Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02084/2019

THE IMMIGRATION ACTS

Decided Under Rule 34 (P)	**Decision & Reasons Promulgated**
On 28 September 2020	**On 01 October 2020**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

A A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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.

DECISION AND REASONS

Background

1. The appellant appealed the respondent's decision dated 19 February 2019 to refuse a protection and human rights claim.

2. First-tier Tribunal Judge Hoffman dismissed the appeal on protection grounds but allowed the appeal on human rights grounds. The respondent appealed the human rights decision. In a decision promulgated on 06 December 2019 the Upper Tribunal set aside a narrow aspect of the judge's assessment relating to suicide risk with reference to Article 3 of the European Convention (Annex). The judge's findings relating to the first five points of the test identified by the Court of Appeal in *J v SSHD* [2005] EWCA Civ 629 were preserved [21-22]. Only the findings relating to the sixth point in *J* were set aside and need to be remade [23-28].

3. Regrettably, there has been a delay in remaking the decision. A previous hearing listed in February 2020 was adjourned for the appellant to produce further evidence and because the Upper Tribunal had not been notified that an interpreter might be required for the hearing.

4. The case was reviewed following the start of the Covid-19 pandemic. The Upper Tribunal sent directions to the parties on 23 April 2020 inviting submissions as to whether the decision could be remade without a hearing bearing in mind the need to take measures to prevent the spread of Covid-19. The respondent was directed to consider whether she wanted to question the appellant in light of further information provided in a supplementary witness statement and the addendum report of Dr Obuaya dated 06 March 2020. The appellant served the up to date evidence on the respondent and filed written submissions. The respondent responded to the directions on 07 May 2020 but failed to give any clear indication of whether she wanted to cross-examine the appellant (who did not give evidence at the hearing before the First-tier Tribunal).

5. In the absence of any clear indication from the respondent as to whether she wished to question the appellant, the Upper Tribunal sent further directions on 19 May 2020 concluding that it was reasonable to infer that she did not. The Upper Tribunal decided that it was possible to determine the appeal without a hearing and made further directions for filing documents. The directions made provision for either party to object to the proposal. No objection was received. The appellant was content to proceed without a hearing.

6. The appellant filed a skeleton argument on 03 June 2020. The respondent does not appear to have filed any further arguments in addition to the written submissions already filed on 07 May 2020. I am satisfied that the parties were given more than enough time to lodge any objection to the matter being decided without a hearing and to make written submissions on the substance of the narrow issue to be determined. Bearing in mind the overriding objective I am satisfied that the appeal can be determined fairly without a hearing based on the written submissions and the documentary evidence.

7. In addition to the documents that were already before the First-tier Tribunal, the following additional documents are before the Upper Tribunal:

   (i) The appellant's bundle dated 21 February 2020;

(ii) The appellant's response to directions dated 30 April 2020 including the addendum report of Dr Obuaya dated 06 March 2020;

(iii) The appellant's further correspondence dated 30 April 2020;

(iv) The respondent's written submissions dated 07 May 2020;

(v) The appellant's written response dated 26 May 2020; and

(vi) The appellant's skeleton argument dated 03 June 2020 and a consolidated bundle.

Legal Framework

8. The relevant legal framework relating to the assessment of suicide risk was outlined in the error of law decision.

> "12. Claims involving medical issues and suicide risk are particularly difficult to decide. A case brought on human rights grounds based on a person's medical condition is one that comes within the '*N* paradigm'. In such cases the threshold for showing a breach of human rights is particularly high. The European Convention on Human Rights does not place an obligation on a host state to refrain from removal where the feared harm does not emanate from intentionally inflicted acts of the public authorities in the receiving state, but instead from a naturally occurring illness. It was only in the most exceptional circumstances of the kind faced by the applicant in the *D* case, who was in the final stages of a terminal illness facing a distressing death without family or other support in the receiving state, that compelling humanitarian considerations were found to engage the operation of Article 3.
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> 13. Some aspects of the law relating to the assessment of medical claims, which are not 'deathbed cases', are currently in flux following the decision of the European Court of Human Rights (ECHR) in *Paposhvili v Belgium* [2016] ECHR 1113. In that case the ECHR considered the potential category of "other exceptional cases, with other extreme facts, where the humanitarian considerations are equally compelling" identified by Baroness Hale in the House of Lords decision in *N* [70].
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> 14. The Court of Appeal decisions in *J* and *Y (Sri Lanka)* govern a discrete area of assessment under Article 3 relating to suicide risk. The decisions in *J* and *N* were heard at around the same time in May 2005. By the time the Court of Appeal in *J* handed down its decision, it had the benefit of the House of Lords decision in *N*. The Court of Appeal conducted a detailed review of the European and domestic case law. The six points it drew from these authorities for the purpose of assessing Article 3 in the context of suicide risk were:
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> > "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].
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> > 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."

15. The first three points set out the basic requirements to show a breach of Article 3. The third point made clear that there is an enhanced threshold in cases that come within the *N* paradigm. The last three points went beyond the decision in *N* to consider the context in cases involving the assessment of suicide risk. The Court of Appeal in the *Y (Sri Lanka)* modified the fifth point as follows:

> "15. ….. 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.
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> 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."

16. The assessment of suicide risk is a discrete aspect of the extension to Article 3 considered in *D* and *N*. In *MM (Malawi) v SSHD* [2018] EWCA Civ 2482 Counsel for the Secretary of State accepted that it was a distinct area of assessment under Article 3 [63]. The Court of Appeal in *J* made clear that there was a high threshold in 'foreign cases', and acknowledging the decisions in *D* and *N*, made clear that the threshold was even higher in cases where "the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state".

