on her.

Although I cannot say with certainty the exact impact that being forced to Mauritius would have on her I think it would be reasonable to say that it would have a significant impact on her mental health at least in the short-term. This would likely comprise of her having further issues with low mood and anxiety symptoms."

34. All the available medical evidence has been considered, even though there may be no specific reference to the same, together with the country information relating to Mauritius.

### **The Advocates Submissions**

35. The case proceeded by way of submissions only. Throughout a careful eye was kept upon MS who did not show adverse signs of being unable to cope with the proceedings such that any reasonable adjustment was required and nor was any suggested by Mr Brown. MS's situation and presentation has been factored into the decision-making process in accordance with guidance for vulnerable witnesses.
36. Mr Brown submitted the issue was whether it was believed MS is a victim of trafficking. He submitted MS had given credible evidence of her experiences and that when she came to the United Kingdom, bar suffering from migraines, she was in good health which is not the position now. Mr Brown sought to rely upon the recent GP report together with the medical earlier report of Dr Cowan a Consultant Psychiatrist dated 28 July 2018 which it was submitted is supportive of MS's account.
37. Mr Brown submitted the evidence raises the issue of the risk of suicide in light of her psychological problems which arose due to the controlling behaviour of her employers. MS does not know where her former employers are, and they could be back in Mauritius.
38. Although there was some evidence regarding sufficiency of protection this will not assist MS as she has no support from her family either whom she claims to have abandoned her and who but are not willing to persist.
39. Mr Brown submitted it should be accepted MS was trafficked by her employers who are people with reach beyond the United Kingdom and, in the alternative, if that is not the case that her private life becomes an issue.
40. It was submitted the evidence shows MS is a vulnerable person who is fragile and not able to cope on her own on return. There is also the risk of suicide with no evidence that the respondent has put any steps in place to minimise any such

risk. MS's mental health will deteriorate if returned with increased risk of suicide. MS also needs assistance by way of counselling and the lack of such support gives rise to an article 8 claim as it will impact upon her moral and physical integrity.

41. Mr Diwnycz refers to the respondent's decision and accepts the medical evidence is relevant. The report of Dr Cowan is noted and her professional opinion of the risk of suicide at the date the report was written, added to which there is now the GP letter 22 January 2020 containing the GPs opinion. It is submitted the question is whether that evidence is enough to show it was a real risk of suicide sufficient to engage article 3.
42. Mr Brown in response stated that it was necessary to consider the background evidence as a whole that in relation to the private life Article 8 and the impact upon MS's mental health due to lack of mental health public support in Mauritius. It was submitted the evidence is supportive of a claimed real risk if MS is removed from the United Kingdom such that the appeal should be allowed.

### Discussion

43. It is not disputed that MS's distress is real. In the copy of her medical records provided to the respondent on 1 March 2017 there is an entry recorded by a counsellor dated 25 November 2016 in the following terms:
 

"History: 2ns session - shared a lot of her past experiences. Voiced regret, shame and a lot of fear. She said I went from one place to another trusting people that ended up being used. Said "I feel like a tissue that people used and thrown in the bin". We explored what this felt for her and she said "I have WHY WHY WHY and how did all this happen to me and WHEN will it end"."
44. A person falling in with those who may not share proper values or who are prepared to take advantage of individuals or who are trusted as to their personality, intentions, and demeanour taken as according with those of another person, but which later turn out otherwise does not, per se, entitle a person to a grant of international protection.
45. MS entered the United Kingdom as a visitor and then a student. She stayed with an aunt. There is no credible evidence of difficulties being experienced with this relative. MS claims as a result of problems with her uncle she was forced to leave this accommodation and fell in with a third party who took the money she provide for the payment of her college fees which he then tried to pay for with a false credit card, which has been shown to be a claim that lacks credibility for the reasons set out in the conclusive decision following the college confirming that the fees had been paid in full with MS providing evidence of further funds being available to her.
46. The evidence supports MS's claim to have had an abortion which ties in with her claim to have had a sexual relationship. Although MS initially reported having been raped to the police when the relationship with Mr and Mrs [P] broke down the allegation was later withdrawn. The evidence supports a

finding that although MS may have been misled the relationship with Mr [P] was consensual.

