IAC-AH-SC/SAR/SC-V2

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11215/2017**

THE IMMIGRATION ACTS

Heard at RCJ	**Decision & Reasons Promulgated**
On 28 November 2022	**On the 30 January 2023**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Walker, Counsel instructed by Turpin & Miller LLP
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

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.

DECISION AND REASONS

1. The Appellant is a citizen of Sierra Leone. His date of birth is 20 January 1990. In a decision promulgated on 10 December 2021 (following a hearing at Field House on 8 December 2021) I set aside the decision of First-tier Tribunal Judge Kudhail to dismiss the Appellant's appeal against the decision of the Secretary of State dated 17 October 2017 to refuse his claim on protection grounds.

2. I found the judge erred for the following reasons:-

> "34. The judge erred when assessing the appeal under Article 3 (health grounds) for the reasons identified in the grounds of appeal and as conceded by Ms Everett. She did not apply the proper legal test set out in AM. I also conclude that she did not take into account all of the evidence in respect of access and availability of treatment. I cannot with certainty say that had the judge not erred in this way, she would have reached the same conclusion. The error infects the Article 8 assessment.
>
> 35. The decision to dismiss the appeal under Articles 3 and 8 ECHR is set aside. However the decision to dismiss the Appellant's claim on protection grounds is maintained.
>
> 36. The Appellant has been found not to have been trafficked or held in servitude. However, he has been found to have been sexually abused and to have injuries which are consistent with beatings from a cane or electric cable. It is the context of the infliction of the injuries/assaults which has not been accepted. However, there can be no doubt from the findings of the judge that the Appellant has been seriously ill-treated. Moreover, he has mental health problems as accepted by the judge".

3. The Appellant came to the UK in 2004 when he was aged 14. He was granted ILR on 11 October 2009 as a dependant on his mother. On 14 February 2007 at Inner London Crown Court the Appellant was convicted of robbery and sentenced to eight months' detention and training order. On 3 September 2009 at Bexley Magistrates' Court he was convicted of driving otherwise than in accordance with the licence and using a vehicle while uninsured. He was fined and disqualified from driving. On 17 June 2010 at North Kent Magistrates' Court he was convicted of travelling on a railway without paying fare and fined. On 26 October 2011 at North Kent Magistrates' Court he was convicted of travelling on a railway without paying fare, possession of a knife blade/sharp pointed article in a public place and sentenced to 112 days' imprisonment suspended for twelve months.

4. On 30 November 2011 the Appellant committed an offence of grievous bodily harm (GBH), an offence under s.18 of the Offences Against the Person Act 1861. He with two others stabbed a man. On 22 June 2012 the Appellant was sentenced of GBH. The sentencing judge's sentencing comments when passing a sentence of twelve years' imprisonment on the Appellant were as follows;

> "In this area the number of stabbings that are taking place have reached a level that the public are frightened and concerned. Young

> men, almost as a fashion accessory, now carry either a gun or a knife and you have previously been convicted, on separate occasions, of carrying either offensive weapons or knives. In some cases there has also been offences of robbery.
>
> On this occasion I am quite satisfied that all three of you have actively participated in the stabbing of Blessing Ago and that reason for it was to sort out some form of territorial dispute, as evidenced by the witness who heard mention of territory and, 'you keep to your patch and I'll keep to mine'.
>
> I am quite satisfied that the sentence I pass must reflect the public concern …
>
> … I am satisfied, as I say, that each of you possessed a weapon which you carried to the scene. These are aggravating features. I am also satisfied that the injuries, though life-threatening at the time, were brought swiftly under control.
>
> I can find little mitigation. Each of you sought to blame the other. You have shown no remorse until convicted and you pleaded not guilty and thought the case through, seeking to deceive the jury into believing your innocence.
>
> I am quite satisfied, therefore, looking at you, that the only way in which I can adequate punish you is by immediate custodial sentences of some length. …
>
> … I am quite satisfied that you were the ringleader. You are older than the others. You should have known better and you should have ensured it didn't happen, and it would have been within your grasp to have done that."

5. The Secretary of State made a deportation order on 8 February 2017. The Appellant's human rights claim was refused on 17 October 2017. The Secretary of State certified deportation under s. 72 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

6. The First-tier Tribunal found that the Appellant had not rebutted the presumption under s.72 and therefore he was excluded from the Refugee Convention. The Judge found that the Appellant would not be at risk on return having rejected the core of his account. The appeal was dismissed under Articles 3 and 8 of ECHR.