17. The nature of the potential harm in a suicide risk case is sufficiently serious to engage the operation of Article 3 within the meaning of the *N* paradigm. If a person can show that there is a real risk that they will commit suicide on return to the

> receiving state, the feared harm clearly meets the minimum level of severity required i.e. intense mental suffering leading to their imminent death.
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> 18. The fifth and sixth points highlighted in *J*, modified in *Y (Sri Lanka)*, simply focus the assessment on issues specific to the circumstances relating to suicide risk. First, an initial assessment of whether there is a real risk that the person is likely to commit suicide if returned to the receiving state. This would normally be assessed with reference to expert psychiatric evidence. Second, whether effective measures can be put in place before, during and after removal to reduce the risk of suicide below a real risk. This would normally be assessed with reference to evidence relating to the circumstances in the receiving state."

9. Since the error of law decision, the Upper Tribunal published *AXB (Art 3 health: obligations; suicide) Jamaica* [2019] UKUT 00397. Much of the decision is not relevant to the issue to be determined in this case. In so far as the Upper Tribunal concluded that the *N* paradigm is the threshold that must be met in a case involving the assessment of suicide risk, it says nothing more than, and does not alter, the approach taken by the Court of Appeal in *J*. In that case, the Court of Appeal incorporated the high threshold into the six-point approach to the assessment of suicide risk. As made clear in the previous decision in this case, it is self-evident that the nature of suicide is such that it reaches the *N* threshold because a person who is at real risk of killing themselves is likely to experience intense mental suffering leading to the risk of death. The focus of the assessment in a case involving potential suicide risk is not usually the threshold but whether the evidence shows that there is a real risk of suicide happening before, during or after removal of the person to their country of origin.

10. The Supreme Court also handed down the judgment in *AM (Zimbabwe) v SSHD* [2019] UKSC 17. It contains a helpful analysis of the ECtHR decision in *Paposhvili v Belgium* [2017] Imm AR 867. In particular, the Supreme Court clarified what was meant by the modest extension of the *N* test at [183] of the ECtHR decision with reference to:

> "…situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy."

11. The Supreme Court did not make specific findings relating to the effect of *Paposhvili* on the assessment of suicide risk. In my assessment, the substantive Article 3 issues discussed in *AM (Zimbabwe)* do not alter the position relating to the six-point approach outlined in *J*. The nature of the risk of suicide is likely to meet the *N* paradigm or the *Paposhvili* extension for the reasons I have already given. Again, the focus of the assessment is usually on the likelihood of suicide happening, taking into account relevant medical evidence and any evidence relating to the availability of support and treatment that might ameliorate the risk.

12. The Supreme Court identified several procedural requirements outlined by the ECtHR in *Paposhvili* at [23] and went on to analyse the decision as follows:

> "32. The Grand Chamber's pronouncements in the *Paposhvili* case about the procedural requirements of article 3, summarised in para 23 above, can on no view be regarded as mere clarification of what the court had previously said; and we may expect that, when it gives judgment in the *Savran* case, the Grand Chamber will shed light on the extent of the requirements. Yet observations on them may even now be made with reasonable confidence. The basic principle is that, if you allege a breach of your rights, it is for you to establish it. But "Convention proceedings do not in all cases lend themselves to a rigorous application of [that] principle …": *DH v Czech Republic* (2008) 47 EHRR 3, para 179. It is clear that, in application to claims under article 3 to resist return by reference to ill-health, the Grand Chamber has indeed modified that principle. The threshold, set out in para 23(a) above, is for the applicant to adduce evidence "capable of demonstrating that there are substantial grounds for believing" that article 3 would be violated. It may make formidable intellectual demands on decision-makers who conclude that the evidence does not establish "substantial grounds" to have to proceed to consider whether nevertheless it is "capable of demonstrating" them. But, irrespective of the perhaps unnecessary complexity of the test, let no one imagine that it represents an undemanding threshold for an applicant to cross. For the requisite capacity of the evidence adduced by the applicant is to demonstrate "substantial" grounds for believing that it is a "very exceptional" case because of a "real" risk of subjection to "inhuman" treatment. All three parties accept that Sales LJ was correct, in para 16, to describe the threshold as an obligation on an applicant to raise a "prima facie case" of potential infringement of article 3. This means a case which, if not challenged or countered, would establish the infringement: see para 112 of a useful analysis in the Determination of the President of the Upper Tribunal and two of its senior judges in *AXB v Secretary of State for the Home Department* [2019] UKUT 397 (IAC). Indeed, as the tribunal proceeded to explain in para 123, the arrangements in the UK are such that the decisions whether the applicant has adduced evidence to the requisite standard and, if so, whether it has been successfully countered fall to be taken initially by the Secretary of State and, in the event of an appeal, again by the First-tier Tribunal.
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> 33. In the event that the applicant presents evidence to the standard addressed above, the returning state can seek to challenge or counter it in the manner helpfully outlined in the judgment in the *Paposhvili* case at paras 187 to 191 and summarised at para 23(b) to (e) above. The premise behind the guidance, surely reasonable, is that, while it is for the applicant to adduce evidence about his or her medical condition, current treatment (including the likely suitability of any other treatment) and the effect on him or her of inability to access it, the returning state is better able to collect evidence about the availability and accessibility of suitable treatment in the receiving state. What will most surprise the first-time reader of the Grand Chamber's judgment is the reference in para 187 to the suggested obligation on the returning state to dispel "any" doubts raised by the applicant's evidence. But, when the reader reaches para 191 and notes the reference, in precisely the same context, to "serious doubts", he will realise that "any" doubts in para 187 means any serious doubts. For proof, or in this case disproof, beyond *all* doubt is a concept rightly unknown to the Convention.

