Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/03762/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 June 2017	**On 5 July 2017**

Before

UPPER TRIBUNAL JUDGE WARR

Between

JU
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy (Mansfield Chambers)
For the Respondent: Mr N Bramble (Presenting Officer)

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born in December 1987. He arrived in this country on 5 October 2007 with entry clearance as a student. In due course he was granted leave to remain as a student until 27 October 2014. An application was made on 25 October 2014 for leave to remain on the basis of Article 8 (private life).

2. In his application form he indicated he had been granted entry clearance to the United Kingdom as a student, and he stated that he received a monthly income of £500 from his parents. The application was refused on 6 January 2015. The respondent did not find there would be any very significant obstacles to the

appellant's return to Sri Lanka and he would not suffer any greater hardship than other Sri Lankans there and there were no exceptional circumstances.

3. The appellant appealed against the decision on 23 January 2015. It was claimed that he was estranged from his family in Sri Lanka and he had been a victim of child abuse and ill-treated by his family. He had very little to return to in Sri Lanka when his substantial academic achievements in the United Kingdom were taken into account.

4. The judge noted that the appellant's case had developed since being presented to the Secretary of State in October 2014. There was evidence from the appellant's partner (whom the judge refers to as "SS") and also evidence of mental health difficulties of which the respondent had not been previously made aware. It was confirmed that the appellant was not relying on family life with his partner. The issue was being raised as part of his private life. Accordingly this did not amount to a new matter which would have required the consent of the Secretary of State under Section 85(5) of the Nationality, Immigration and Asylum Act 2002. It is to be noted that there was no Presenting Officer before the First-tier Judge. It was made clear that no reliance was being placed upon paragraph 276ADE(1) and accordingly the only issue to be decided was whether the appeal should be allowed by reference to Article 8 outside the Immigration Rules based upon the appellant's private life. The judge heard oral evidence from the appellant about his depression and the abuse he had suffered and his symptoms. He referred to SS whom he had known since October 2010 and he wished to propose to her. His partner would not accompany him to Sri Lanka as her family remained in the United Kingdom and she was born here. His partner lived with her parents about one and a half hours' travel from where the appellant resided.

5. SS also gave evidence and referred to a previous marriage between her and an older man which had never been consummated. The appellant had confided in her about the abuse he had suffered and SS received significant support from the appellant whom she wished to marry. They would not live together until their marriage. They were not engaged.

6. The First-tier Judge refers to the five stage approach in **Razgar [2004] UKHL 27** and concluded that the main issue in the appeal was proportionality.

7. The judge went on to make the following findings:

> "57. I accept that the Appellant has been in the United Kingdom since October 2007, and that he has not returned to Sri Lanka. I find that the Appellant has been receiving financial support from his parents. When he made his application for further leave to remain in October 2014, he confirmed at section 5.12 of the application form that he was still receiving £500 per month from his parents.
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> 58. It is correct that the nature of this application has changed somewhat, in that initially there was no reference to the Appellant having a relationship,

nor was there any reference to him having suffered sexual abuse as a child. The abuse was raised for the first time in the Grounds of Appeal. The relationship was mentioned for the first time in the Appellant's witness statement dated 25th May 2016.

59. I accept that the Appellant has studied while in this country and that he has been awarded a degree, and he graduated in 2014. I accept that the Appellant has made some friends while in this country. I also accept that he undertook some charity work in 2009. The evidence does not however demonstrate that he has engaged in 'a wealth of charity work' as contended in the letter accompanying the application for leave to remain.

60. Having considered the evidence given by the Appellant and SS, I accept that they are in a relationship. I accept that SS is still married, but that proceedings to annul her marriage have been initiated.

61. As accepted by the couple, they are not engaged to be married, and they do not live together and have never done so. I accept that SS lives with her family, and I find that it is correct to accept, on the Appellant's behalf, that he and SS do not have family life that would engage Article 8.