47. That is not to undervalue the distress that will no doubt have been felt by MS when she realised she was being used by this individual, as a result of the abortion, and what she may have felt by his betrayal when Mr Penn blamed her for their relationship when this was discovered by his wife.
48. In relation to the submission by Mr Brown that MS is a victim of trafficking/modern day slavery, this was considered and rejected following the NRM referral.
49. In DC (trafficking: protection/human rights appeals) Albania [2019] UKUT 351 it was said that:
- (i) In a protection appeal, the "reasonable grounds" or "conclusive grounds" decision of the Competent Authority (CA) will be part of the evidence that the tribunal will have to assess in reaching its decision on that appeal, giving the CA's decision such weight as is due, bearing in mind that the standard of proof applied by the CA in a "conclusive grounds" decision was the balance of probabilities;
  - (ii) In a human rights appeal, a finding by the tribunal that the CA has failed to reach a rational decision on whether the appellant has been the victim of trafficking, such as to be eligible for leave to remain in the United Kingdom for that reason alone, may lead the tribunal to allow the human rights appeal, on the basis that removing the appellant at this stage would be a disproportionate interference with the appellant's Article 8 ECHR rights. This scenario is, however, of narrow ambit and is unlikely to be much encountered in practice (the UT stressed that all the tribunal would be finding would be that removal would be disproportionate before the respondent was able to rectify the failure);
  - (iii) In a human rights appeal, the question whether the appellant has been the victim of trafficking may be relevant to the issue of whether the appellant's removal would breach the ECHR, even where it is not asserted there is a trafficking-related risk of harm in the country of proposed return and irrespective of what is said in sub-paragraph (ii) above: e.g. where the fact of trafficking may have caused the appellant physical or psychological harm. Here, as in sub-paragraph (i) above, the CA's decision on past trafficking will be part of the evidence to be assessed by the tribunal.
50. It is not made out on the evidence that the decision of the Competent Authority in this case is irrational. Even though the question of whether MS is a victim of trafficking/modern slavery was considered the balance of probabilities rather than the lower standard applicable to a protection appeal, it is not made out that the findings on either basis are unsafe. The evidence from the college clearly undermined completely MS's claim in relation to that core aspect of the case. The evidence from the Metropolitan Police and other sources made available, including the appellant's own statements and medical reports, support the conclusion that the real issue is the trust MS put in certain people but ended up feeling being used by them.



51. The Office of the United Nations High Commissioner for Refugees (UNHCR) guidelines on international protection state: 'An important aspect of this definition is an understanding of trafficking as a process comprising a number of interrelated actions rather than a single act at a given point in time. Once initial control is secured, victims are generally moved to a place where there is a market for their services, often where they lack language skills and other basic knowledge that would enable them to seek help. While these actions can all take place within one country's borders, they can also take place across borders with the recruitment taking place in one country and the act of receiving the victim and the exploitation taking place in another. Whether or not an international border is crossed, the intention to exploit the individual concerned underpins the entire process.'
52. It is not made out on the evidence that MS has been the subject of threat or use of force or other form of coercion to achieve the consent of any of the other individual she refers to having control over her. MS fails to establish that any consent which she clearly gave to the sexual relationship, the paid and unpaid employment in her aunts property as a result of obtaining rent-free accommodation, was obtained as a result of the threat of force, abduction, fraud, or abuse of power, although MS's claim based upon the deception of Mr [P] and her alleged position of vulnerability is noted. It is not made out however that any deception that may have been employed is such as that which occurs when a person ends up being exploited through prostitution who may originally have been under the impression there were legitimate education or employment opportunities.
53. It is not made out that MS is a victim of exploitation such as to enable a finding to be made that this is a modern slavery case on the facts.
54. There is also no credible evidence of physical coercion against MS, including the threat of the use of force or the actual use of force against her, or withholding travel or immigration documents.
55. There is no credible evidence of the use of psychological coercion such as blackmail, forcing MS to pay an excessive amount of money for substandard accommodation, making significant deductions from her 'salary', threats of rejection from, or disapproval by a peer group or family members or social stigma. It is in particular not made out this is a case in which MS has been exploited sexually or subjected to sexual exploitation or other forms of sexual violence to entice her over time to take part in activity in which she may not be an entirely willing participant.
56. It is also not made out MS has been trafficked for the purpose of 'exploitation' in the form of either: sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, forced criminality, removal of organs (also known as organ harvesting), on the facts.
57. The relevant issues in such cases is the purpose of the acts a victim complains of. It is not made out the intention of those involved was for the purposes of exploitation. It is not made out on the facts this is a gender related violence case.
58. Nor is it made out that such aspects, in any event, tip the balance of the article 8 assessment in MS's favour.