13. In my assessment, the procedural issues discussed in *AXB* and *AM (Zimbabwe)* do nothing more than clarify the usual principles relating to the assessment of a human rights claim. The overall burden of proof is on the appellant to produce evidence to show that there are substantial grounds for believing that there is a real

risk of serious harm amounting to a breach of Article 3. The threshold is high in health cases if the risk does not emanate from the authorities in the receiving state. It is always open to the respondent to produce evidence to show that appropriate health care or other effective mechanisms are available to reduce the risk of Article 3 ill-treatment below a real risk.

Decision and reasons

14. It is not necessary to set out the full history of the appellant's protection claim or the previous medical evidence in detail. The appellant's account of past trauma was accepted by a previous First-tier Tribunal judge. First-tier Tribunal Judge Hoffman concluded that there was no reasonable degree of likelihood that the appellant was at risk of persecution if returned to Sri Lanka at the date of the hearing. The evidence before the First-tier Tribunal relating to the appellant's mental health and the medical opinions on suicide risk were summarised in the error of law decision:

> "4. The judge considered a set of medical reports outlining the effect of past trauma and the risk of suicide [15-27]. It was not disputed that the appellant continued to have a subjective fear of return [49]. In 2015 Dr Obuaya concluded that return to Sri Lanka would lead to deterioration in the appellant's mental health. His subjective fear of the authorities was likely to act as a "significant barrier" to him accessing mental health services, even if they were available. At the time, he assessed the appellant to be at low risk of attempting suicide or self-harm. There was no known history of previous suicide attempts. When he had suicidal ideations, his family appeared to be a protective factor. In 2017 Dr de Pentheny's opinion was that the appellant was at increased risk of suicide since 2015. The appellant disclosed past trauma not mentioned to Dr Obuaya. In 2016 he attempted to commit suicide by taking several pills with alcohol. She considered that there would be a serious deterioration in his mental health and would be at high risk of suicide if returned to Sri Lanka. Dr Obuaya conducted a further assessment in July 2019 and had the opportunity to review Dr de Pentheny's report. He noted that there were further incidents of the appellant attempting to 'overdose' in 2017 and 2018 albeit the number of pills that he took were not excessive. He considered that the appellant's symptoms were best understood in the context of depressive illness rather than PTSD. He still considered the appellant to be a low to moderate suicide risk in the UK. However, the risk of suicide or self-harm was likely to increase to a moderate to high level if he were to be informed that he was going to be removed to Sri Lanka.
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> 5. Similar information was recorded elsewhere in the medical records. The judge observed that a GP trainee noted in March 2019 that the appellant had ""fleeting thoughts of suicide" which he does not act upon because he thinks of his family and no thoughts of self-harm." [27]."

15. The First-tier Tribunal judge conducted a structured assessment of the six-point approach in *J*. He made sustainable findings relating to the first five points, which were open to him to make on the evidence. The Upper Tribunal only set aside the findings relating to the sixth point in *J*. The judge's finding that no adequate medical treatment was likely to be available in Sri Lanka was preserved. Having noted that Dr Obuaya and Dr de Pentheney did not address the question of whether the appellant's family members in Sri Lanka might act as a protective factor to ameliorate the risk of suicide in the absence of adequate medical treatment, the First-tier Tribunal failed to make any clear findings on the issue.

16. The appellant produced further evidence seeking to address the gap identified by the First-tier Tribunal. First, a supplementary witness statement dated 18 February 2020. Second, the addendum report of Dr Obuaya dated 06 March 2020.

17. In his statement, the appellant says that his parents and two siblings live in Sri Lanka. He says that his mother is suffering from a chronic mental illness. The appellant does not say whether there has been a formal diagnosis but describes his mother as suffering from "acute paranoia". He says that on the occasions he has spoken to her on the phone she did not recognise him. He says that his mother often shouts and becomes agitated. She is 73 years old and lives at home with his 72-year-old father. The appellant says that he does not think that he would feel safe living with his parents. He thinks that his mother's poor mental health would worsen his own mental health condition. They do not own a house. His father no longer works, and his parents struggle financially. His sister is dependent on her husband and cannot offer regular support to their parents. The appellant's parents live in Colombo. Neither sibling lives near to their parents. His sister lives in Galle. His brother lives in Negombo. The appellant says that his brother is unemployed and often moves around staying with friends. He wants to leave Sri Lanka to look for work in another country. He does not know the whereabouts of any extended family members and does not think that his parents receive support from any other family members.

18. The appellant receives treatment for his mental health and support for drug and alcohol dependency in the UK. He says that he has been prescribed anti-depressant medication. He continues to receive support from the Helen Bamber Foundation where he attends weekly group therapy sessions. The appellant thinks that his mental health would deteriorate without this support. When he thinks about being forced to return to Sri Lanka he often thinks of suicide. He is still frightened that he would be ill-treated by the Sri Lankan authorities because of his past experiences. He does not want to expose his family members to risk. He does not have anyone who would be able to give him adequate support in Sri Lanka.

19. Dr Obuaya is a consultant psychiatrist for the Camden and Islington NHS Foundation Trust. He has assessed the appellant on at least three occasions and on the second occasion also had the benefit of Dr de Pentheny's opinion. By 2019 there was evidence to show that the appellant had self-harmed on several occasions. Dr de Pentheny considered that there would be a serious deterioration in the appellant's health if he were forced to return to Sri Lanka, giving rise to a high risk of suicide. Dr Obuaya considered the risk to be low to moderate while in the UK, but the risk of suicide would rise to moderate to high if he was told that he would be removed to Sri Lanka. The doctors noted the appellant had family in Sri Lanka, but did not comment on whether they had taken this fact into account in assessing the risk of suicide.