62. I accept the contents of the letters from the wellbeing team of Hertfordshire NHS Trust dated 27th August 2015 and 21st October 2015 to the effect that the Appellant has been attending CBT treatment. I accept that the Appellant has disclosed that he experienced physical, sexual and mental abuse while growing up in Sri Lanka. I also accept that the Appellant has been having counselling with Relate, as explained in the letter dated 21st June 2016. I have carefully considered Dr Persaud's report dated 25th May 2016 in which the opinion is given that the Appellant suffers from major depression and PTSD. I am afraid that I do not accept Dr Persaud's opinion that the Appellant would not survive in Sri Lanka because of his mental and physical health problems. Dr Persaud gives the opinion that the Appellant is not liable to receive the correct medical treatment in Sri Lanka and places the Appellant's risk of suicide as moderate to high. I note that the Relate counsellor, having completed eight sessions with the Appellant, as opposed to the one meeting that Dr Persaud undertook, referred to thoughts of self-harm, stated that 'there does not seem to be current suicidal ideation.' On this issue, I place more weight upon the evidence from Relate, on the basis of the number of sessions that the counsellor has had with the Appellant. Dr Persaud does not provide any basis for his opinion that the Appellant would not receive the correct medical treatment in Sri Lanka. The Appellant has submitted no independent or objective evidence to show that he would not receive the correct medical treatment.

63. This is not a case where it has been contended that the Appellant would be at risk if returned to Sri Lanka, nor is it a case where reliance has been placed upon Article 3 of the 1950 Convention.

64. The abuse that has caused the Appellant to seek help for mental health issues, ended in 2004, and for the avoidance of doubt, I accept the Appellant's account that he was sexually abused by an aunt.

65. I do not accept that the Appellant suffered abuse from his family after 2004. The evidence indicates that his family financially supported him in Sri Lanka, and also financially supported him while he has studied in the United Kingdom.

66. The Appellant's parents were still providing financial support in October 2014, and I do not accept that they have stopped supporting the Appellant.

67. I conclude that the Appellant is currently receiving treatment for depression and symptoms of post-traumatic stress disorder, and I do not accept that there is a risk of suicide, and I find that the Appellant would be able to access medical treatment in Sri Lanka.

68. I find that the Appellant would be able to obtain support from his parents, and because his parents have been supporting him financially, I see no reason why they would not continue to do so, and therefore it would not be the case that the Appellant could not afford to pay for medical treatment that was required."

8. The judge took into account the considerations set out in Section 117B of the 2002 Act and accepted that the appellant could speak English and was financially independent, referring to **AM (Malawi) [2015] UKUT 0260 (IAC)**. He reminded himself that little weight could be given to private life established by a person at a time when his immigration status was precarious. He had only ever been granted limited leave to remain.

9. The judge noted that the appellant was aged 28 and educated to a degree level and that such a qualification would be of assistance to him in obtaining employment in Sri Lanka. He had come to the United Kingdom to obtain a qualification on the basis that such a qualification would enhance his employment prospects.

10. The judge concluded his determination as follows:

"74. I see no reason why the Appellant would not be able to obtain employment and accommodation in Sri Lanka and obtain medical treatment that he requires.

75. If the Appellant wishes to work in the United Kingdom, it is open to him to make the appropriate application for entry clearance from Sri Lanka. If the Appellant and SS decide that they wish to marry, then again it is open to the Appellant to make the appropriate entry clearance from Sri Lanka.

76. I find that the weight that must be attached to the fact that the Appellant cannot satisfy the Immigration Rules, and the weight to be given to the public interest in maintaining effective immigration control, outweighs the weight to be attached to the wishes of the Appellant that he be allowed to remain in the United Kingdom notwithstanding that he cannot satisfy the Immigration Rules."

11. Accordingly, the judge dismissed the appeal.

12. Permission to appeal was sought on a number of grounds.

13. The application came before First-tier Judge Pullig. The judge considered that the application was out of time but extended time. I will need to return to this issue for reasons given below.

14. Judge Pullig rejected the majority of the grounds but considered that it was arguable that the judge had erred in paragraph 62 of his determination in not accepting the opinion of Dr Persaud that the appellant would not survive in Sri Lanka because of his mental and physical health problems. Reference in paragraph 4 of the grounds had been made to paragraphs 451-456 of **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.