7. The judge made the following findings which are preserved:-

(i) The Appellant failed to rebut the presumption that he constitutes a danger to the community.

(ii) The Appellant is not at risk on return to Sierra Leone under Article 3 (on account of his father).

(iii) The Appellant and his sister, E, were not trafficked in Italy before coming to the United Kingdom.

(iv) The Appellant has not been here lawfully for most of his life and he is not socially and culturally integrated.

(v) The Appellant has a genuine and subsisting parental relationship with his son, EM (aged four).

(vi) The impact of the Appellant's deportation would not be unduly harsh on EM

(vii) The Appellant is not rehabilitated

(viii) The Appellant has PTSD, depression and suicidal ideation

(ix) The Appellant has not been trafficked. However, he is a victim of abuse. He has been sexually abused and has injuries which are consistent with beatings from a cane or electric cable.

The Issues

8. I have to decide whether returning the Appellant to Sierra Leone would amount to treatment including torture or "inhuman or degrading treatment or punishment" breaching his rights under Article 3 ECHR on account of his mental health. If the answer is affirmative, the appeal succeeds (Article 3 is a non-derogable right). If negative, I must consider whether the decision of the Secretary of State breaches the Appellant's right to private and/or family life under Article 8 ECHR.

The Law

9. There is no dispute between the parties concerning the relevant law and application thereof. Section 32 of the UK Border Act 2007 ("the 2007 Act") states in summary that the Secretary of State must make a deportation order in respect of a foreign criminal subject to exceptions set out in s.33. The Appellant states that deportation breaches his rights under the ECHR which is an exception and therefore his deportation is unlawful.[1]

10. The Appellant must establish that he meets the threshold for establishing Article 3 harm identified at [29]–[31] of the Supreme Court's judgment in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17; [2020] Imm AR 1167. That is he must be exposed to a real risk of:

(i) a significant, meaning substantial, reduction in his life expectancy arising from a completed act of suicide and/or

[1] Section 32 of the 2007 Act states that the Secretary of State is required to make a deportation order if the provisions in Section 32 (the "foreign criminal" conditions) are satisfied and none of the exceptions in Section 33 apply. The exception in Section 33(2)(a) is where removal of the foreign criminal would breach a person's Convention rights.

(ii) a serious, rapid and irreversible decline in his state of mental health resulting in intense suffering falling short of suicide, following return to the receiving state.

When undertaking an assessment the six principles identified at [26] and [31] of J v Secretary of State for the Home Department [2005] EWCA Civ 629; [2005] Imm AR 409 (as reformulated in Y (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362 apply. The Appellant must adduce evidence capable of demonstrating that there are substantial grounds for believing that Article 3 will be violated. This can be explained as raising a prima facie case which means a case which in the absence of challenge would establish infringement. It is a demanding threshold. It is for the Appellant to demonstrate that there are substantial grounds for believing that such a risk exists; after that point, the burden falls to the Secretary of State to dispel any serious doubts raised by it (AM [33]).

11. The Upper Tribunal case AM (Article 3; health cases) Zimbabwe [2022] UKUT 131 sets out the following principles in the headnote in relation to the threshold test:

> "In Article 3 health cases two questions in relation to the initial threshold test emerge from the recent authorities of AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 and Savran v Denmark (application no. 57467/15): (1) Has the person (P) discharged the burden of establishing that he or she is "a seriously ill person"? (2) Has P adduced evidence "capable of demonstrating" that "substantial grounds have been shown for believing" that as "a seriously ill person", he or she "would face a real risk": [i] "on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, [ii] of being exposed [a] to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering, or [b] to a significant reduction in life expectancy"? 2. The first question is relatively straightforward issue and will generally require clear and cogent medical evidence from treating physicians in the UK. 3. The second question is multi-layered. In relation to (2)[ii][a] above, it is insufficient for P to merely establish that his or her condition will worsen upon removal or that there would be serious and detrimental effects. What is required is "intense suffering". The nature and extent of the evidence that is necessary will depend on the particular facts of the case. Generally speaking, whilst medical experts based in the UK may be able to assist in this assessment, many cases are likely to turn on the availability of and access to treatment in the receiving state. Such evidence is more likely to be found in reports by reputable organisations and/or clinicians and/or country experts with contemporary knowledge of or expertise in medical treatment and related country conditions in the receiving state. Clinicians directly involved in providing relevant treatment and services in the country of return and with knowledge of treatment options in the public and private sectors, are likely to be particularly helpful. 4. It is only after the threshold test has been met and thus Article 3 is applicable, that the returning state's obligations

summarised at [130] of Savran become of relevance – see [135] of Savran."