20. Dr Obuaya's initial report prepared in 2015 mentioned the appellant's family as a protective factor. This initial assessment was made before the appellant made subsequent attempts to harm himself in 2016, 2017 and 2018.

21. The appellant's family was also mentioned as a protective factor by a GP trainee to Dr Singh (Consultant Psychiatrist at the Redbridge Integrated Care Directorate) in correspondence to his GP dated 25 September 2019. Dr Morris noted that the appellant presented with low mood and thoughts of self harm. Triggering issues were previous trauma in Sri Lanka, separation from his family and delays in the asylum process. The appellant reported that he occasionally had nightmares about his previous experiences in Sri Lanka. He also reported suicidal ideation when thinking about previous trauma or missing his family. The doctor did not appear to have a record of previous attempts to self-harm because he noted that the appellant denied any plans to commit suicide and "has never acted on any thoughts". The correspondence states that the appellant's family is also a protective factor. The correspondence was broadly consistent with an earlier letter written by the same clinic on 30 July 2019. I observe that the correspondence from the GP trainees was not an assessment of suicide risk if returned to Sri Lanka and appeared to be describing the circumstances as they stand while the appellant is in the UK. Nor is it clear whether the GP trainees had a full history, including information about previous attempts to self-harm.

22. Dr Obuaya was asked to provide an addendum report specifically addressing the question of whether family support might affect his assessment of moderate to high risk of suicide if the appellant is returned to Sri Lanka. Dr Obuaya made clear that the further report should be read with the earlier reports he prepared in 2015 and 2019. He spoke to the appellant again on 04 March 2020 in order to prepare the report. Dr Obuaya confirmed that the appellant's psychiatric symptoms were unchanged since his last report. Since the last interview the appellant had not attempted suicide although he admitted to "fleeting non-specific suicidal thoughts". The appellant described a good relationship with his parents who he speaks to about twice a week. He told Dr Obuaya that his siblings live about half a day journey from his parents. He speaks to them from time to time but is not especially close to them. Dr Obuaya's conclusions were:

> "24. In my first report, at Paragraph 38, I stated that: "Without adequate support, (Mr [AA]) would be vulnerable to experiencing a deterioration in his mental state, making it difficult for him to engage in the tasks needed to establish a new life for himself in Sri Lanka". The emphasis here was on professional support that might afford Mr [AA], as opposed to any personal support.
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> 25. In my second report, I opined that the risk of suicidal behaviour or serious self-inflicted harm is likely, in my view, to increase to a moderate to high level upon hearing that he would definitely be returning to Sri Lanka, during the transit there and once he was back there. The basis of this was that in my clinical opinion it would be less likely that Mr [AA] would be able to take stock of his situation and make a considered decision in an environment he regards to be full of danger.
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> 26. My view about Mr [AA]'s suicide risk is unchanged.
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> 27. I note from Paragraph 68 of the Determination promulgated 14 August 2019 that it was considered unsatisfactory that my previous reports had not considered whether or [not] Mr [AA]'s family in Sri Lanka could act as a support network on return and therefore mitigate the risk of him committing suicide.

28. I have not considered whether my view as to Mr [AA]'s suicide risk upon removal (moderate to high on return) takes into account the presence of family in Sri Lanka. I usually refrain from commenting explicitly on this area, unless it has been brought to my attention that a member of the personal support network is actively involved in providing care for the affected person and that support is likely to be halted in the event of removal. It is in my opinion speculative to comment on a support network in another country that I have not interacted with directly.

29. However, I note that Mr [AA]'s mother appears to have significant mental health difficulties and I have deduced that his father is an informal carer for her. His brother and sister both live far from his parents. I understand that his brother may have no fixed abode and his sister is financially constrained.

30. My clinical impression is that of his family members in Sri Lanka, only Mr [AA]'s father is likely to be in a position to offer him support in relation to his mental health difficulties. His siblings live far away from home and his (sic) may not be able to provide adequate support given their respective housing and financial challenges.

31. Mr [AA]'s mother is likely to be too unwell to provide reliable or consistent support. The burden of also caring for Mr [AA]'s mother falls on his father, so this is likely to limit the effectiveness with which he is able to support Mr [AA].

32. I would emphasise that neither the professional nor personal support systems should be viewed in isolation. However, I am concerned that Mr [AA]'s personal support will be limited and I am of the opinion that it would not be robust enough to mitigate the aforementioned risk on return."

23. There is no dispute about Dr Obuaya's qualification to comment on the appellant's mental health. He is a Consultant Psychiatrist. His opinion should be given weight. I find that the addendum report, similar to the previous reports, is written in a careful and thoughtful way. Dr Obuaya clearly was aware that the appellant had family members in Sri Lanka when he made his earlier assessment relating to the likelihood of suicide. He provides specific consideration of the issue in the most recent report. Having considered the family circumstances described by the appellant, the presence of family members in Sri Lanka has not changed his overall assessment of the risk of suicide.

24. It is accepted that the appellant suffered past-ill treatment by the Sri Lankan authorities. It is accepted that he has a subjective fear of return as a result of that past-ill treatment. As with many cases of this kind, the appellant's mental health is affected by several different factors. Past trauma plays a role as does the continuing uncertainty surrounding his immigration status in the UK and the ongoing risk of removal. The appellant's mood is described as low with some suicidal ideation. There is some evidence to suggest that he has self-harmed in the past although the suicide attempts did not appear to be concerted. Nevertheless, he made these attempts while he was in the relative safety of the UK, was in receipt of treatment from his GP and local care team and had therapeutic support from a specialist organisation. The good relationship that he continues to have with his parents is said to act as a protective factor while he is in the UK but despite this level of support the

appellant has still be sufficiently distressed to seek to harm himself on several occasions.

