**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal number: PA/03190/2019**

**THE IMMIGRATION ACTS**

| **Heard at Glasgow** | **Decision and Reasons Promulgated** |
|---|---|
| **On 31 October 2019** | **On 06 November 2019** |

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**R R**
(ANONYMITY DIRECTION MADE)

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr U Aslam, of McGlashan MacKay, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Sri Lanka. He first arrived in the UK in 1999. After exhausting his asylum claim, he was removed in 2009. He returned on a forged Malaysian passport on 14 February 2018 and again sought protection. The respondent refused his claim for reasons set out in a decision dated 12 March 2019. FtT Judge Bell dismissed his appeal by a decision promulgated on 7 August 2019.

2. The appellant's grounds of appeal to the UT are set out in his application dated 21 August 2019. Permission was granted on 4 September 2019.

3. The grounds at [3-4] assert error at [71] of the decision in relation to [29] of a report by Dr Ross, by overlooking that the assessment of suicide risk was in the event of return, which had not yet been finally decided or

attempted; accordingly, the facts that the appellant had not been referred to psychiatric of secondary mental health services, had no hospital admissions, and the GP had no current health concerns, were "wholly irrelevant", or could not be held to disclose no high risk of suicide if return were to be decided and attempted.

4. The errors are categorised as having regard to irrelevant considerations, making inferences not rationally available, and giving "manifestly inadequate weight to Dr Ross's expertise".

5. It may be obvious that any risk of self-harm would be at its most intense at the stage of actual removal; but it would be highly artificial to say that absence of any current concern or need for treatment is irrelevant to the reality of that risk.

6. As Mr Govan pointed out, the appellant has already been through the whole process of application, appeal and removal, and is well through it again. He should be aware of impending reality. This is not a prospect yet to dawn upon him.

7. The ground does not acknowledge the totality of the judge's reasons at [63 – 73] for finding Dr Ross's view "too speculative to be reliable". These include the significant point that Dr Ross took it that the appellant had given an accurate account of detention and torture in Sri Lanka in 1997, although he had failed to establish that claim in previous proceedings. The issue is also to be placed in context of the appellant failing again to establish that claim before Judge Bell, and failing to establish his further claim of detention and torture in 2018.

8. This ground discloses no error in the treatment of the report by Dr Ross.

9. The grounds at [5] assert error at [72-73] by "applying the wrong test *et separatim* the wrong standard of proof". The suggestion, as developed in submissions by Mr Aslam, is that the reference in *J v SSHD* [2005] Imm AR 409 to a high threshold, which goes to the level of harm, has been misunderstood as going to the standard of proof.

10. The lower standard of proof in both asylum and article 3 cases is perhaps the best known feature of this jurisdiction. It may be possible to suggest error by taking phrases out of context, but decisions are to be read fairly and as a whole. The wording at [72] of a need for "the clearest possible evidence" is followed by "of a real risk". At [73] inability to find that the risk of suicide "is high" is followed by "far short of high".

11. I am not persuaded that the Judge decided this case against the appellant by applying a higher standard of probation than the law requires.

12. The third error asserted in the grounds, at [6], is failing to give adequate reasons, or giving manifestly inadequate weight to a relevant consideration, in finding that risk could be managed at the time of removal, when the appellant had self-harmed during his previous removal.

13. As I observed at the hearing, the history of self-harm could as readily be interpreted as going against the appellant's case. The respondent cannot possibly eliminate all attempts at self-harm. Although the appellant may have frustrated the first attempt to remove him in 2009, his removal was subsequently managed. If anything, that is an indication that it could be managed again. It is within judicial knowledge that the respondent has appropriate policies and mechanisms in place.

14. The ground essentially argues that because the appellant self-harmed in 2009, it is impossible to find that his removal might be managed successfully in 2019. There is no error in holding to the contrary.

15. I am fortified in my view of all the grounds by the consideration that the case fell well short of the six parameters of *J,* set out by the FtT at [39]. On the adverse credibility findings as to alleged events in 1997 and in 2018, there was no causal link between removal and inhuman treatment, and no objective risk from the foreign state.

16. Separately and together, the grounds do not show that the decision of the FtT involved the making of any error on a point of law whereby it should be set aside. The decision shall stand.

17. The FtT made an anonymity direction. The matter was not addressed in the UT. Anonymity is preserved herein.

Hugh Macleman

Dated 1 November 2019
UT Judge Macleman