15. In relation to paragraph 6 of the grounds which raised a number of issues relating to proportionality, Judge Pullig notes that some of the items repeated matters complained of earlier in the grounds which he had already dealt with and granted permission only insofar as the arguments related to the appellant's medical condition. In other respects the judge's findings were sustainable and where there were no findings the matters complained of were peripheral and not material.

16. As I have already mentioned at the hearing an issue was taken with the finding by Judge Pullig that the grounds were out of time. Counsel filed a bundle containing the relevant e-mail correspondence. Counsel drew attention to the fact that it was stated on the face of the determination that it had been promulgated on 27 July 2016 which differed from the date on the cover sheet – 26 July 2016. The cover sheet was stamped with the date Counsel had received the determination – 28 July 2016. Counsel had sent an application initially on 9 August 2016 unhappily including the wrong determination. However, this was speedily corrected the following day and the Tribunal acknowledged receipt on Wednesday, 10 August 2016 at 10.50 a.m. Accordingly, he submitted the application was in time. However, the appellant had been told in December 2016 when reporting that the decision had not been appealed from. Counsel accordingly resubmitted all the chain of correspondence, again submitting the application was not in time but in the alternative requesting time to

be extended. The First-tier Judge had not dealt with the issue of the initial application having been lodged in time but had simply extended time.

17. Mr Bramble accepted that if what was stated was correct then the application was lodged in time, although he could not of course speak for what had gone on in the Tribunal offices.

18. The issue is not directly in front of me and it is not relevant to the disposal of this case. Anything I say would not bind the parties. However, from the file it does appear that the promulgation of the decision was indeed issued on 27 July 2016 and not 26 July 2016. The file copy of the promulgation notice bears the 27 July date. As Counsel points out, that is consistent with the date given on the face of the determination.

19. As I have said, Mr Bramble accepted that if the grounds had been lodged on the date claimed and the determination had been promulgated when claimed they would be in time. However, he could not comment on what had gone on before the Tribunal. I do not think that there is much I could or should add on the matter, although I can say that it would appear that the promulgation date was the 27th rather than the 26th. There is little I can say about e-mail correspondence that is not in the Tribunal file. Counsel does not appear as a witness before me in this matter. All I can say in an effort to be helpful is that it would not be the first occasion in which material has not reached a Tribunal file.

20. The reason why Counsel wishes to have the matter looked at is that it is proposed to make an application under the ten year Rule and a delayed application for permission would stop the clock running. That of course is not a matter for me at this hearing.

21. The principal point relates to the medical evidence and the judge's treatment of it in paragraph 62 of the decision. Mr Paramjorthy submitted there was a tension in the evidence in that the judge had accepted that the appellant had been abused. He acknowledged that the grounds had been restricted. Mr Bramble submitted that the judge had taken into account all the evidence. Paragraph 62 was the key paragraph. For the reasons given the judge had been entitled to prefer the report made by Relate on the specific issue. He had only seen the appellant on one occasion. He was entitled to conclude that Dr Persaud had not explained why the appellant would not receive the correct medical treatment in Sri Lanka.

22. There was no reply from Mr Paramjorthy.

23. The First-tier Judge gave careful consideration to all the material before him. He notes in paragraph 49 that he had taken into account all the documentation received. He states and I have no reason to doubt that he had given careful consideration to Dr Persaud's report and he properly explains why he parted company with it. He was entitled to prefer the material provided by the Relate counsellor who had completed eight sessions with the appellant and concluded that there did not seem to be current

suicidal ideation. The judge makes it plain that he had placed more weight upon the evidence from Relate on this issue. It is not apparent he was not aware of Dr Persaud's qualifications. It was open to the judge to place more reliance upon Relate's evidence on this particular matter.

24. Reference was made in the appellant's grounds to **GJ** and in particular paragraphs 452 to 456. In that case it had been accepted the appellant had a genuine fear of return and had suicidal ideation and firm plans to commit suicide rather than return. In paragraph 456 it was accepted that the appellant was mentally very ill and too ill to give reliable evidence.

25. In this case the judge concluded that the appellant could obtain support from his parents and he would be able to afford to pay for medical treatment that was required. I am not satisfied that when the decision is read as a whole the judge materially erred in concluding as he did.

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

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

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date 5 July 2017

G Warr, Judge of the Upper Tribunal