25. There can be no doubt that the respondent has procedures for removal cases of this kind and can put in place measures to ameliorate the risk of suicide during removal to Sri Lanka. However, the situation the appellant would face on arrival in Sri Lanka would be quite different to his current circumstances in the UK. With the professional support available to him in the UK, alongside emotional support from his parents in Sri Lanka, the risk of suicide is not high. But even with that support the appellant's mental health is poor and he is reported to have attempted to self-harm in the past.

26. I am satisfied that I can place weight on Dr Obuaya's assessment. The appellant's subjective fear of return would be significantly heightened if that which he fears comes to pass. Dr Obuaya's opinion is that this is likely to lead to a significant deterioration in his condition with a moderate to high risk of suicide if returned to Sri Lanka. The appellant is unlikely to be able to access adequate clinical treatment to ameliorate the risk of suicide either with or without the support of family members. I have been given no reason to doubt the appellant's description of his family circumstances in Sri Lanka, which has been broadly consistent and is generally consistent with background information relating to the conditions in Sri Lanka. The appellant's elderly father appears to be the only person who could provide some emotional or practical support to the appellant but the evidence indicates that what limited support he might be able to offer is unlikely to be enough to ameliorate the risk of suicide given the heightened fear that the appellant is likely to experience and the absence of adequate clinical treatment. For the purpose of the sixth point in *J*, I find that there is unlikely to be an effective mechanism to reduce the risk below a real risk.

27. For the reasons given above, I am satisfied that there are substantial grounds for believing that there would be a real risk of suicide if the appellant is returned to Sri Lanka. I conclude that the appellant's removal would be unlawful under section 6 of the Human Rights Act 1998.

DECISION

The appeal is ALLOWED on human rights grounds

Signed *M. Canavan* Date 29 September 2020
Upper Tribunal Judge Canavan

ANNEX

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02084/2019

THE IMMIGRATION ACTS

Heard at Field House
On 30 October 2019

Decision Promulgated

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Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A A
(ANONYMITY DIRECTION MADE)

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the original appellant (AA) 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.

Representation:

For the appellant: Ms S. Cunha, Senior Home Office Presenting Officer
For the respondent: Ms A. Patya, instructed by Virgo Solicitors

DECISION AND REASONS

1. For the sake of continuity, I shall refer to the parties as they were before the First-tier Tribunal although technically this is an appeal by the Secretary of State to the Upper Tribunal.

2. The appellant (AA) appealed the respondent's (SSHD) decision dated 19 February 2019 to refuse a protection and human rights claim.

3. In a decision promulgated on 14 August 2019 First-tier Tribunal Judge Hoffman ("the judge") dismissed the appeal in so far as it relied on protection grounds but allowed the appeal in so far as it relied on human rights grounds. The judge considered an earlier decision of the First-tier Tribunal in 2016, in which a judge accepted that the appellant was arrested and detained in 2009 but concluded that he would not be of continued interest to the Sri Lankan authorities [2-3]. In this appeal, the appellant only sought to argue that the effect of past ill-treatment was such that his removal to Sri Lanka would breach his rights under Article 3 of the European Convention as a result of past persecution.

4. The judge considered a set of medical reports outlining the effect of past trauma and the risk of suicide [15-27]. It was not disputed that the appellant continued to have a subjective fear of return [49]. In 2015 Dr Obuaya concluded that return to Sri Lanka would lead to deterioration in the appellant's mental health. His subjective fear of the authorities was likely to act as a "significant barrier" to him accessing mental health services, even if they were available. At the time, he assessed the appellant to be at low risk of attempting suicide or self-harm. There was no known history of previous suicide attempts. When he had suicidal ideations, his family appeared to be a protective factor. In 2017 Dr de Pentheny's opinion was that the appellant was at increased risk of suicide since 2015. The appellant disclosed past trauma not mentioned to Dr Obuaya. In 2016 he attempted to commit suicide by taking several pills with alcohol. She considered that there would be a serious deterioration in his mental health and would be at high risk of suicide if returned to Sri Lanka. Dr Obuaya conducted a further assessment in July 2019 and had the opportunity to review Dr de Pentheny's report. He noted that there were further incidents of the appellant attempting to 'overdose' in 2017 and 2018 albeit the number of pills that he took were not excessive. He considered that the appellant's symptoms were best understood in the context of depressive illness rather than PTSD. He still considered the appellant to be a low to moderate suicide risk in the UK. However, the risk of suicide or self-harm was likely to increase to a moderate to high level if he were to be informed that he was going to be removed to Sri Lanka.

5. Similar information was recorded elsewhere in the medical records. The judge observed that a GP trainee noted in March 2019 that the appellant had ""fleeting thoughts of suicide" which he does not act upon because he thinks of his family and no thoughts of self-harm." [27].

6. The judge began his findings under the heading "Article 3 ECHR: The medical claim". The judge conducted an analysis of the medical reports and noted where they diverged. He accepted that significant weight should be given to the expert opinions of Dr Obuaya and Dr de Pentheny. Dr Obuaya concluded that the appellant was suffering from a Severe Depressive Episode while Dr de Pentheny concluded that he was suffering from Post-traumatic Stress Disorder (PTSD) [51]. The judge gave greater weight to Dr Obuaya's opinion because he had seen the appellant over a longer period of time and had not changed his diagnosis even after having had the opportunity to review new information contained in Dr de Pentheny's report [52]. Regardless of the exact diagnosis, it was not disputed that the appellant was suffering from mental health problems. The doctors agreed that his removal to Sri Lanka would lead to deterioration in his mental state and an increased risk of suicide [53].