12. The statutory framework for consideration of Article 8 claims is s.117 of the 2002 Act which is set out below.

Section 117 of the 2002 Act

"**117A Application of this Part**

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard –

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where –

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D Interpretation of this Part

(1) In this Part –

"Article 8" means Article 8 of the European Convention on Human Rights;

"qualifying child" means a person who is under the age of 18 and who –

(a) is a British citizen, or

(b) has lived in the United Kingdom for a continuous period of seven years or more;

"qualifying partner" means a partner who –

(a) is a British citizen, or

(b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).

(2) In this Part, "foreign criminal" means a person –

(a) who is not a British citizen,

(b) who has been convicted in the United Kingdom of an offence, and

(c) who –

(i) has been sentenced to a period of imprisonment of at least 12 months,

(ii) has been convicted of an offence that has caused serious harm, or

(iii) is a persistent offender.

(3) For the purposes of subsection (2)(b), a person subject to an order under –

(a) section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc),

(b) section 57 of the Criminal Procedure (Scotland) Act 1995 (insanity etc), or

(c) Article 50A of the Mental Health (Northern Ireland) Order 1986 (insanity etc),has not been convicted of an offence.

(4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time –

(a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);

(b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time;

(c) include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for that length of time; and

(d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.

(5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it."

13. In order to consider very significant obstacles to integration, I apply the test in Kamara v Secretary of State for the Home Department [2016] EWCA Civ 813:-

> "14. In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life".

14. In relation to s117C (6), the court gave guidance in NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662. The following is relevant:-

> "29. In our view, the reasoning of the Court of Appeal in *JZ (Zambia)* applies to those provisions. The phrase used in section 117C(6), in para. 398 of the 2014 rules and which we have held is to be read into section 117C(3) does not mean that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that 'there are very compelling circumstances, over and above those described in Exceptions 1 and 2'. As we have indicated above, a foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paras. 399 or 399A of the 2014 rules), or features falling outside the circumstances described in those Exceptions and those paragraphs, which made his claim based on Article 8 especially strong.
>
> 30. In the case of a serious offender who could point to circumstances in his own case which could be said to correspond to the circumstances described in Exceptions 1 and 2, but where he could only just succeed in such an argument, it would not be possible to describe his situation as involving very compelling circumstances, over and above those described in Exceptions 1 and 2. One might describe that as a bare case of the kind described in Exceptions 1 or 2. On the other hand, if he could point to factors identified in the descriptions of Exceptions 1 and 2 of an especially compelling kind in support of an Article 8 claim,

> going well beyond what would be necessary to make out a bare case of the kind described in Exceptions 1 and 2, they could in principle constitute 'very compelling circumstances, over and above those described in Exceptions 1 and 2', whether taken by themselves or in conjunction with other factors relevant to application of Article 8.
>
> ...
>
> 33. Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.
>
> 34. The best interests of children certainly carry great weight, as identified by Lord Kerr in *HH v Deputy Prosecutor of the Italian Republic* [2012] UKSC 25; [2013] 1 AC 338 at [145]. Nevertheless, it is a consequence of criminal conduct that offenders may be separated from their children for many years, contrary to the best interests of those children. The desirability of children being with both parents is a commonplace of family life. That is not usually a sufficiently compelling circumstance to outweigh the high public interest in deporting foreign criminals. As Rafferty LJ observed in *Secretary of State for the Home Department v CT (Vietnam)* [2016] EWCA Civ 488 at [38]:
>
> > 'Neither the British nationality of the respondent's children nor their likely separation from their father for a long time are exceptional circumstances which outweigh the public interest in his deportation.'
>
> 35. The Court of Appeal said in *MF (Nigeria)* that paras. 398 to 399A of the 2012 rules constituted a complete code. The same is true of the sections 117A-117D of the 2002 Act, read in conjunction with paras. 398 to 399A of the 2014 rules. The scheme of the Act and the rules together provide the following structure for deciding whether a foreign criminal can resist deportation on Article 8 grounds".

15. The deportation of foreign criminals is in the public interest. The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.[2]

The Evidence

16. The Appellant relies on the evidence that was before the First-tier Tribunal. In addition to that evidence he relies on an addendum from Lisa Davies of 9 April 2022 and expert report from Ibrahim Bangura of 15 August 2022. I have summarised their evidence below. The Appellant and his sister have updated their evidence. The Appellant gave live evidence. There was no live evidence from his family in the United Kingdom. I have not set out the

[2] See s.117C(2) of the 2002 Act

Appellant's evidence or that of family members. Much of it relates to the Appellant's complaint that he was trafficked; however, the First-tier Tribunal found him not to have been the victim of trafficking. I have engaged with the evidence and the oral submissions where necessary in my findings and reasons.