59. In relation to the risk of suicide Mr Diwnycz referred to [11-13] of the report of Dr Cowen which is in the following terms:

“11. Suicide: [MS] took some preparatory steps to end her life but was talked out of this by a friend she met in a shop whilst thinking of buying the pills. It is difficult to know, had she not met the friend, whether she would have taken any further steps i.e. actually purchased the pills and taken them. She has taken no preparatory steps towards suicide either before or since. Even though she may have had suicidal thoughts, she has been able to argue herself out of these.

12. Risk of suicide if returned to Mauritius: [MS] told me that she had not considered being returned to Mauritius as a possibility, despite the fact that the Home Office could decide to deport her. [MS’s] assertion that she has “never been free” and doesn’t know her own mind, combined with comments from her counsellor suggesting that she isn’t very realistic, makes me think that she struggles, and has always struggled, to cope with difficult situations. When pressed as to what she would do about accommodation in Mauritius eventually she told me she would live with her family. She was pessimistic about her chances of gaining employment. She did not mention suicide as a response to being returned to Mauritius. Obviously a suicide attempt could not be ruled out, and suicide attempts are not necessarily related to the severity of a mental illness. However given MS’s past history (see above, J.11)) it is unlikely that MS would make a serious suicide attempt faced with return to Mauritius.

13. MS fears that Mr and Mrs Pam could harm her or her family were she returned to Mauritius on the basis of threats they have made. I have no way of knowing whether MS’s fears are realistic; her fears regarding this are not, however, based on any delusional thinking.”

60. The reference to the ability to return to live with family in Mauritius was noted by Dr Cowen. There is no credible evidence this option is no longer available to MS or that she will not receive support from this source if returned.

61. There is also recorded in the copy of MS’s medical records constant reference to there being no active suicidal thoughts detected.

62. It is accepted that in principle, the risk of suicide can engage Article 3, but the threshold is very high. In J v SSHD [2005] EWCA Civ 629 the Court of Appeal set out the test in Article 3 cases as follows. (i) the feared ill treatment must be of a minimum level of severity; (ii) a causal link must be shown between the act of removal and the inhuman treatment relied on; (iii) in a foreign case the Article 3 threshold will be particularly high. (iv) in principle it was possible for an Article 3 case to succeed on the basis of a risk of suicide and (v) in a foreign case of suicide risk it would be relevant to consider whether the fear of ill treatment in the receiving state was objectively well founded; if not, this would weigh against there being a real risk of there being a breach; and (vi) it would also be relevant to consider whether the removing and/or the receiving state had effective mechanisms to reduce the risk; if there were, this would also weigh against there being a real risk of a breach. The Court of Appeal went on to say that the Tribunal was correct to consider separately the risk of treatment contrary to Article 3 in the UK, in transit and in Sri Lanka. In relation to the risk

in the UK it was open to the Tribunal to conclude that the risk of suicide in the UK would be adequately managed by the UK authorities and that in combination with the support of the appellant's family they could bring the risk of suicide to below the Article 3 threshold when the decision to remove was taken. In relation to the risk of suicide on route the Tribunal was entitled to infer that the Secretary of State would take all reasonable steps to discharge his obligations under section 6 of the Human Rights Act and take judicial notice of the arrangements that the Secretary of State made to escort vulnerable persons on return. In relation to the risk of suicide in Sri Lanka the Tribunal was entitled to take into account the evidence that there would be family support on return, that the claimant would have access to medical treatment, and that his fears of persecution were not objectively justified.