7. The judge directed himself to the legal framework for medical cases with reference to the line of authorities in *D v UK* (1997) 24 EHRR, *N v SSHD* [2005] UKHL 31 and *Bensaid v UK* (2001) EHRR 205 [54]. The key issue was whether the appellant would be able to access adequate treatment in Sri Lanka. The judge considered what was said in the Secretary of State's decision letter [55]. Although he found the decision letter to be lacking in detail he reminded himself that the burden of proof was on the appellant to show that he would be unable to access adequate treatment because of his vulnerability, combined with the deficiencies in the provision of mental health care in Sri Lanka, identified by the Upper Tribunal in *GJ and others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 00319 [56]. The judge considered what the Tribunal in *GJ* said about the provision of healthcare for an appellant in that case (MP) and concluded:

> "57. Like MP, the appellant in the present appeal has been ill-treated by the Sri Lankan authorities and suffers from a serious mental health disorder. Like MP, the appellant has also been assessed by experts of posing a risk of suicide if removed from the UK. Furthermore, I find the contents of paragraphs 48 and 49 of the Refusal Letter are too vague to demonstrate that there has been a significant change in the availability of mental healthcare facilities in Sri Lanka since the Upper Tribunal made its findings in *GJ*.
>
> 58. Moreover, as Dr Obuaya and Dr de Pentheny have found, if the appellant was removed to Sri Lanka this would likely lead to a deterioration of his mental health and an increase in the risk of him self-harming. Furthermore, both doctors agree that the appellant's fear of the Sri Lankan authorities would act as a barrier preventing him from accessing mental healthcare facilities in Sri Lanka.
>
> 59. Having considered the medico-legal reports in the round with the above-mentioned paragraphs from *GJ*, as well as the case law mentioned in paragraph 54 above, on the facts of the present appeal I accept that [it] is unlikely that the appellant would be able to access the limited mental healthcare facilities available in Sri Lanka. In those circumstances, I find that if he was removed from the UK at this time it is likely that the deterioration of his mental health i.e. his severe depression), if untreated, would likely expose him to inhuman and degrading treatment contrary to Article 3."

8. Under a separate heading entitled "Article 3 ECHR: Suicide risk", the judge went on to consider the discrete issue relating to the risk of suicide. He noted the six-

stage test outlined in *J v SSHD* [2005] EWCA Civ 629 and conducted a structured analysis with reference to those stages [62-71]. Earlier in the decision, he also noted a reference to *Y (Sri Lanka) v SSHD* [2009] EWCA Civ 362 [10]. He was satisfied that the risk of harm was sufficiently serious to engage the operation of Article 3. He was satisfied that there was a causal link between the risk of suicide and the act of return. Both Dr Obuaya and Dr de Pentheny considered that the suicide risk would increase to a moderate to high level if he were to be forcibly returned. He took into account the high threshold in 'foreign cases'. In relation to the fifth point highlighted in *J*, the judge was satisfied that the appellant had a genuine subjective fear of return and that this would increase the suicide risk if returned. This was consistent with what was subsequently said in *Y (Sri Lanka)* at [16], where the Court of Appeal noted that a genuine subjective fear of persecution could still give rise to a real risk of suicide even if the fear is not well-founded. In considering the sixth point highlighted in *J*, the judge made the following findings:

> "67. Sixthly, I must consider whether the removing state and/or the receiving state has effective mechanisms to reduce the risk of suicide. In terms of the risk of suicide posed by the appellant on notification of removal to Sri Lanka, in my view this could be managed by those treating him for his depression. Furthermore, I accept that it is likely that the Home Office would be able to put measures in place to mitigate the risk of the appellant committing suicide in transit to Sri Lanka.
>
> 68. Before I consider whether effective mechanisms could be put in place in the receiving state, it is at this point necessary to point to an unsatisfactory aspect of both Dr Obuaya's and Dr de Pentheny's reports. That is that neither doctor has considered whether the appellant's family in Sri Lanka could act as a support network on return and therefore mitigate the risk of the appellant committing suicide. This is despite Dr de Pentheny recording that the appellant misses his family and has "developed loving relationships with his parents, sister and brother" (paragraphs 14 and 24) and Dr Obuaya recording at paragraph 16 of his first report that the appellant would "think of his family" in order to prevent himself from acting on suicidal thoughts (a point which is supported by Dr Rahman in her letter). Neither was I assisted on this point by the fact that the appellant did not provide any evidence to the tribunal on this occasion, although given that the respondent acquiesced to this, I do not make any adverse inferences against the appellant.
>
> 69. With the above in mind, having considered the totality of the medical evidence, I am willing to accept that given my findings that the appellant would [be] unable to access mental health treatment in Sri Lanka, it is unlikely that the Sri Lankan authorities would be able to mitigate the risk of the appellant committing suicide on return to Sri Lanka on return.
>
> 70. I therefore conclude that the appellant's removal to Sri Lanka would breach Article 3 on suicide grounds.
>
> 71. It should be noted, however, that the appellant is currently receiving treatment from the NHS for his mental health problems. Further, as mentioned above, the medical evidence does confirm that thoughts of the appellant's family have dissuaded him from taking his own life in the past. Dr Rahman's letter records that the appellant is in regular contact with his family and he longs to see them. It therefore seems likely that the appellant is close to his family in Sri Lanka and that they would [be] able to provide a support network for him if and when his condition improves, which could mean that his return to Sri Lanka would no longer violate Article 3."

9. The Secretary of State's grounds are not clearly particularised and tend towards general submissions. However, the following points can be discerned.