63. In AA (Iraq) [2012] EWCA Civ 23 the Court of Appeal acknowledged distinguished between "domestic" cases, where the risk is of suicide in this country on being told of the decision or of suicide in transit, and "foreign" cases, where the risk relates to the situation after arrival in the receiving country. The Court said "Any Immigration Judge is entitled to take the view that the risk of suicide in the UK upon learning of a final decision to remove her would be adequately managed in this country by the relevant authorities: see J, ante, paragraph 57. ... Moreover, the Immigration Judge would be entitled to assume that the Home Secretary would take appropriate measures to guard against any suicide attempt during the relatively brief transit to Belgium, including the provision of appropriately qualified escorts: see J, paragraphs 61 and 62."
64. In AXB (Art 3 health: obligations; suicide) Jamaica [2019] UKUT 397 it was confirmed that where an individual, asserts that he would be at real risk of committing suicide, following return to the Receiving State, the threshold for establishing Article 3 harm is the high threshold described in N v United Kingdom [2008] ECHR 453, unless the risk involves hostile actions of the Receiving State towards the individual, which does not in MS's case.
65. Also in AXB it was found (i) In a case where an individual, asserts that his removal from the Returning State would violate his Article 3 ECHR rights because of the consequences to his health, the obligation on the authorities of a Returning State dealing with a health case is primarily one of examining the fears of an applicant as to what will occur following return and assessing the evidence. In order to fulfil its obligations, a Returning State must provide "appropriate procedures" to allow that examination and assessment to be carried out. In the UK, that is met in the first place by an examination of the case by the Secretary of State and then by an examination on appeal by the Tribunal and an assessment of the evidence before it; (ii) There is no free-standing procedural obligation on a Returning State to make enquiries of the Receiving State concerning treatment in that State or obtain assurances in that regard. Properly understood, what is referred to at [185] to [187] of the Grand Chamber's judgment in Paposhvili concerns the discharge of respective burdens of proof; (iii) The burden is on the individual appellant to establish that, if he is removed, there is a real risk of a breach of Article 3 ECHR to the standard and threshold which apply. If the appellant provides evidence which is capable of

proving his case to the standard which applies, the Secretary of State will be precluded from removing the appellant unless she is able to provide evidence countering the appellant's evidence or dispelling doubts arising from that evidence. Depending on the particular circumstances of the case, such evidence might include general evidence, specific evidence from the Receiving State following enquiries made or assurances from the Receiving State concerning the treatment of the appellant following return.

66. The evidence does not establish a credible real risk of suicide although it is accepted MS might react adversely to being told she is to be returned to Mauritius. It is not made out treatment will not be available in the United Kingdom and MS has failed to show that any treatment that will be required will not be available in Mauritius from doctors in primary, secondary and/or tertiary health care facilities if required. It is accepted the standard of care for mental health issues is not the same in Mauritius as in the United Kingdom, but MS fails to establish the services that are available will not be sufficient to prevent a breach of article 3 on return.
67. MS claims to have a fear on return from Mr and Mrs [P] but even if Mr [P] is a singer who may return to Mauritius from time to time it is not made out there is a credible real risk of harm from this individual to the appellant if she is returned. There is no evidence of ongoing threats while she has remained in the United Kingdom sufficient to warrant a grant of international protection. Whilst MS feels she has been badly wronged by these individuals, and has a subjective fear of them, MS fails to establish such fear is objectively well-founded sufficient to entitle her to a grant of international protection. MS has also failed, despite it being raised from [32] of the reasons for refusal letter, to demonstrate that the authorities in Mauritius will be unwilling or unable to offer her protection if she sought it in the circumstances that she describes. MS fails to establish any credible real risk of persecution by the State or from non-state actor from which the state is unable to provide protection, for a Convention reason or otherwise.
68. MS fails to establish an entitlement to a grant of international protection under either the Refugee Convention, Qualification Directive, Immigration Rules, or Articles 2 or 3 ECHR.
69. In relation to Article 8 private life based upon the withdrawal of counselling and support in the UK, in N v UK (Application 26565/05) the Grand Chamber upheld the decision of the House of Lords and said that in medical cases Article 3 only applied in very exceptional circumstances particularly as the suffering was not the result of an intentional act or omission of a State or non-State body. The EctHR said that Article 3 could not be relied on to address the disparity in medical care between Contracting States and the applicant's state of origin. The fact that the person's circumstances, including his or her life expectancy, would be significantly reduced was not sufficient in itself to give rise to a breach of Article 3. Those same principles had to apply in relation to the expulsion of any person afflicted with any serious, naturally occurring physical or mental illness which might cause suffering pain or reduced life expectancy and required specialist medical treatment that might not be readily available or which might only be available at considerable cost. Notably the court held that no separate

issues arose under Article 8(2) in that case and so it was not even necessary to consider the Claimant's submission that removal would engage her right to respect for private life.

70. MS fails to establish a credible breach of Article 3 on the basis of her medical needs.
71. In relation to MS's mental health and Article 8(2) ECHR, in Djali [2003] EWCA Civ 1371 the Appellant's wife was suffering from severe PTSD. Medical reports indicated that she was only on anti-depressant medication because she was too disturbed to commence psychotherapy. The psychiatrist was satisfied that returning her to Kosovo would have a detrimental effect on her physical and mental health. Simon Browne LJ said that she was not undergoing psychotherapy treatment in the UK so, if such treatment was not available in Kosovo the actual effect of return could not be serious harm. At most, return would "imperil her prospects of a better recovery" which would not engage Art 8(1). Simon Browne LJ did not consider that the Art 8 (1) threshold was crossed but he went on to say that, even if Art 8 was engaged, this was only "a borderline case of interference"; it was a case widely replicated throughout the asylum system; and, given the grave problems of asylum overload facing this country, it was inevitable that the decision maker would regard the interests of immigration control as the imperative and overriding factor in such a case.
72. In Nacic and Others v Sweden (Application no. 16567/10) ECtHR (Fifth Section) 2012 it was held that aliens who were subject to expulsion could not, in principle, claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. The fact that an applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the Contracting State was not sufficient in itself to give rise to a breach of Article 3. The decision to remove an alien who was suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness were inferior to those available in the Contracting State may raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal were compelling: N v United Kingdom (Application no. 26565/05), 27 May 2008 considered (para 49)
73. The test under UK domestic law remains the correct test – see EA & Ors (Article 3 medical cases – Paposhvili not applicable) [2017] UKUT 445).
74. It is accepted MS has formed a private life in the United Kingdom including engagement with the support services referred to in her bundle. So far as the issue was the proportionality of any interference with that private life caused by the withdrawal of counselling and support services, I find the respondent has established that any interference is proportionate to the legitimate interest relied upon. MS's status has always been precarious since her leave expired, MS is not economically active, MS has no legitimate expectation to be able to remain in the United Kingdom whatever her wish to do so, MS has failed to establish treatment is not available in Mauritius, and has failed to establish that returning

her will amount to an unlawful reach of a protected right pursuant to article 3 on medical grounds or article 8 medical and private life grounds ECHR.

75. Whilst there is considerable sympathy for MS whose life has not turned out as she would have wished, such sympathy cannot be the basis for finding the respondent's decision not proportionate. Having carefully considered all the competing aspects of this appeal the only conclusion realistically available on the facts and in law is that the appeal must be dismissed.

**Decision**

76. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

77. I make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings (in whatever form) shall directly or indirectly identify the appellant. Failure to comply with this order could lead to a contempt of court".

Signed.....  
Upper Tribunal Judge Hanson

Dated the 27 February 2020