   (i) The appellant's case could be distinguished from the case of MP referred to in *GJ*. This appellant did not have severe PTSD and did not have clear plans to commit suicide.

   (ii) The judge failed to make any clear finding as to whether support from the appellant's family might act as a protective factor reducing the risk of suicide.

   (iii) The judge failed to consider the case of *KH (Afghanistan) v SSHD* [2009] EWCA Civ 1354, which was decided after *Y (Sri Lanka)*. The appellant could not have succeeded in showing that he came with the 'very exceptional' category of cases that might engage Article 3 even if he did not have family in Sri Lanka. The judge failed to apply the stringent test in *J* properly.

10. Ms Cunha argued that the judge failed to consider adequately whether the availability of family support in Sri Lanka would make a difference. This undermined the judge's finding in relation to the *J* line of authorities and the *N* line of authorities. The evidence showed the appellant had strong family ties in Sri Lanka and that this was a protective factor when he had suicidal thoughts. She submitted that the appellant could approach psychiatrists in Sri Lanka or "could treat himself and prevent suicide risk".

11. In response, Ms Patya argued that the judge had found that there was no evidence to suggest that the availability of mental health care was any different to the position when the Upper Tribunal decided *GJ*. The expert evidence indicated that the appellant's condition would deteriorate and there would be an increased risk of suicide if he were to be returned to Sri Lanka. His needs were not just limited to limiting the risk of suicide. Even if he did have family support the judge found that adequate treatment was unlikely to be available.

Decision and reasons

12. Claims involving medical issues and suicide risk are particularly difficult to decide. A case brought on human rights grounds based on a person's medical condition is one that comes within the '*N* paradigm'. In such cases the threshold for showing a breach of human rights is particularly high. The European Convention on Human Rights does not place an obligation on a host state to refrain from removal where the feared harm does not emanate from intentionally inflicted acts of the public authorities in the receiving state, but instead from a naturally occurring illness. It was only in the most exceptional circumstances of the kind faced by the applicant in the *D* case, who was in the final stages of a terminal illness facing a distressing death without family or other support in the receiving state, that compelling humanitarian considerations were found to engage the operation of Article 3.

13. Some aspects of the law relating to the assessment of medical claims, which are not 'deathbed cases', are currently in flux following the decision of the European Court of Human Rights (ECHR) in *Paposhvili v Belgium* [2016] ECHR 1113. In that case the ECHR considered the potential category of "other exceptional cases, with other extreme facts, where the humanitarian considerations are equally compelling" identified by Baroness Hale in the House of Lords decision in *N* [70].

14. The Court of Appeal decisions in *J* and *Y (Sri Lanka)* govern a discrete area of assessment under Article 3 relating to suicide risk. The decisions in *J* and *N* were heard at around the same time in May 2005. By the time the Court of Appeal in *J* handed down its decision, it had the benefit of the House of Lords decision in *N*. The Court of Appeal conducted a detailed review of the European and domestic case law. The six points it drew from these authorities for the purpose of assessing Article 3 in the context of suicide risk were:

> "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."

15. The first three points set out the basic requirements to show a breach of Article 3. The third point made clear that there is an enhanced threshold in cases that come within the *N* paradigm. The last three points went beyond the decision in *N* to consider the context in cases involving the assessment of suicide risk. The Court of Appeal in the *Y (Sri Lanka)* modified the fifth point as follows:

> "15. ….. 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."

16. The assessment of suicide risk is a discrete aspect of the extension to Article 3 considered in *D* and *N*. In *MM (Malawi) v SSHD* [2018] EWCA Civ 2482 Counsel for the Secretary of State accepted that it was a distinct area of assessment under Article 3 [63]. The Court of Appeal in *J* made clear that there was a high threshold in 'foreign cases', and acknowledging the decisions in *D* and *N*, made clear that the threshold was even higher in cases where "the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state".

17. The nature of the potential harm in a suicide risk case is sufficiently serious to engage the operation of Article 3 within the meaning of the *N* paradigm. If a person can show that there is a real risk that they will commit suicide on return to the receiving state, the feared harm clearly meets the minimum level of severity required i.e. intense mental suffering leading to their imminent death.

18. The fifth and sixth points highlighted in *J*, modified in *Y (Sri Lanka)*, simply focus the assessment on issues specific to the circumstances relating to suicide risk. First, an initial assessment of whether there is a real risk that the person is likely to commit suicide if returned to the receiving state. This would normally be assessed with reference to expert psychiatric evidence. Second, whether effective measures can be put in place before, during and after removal to reduce the risk of suicide below a real risk. This would normally be assessed with reference to evidence relating to the circumstances in the receiving state.

19. Having analysed the relevant legal framework, I turn to consider the First-tier Tribunal decision in this case. There is no challenge to the judge's findings relating to the availability of psychiatric treatment in Sri Lanka. The judge considered the evidence before the Upper Tribunal in *GJ (Sri Lanka)*. It was open to him to

conclude that the more recent evidence before him did not change the position since in relation to the scarce or inadequate availability of psychiatric treatment.

20. When the judge went on to consider "Article 3: The medical claim" i.e. the *N* paradigm, it seems clear that he relied heavily on the findings made by the Upper Tribunal in the case of MP in *GJ (Sri Lanka)* [56-59]. However, when that part of the decision relating to MP is considered in full, the Upper Tribunal found that there would be a breach of Article 3 based on the discrete issue of suicide risk, not in relation to the wider *N* paradigm applicable in other medical cases. At [449-456] the Upper Tribunal considered the evidence relating to suicide risk and quoted the relevant parts of the decisions in *J* and *Y (Sri Lanka)*. The First-tier Tribunal's comparison with the appellant in MP was inaccurate in so far as the judge placed weight on what was said in *GJ (Sri Lanka)* for the purpose of "the medical claim". In reality, MP was a suicide risk case. Any error in characterising this case as a medical claim for the purpose of the wider *N* paradigm would not be material if the judge's subsequent findings relating to suicide risk were nevertheless sustainable.

21. Under the separate heading of "Article 3: Suicide risk" the judge conducted a structured assessment of the six points identified in *J*. It was open to him to find that the risk of suicide was sufficiently serious to engage the operation of Article 3 and that there would be a causal link between the act of removal and the potential suicide risk [62-63]. He considered, quite properly, the particularly high threshold in Article 3 cases [64]. It was open to him to remind himself that an Article 3 claim based on suicide risk could in principle succeed.

22. The judge went on to consider the more specific issues relating to suicide risk identified by the Court of Appeal in *J*. In relation to the fifth point, it was open to him to conclude that the appellant had a genuine subjective fear of return. It was accepted that the appellant suffered past persecution albeit his current fear was not objectively well-founded. Based on the psychiatric evidence, it was open to the judge to conclude that the appellant continues to have a genuine subjective fear, which would lead to a moderate to high risk of suicide on return [66].

23. The judge's treatment of the sixth point in *J* is more problematic. I quoted his findings in full at [8] above. It was open to the judge to conclude that the respondent would be able to put in place measures to mitigate the suicide risk before and during removal to Sri Lanka. The crucial assessment was the evidence relating to risk on return to Sri Lanka. His finding relating to the lack of adequate psychiatric treatment is unchallenged. It was open to the judge to find at [69] that the authorities in Sri Lanka would be unable to mitigate the risk of suicide due to inadequate provision of mental health treatment.

24. Whether the risk of suicide arising from the appellant's genuine subjective fear of return could be mitigated by other means was considered. At [68] the judge observed that there was evidence to show that the appellant had a close relationship with his family in Sri Lanka, which was said to have acted as a protective factor in relation to suicide risk while he is in the UK. The judge observed that the expert reports did not comment on whether the appellant's

family might act as a protective factor to mitigate the risk of suicide on return. In the end he concluded that the risk could not be mitigated because inadequate treatment was available.

25. It is common for judges to be faced with an incomplete set of evidence, but that does not detract from the obligation to make findings on issues that are relevant to the proper determination of an appeal. In this case it would have been open to the judge to take into account the fact that both doctors were aware that the appellant had close family members in Sri Lanka, yet still assessed the suicide risk to be moderate to high as a result of the heightened fear that he was likely to experience upon return as a result of past persecution. It would have been open to him to weigh up the evidence showing that his family were a protective factor while he is in the UK, where the suicide risk was assessed to be lower, against the evidence that showed that his fear was likely to be increased along with the risk of suicide if returned to the place of his past persecution. Even in the absence of specific expert opinion, it might have been reasonable to infer that the protective effect of his family might be reduced in the different and far more fearful context of return to Sri Lanka. Conversely, it would have been open to the judge to consider the more direct support that he is likely to have from his family if he were to be returned to Sri Lanka. None of these matters were considered.

26. Although it was open to the judge to conclude that it was unlikely that the Sri Lankan authorities would be able to mitigate the risk of suicide due to unavailable or inadequate mental health care in Sri Lanka, the question of whether the protective effect of his family might nevertheless reduce the suicide risk below that of a real risk thereby reducing the need for treatment was a relevant consideration. The fact that the appellant might benefit from other treatment and support that is not likely to be available in Sri Lanka is unlikely, taken alone, to reach the very high threshold in cases of this sort in the absence of evidence to show that there would be a real risk of suicide.

27. Having identified the issue of family support at [68] the judge failed to resolve it before concluding that the lack of available treatment alone gave rise to a real risk of suicide. The judge then muddied the waters at [71] by observing, apparently as an aside, that the appellant's family would be able to provide support "if and when his condition improves". The combination of comments in [68] and [71] leaves the reader of the First-tier Tribunal decision unclear as to what the judge's conclusions were regarding the potential protective effect the appellant's family might have in terms of mitigating the risk of suicide if he were to return to Sri Lanka, whether treatment is available or not.

28. I conclude that the absence of clear findings relating to the potential mitigating effect of family support amounts to an error of law. For the reasons given above the First-tier Tribunal findings relating to "the medical claim" are set aside as are the findings relating to the sixth point in *J*. The rest of the First-tier Tribunal findings relating to the first five points in *J* are sustainable and are preserved.

29. The normal course of action would be for the Upper Tribunal to remake the decision. Although the Supreme Court is due to consider wider issues relating to the *N* paradigm and the effect of the decision in *Paposhvili* in *AM (Zimbabwe)*, it is unclear to what extent the court will consider the discrete issue of suicide risk. Nevertheless, it was agreed that it would be sensible to relist this case for remaking to allow for the possibility of *AM (Zimbabwe)* being decided before the next hearing. However, given the discrete nature of the assessment in suicide risk cases, and the narrow issue that must be remade, it is unlikely that the case will be adjourned to await the outcome of the Supreme Court decision if the judgment has not been handed down before the resumed hearing.

30. Allowing some time before the next hearing will also give the appellant the opportunity to plug the gap in the evidence identified by the First-tier Tribunal, which would assist the Upper Tribunal when it remakes the decision.

DIRECTIONS

31. The parties are granted permission to file any up to date evidence at least **seven days** before the next hearing.

32. The resumed hearing will be listed on the first available date after ten weeks.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision will be remade at a resumed hearing in the Upper Tribunal

Signed  Date 04 December 2019
Upper Tribunal Judge Canavan