The Evidence of Lisa Davies

17. Ms Davies initially assessed the Appellant on 19 and 22 January 2021 and her report of 25 January 2021 was before the First-tier Tribunal. Most of the report engages with the risk of reoffending and rehabilitation.

18. She assessed the Appellant as having a moderate depressive episode and moderately severe symptoms of posttraumatic stress disorder (PTSD). She found that active suicidal intent was present in December 2020 and that recurrent suicidal ideations are present.

19. Ms Davies engaged with Dr Chisholm's earlier assessment of the Appellant. At that time he was found not to meet the diagnostic criteria for PTSD using the CAP-5 assessment; however, the Appellant was at the time in the community. Ms Davies noted that Dr Chisolm felt that the Appellant would meet the criteria for a major depressive disorder when in prison and that he was considered by Dr Chisolm to be vulnerable because of past traumatic life events although he was not felt to be at risk of suicide as he had no plans, thoughts or intent to harm himself. He was however considered to be at increased risk in the event of a further episode of depression. (Ms Davies stated that this appeared to have occurred in around September 2020 when the Appellant's probation officer reported that she had concerns about his mental health and that the Appellant has reported making a serious attempt on his life by overdose in December 2020). The risk of suicide was combined with a risk of other negative consequences including PTSD and Dr Chisolm opined that if the protective factors were removed, as would occur in the event of deportation, he would be in a high risk group for poor mental health and suicide.

20. Ms Davies stated that the Appellant presents with a high risk of suicide in the event of deportation. She assessed him as being at high risk of committing suicide following an adverse outcome to the current immigration proceedings and in the event of forced removal to Sierra Leone and the resulting loss of the familial and partner support he receives in the UK and the loss of his relationship with his son which are, the Appellant told her, protective for him in relation to the risk of suicide. Ms Davies anticipated an increase in the Appellant's symptoms of PTSD in the event of a forced return which would render him unlikely or unable to seek independent support and assistance. There was a high risk of the Appellant being re-trafficked given his past experiences, vulnerability and mental health functioning, which would be worsened if forcibly removed.

21. Ms Davies prepared an addendum to her report of 9 April 2022 focussing on the Appellant's mental health and suicidal ideation. Risk of suicide was assessed on 21 February 2022, using the Beck Suicide Scale (BSS). At 3.3.18 Ms Davies states as follows:-

> "[The Appellant's] suicidal ideation was assessed using the Beck Suicide Scale (BSS) (Beck and Steer, 1991). It is important to note that as with the other Becks inventories the BSS is based solely on self-report and should be interpreted accordingly. [The Appellant's] response on the BSS were indicative of a high level of suicidal ideation. He has made prior attempts and reported three attempts in the last six months."

22. The BSS is a 21 item self-report questionnaire that measures the severity of suicidal ideation in adults and adolescents. Ms Davies records that the Appellant reported to her a clear intention to end his life if removed to Sierra Leone, having admitted writing a suicide note and having engaged in planning with regards to a future attempt.

23. The Appellant told Ms Davies that he was not getting any support for his mental health in prison or from the Probation Services and that he had not yet had contact with the mental health team at HMP Belmarsh following his assessment by her in January 2021. He reported that prior to his recall he was being seen by Mental Health Services and was on a waiting list for group interventions. He told Ms Davies that he had been seeing his GP and taking medication and that he was prescribed Sertraline 150 milligrams, which he has been able to receive in prison. The Appellant informed Ms Davies that he has received visits from his girlfriend in prison and that he speaks to his mother every day and to his sister and his son.

24. Ms Davies indicates that she did not have sight of any recall reports from the Probation Service detailing the reasons for the Appellant's recall although she understood, as of 8 April 2022, that there was no further action being taken by the police in relation to an allegation of rape.

25. Ms Davies recommends that the Appellant be referred to the prison mental health in-reach team to receive support and psychoeducation for his experiences of trauma and engage in trauma-focused sessions and stabilisation work. She states that interventions are unlikely to be successful while the Appellant faces the prospect of removal.

26. The Appellant reported to Ms Davies that he has support in the UK from his mother, partner and sister and that he receives personal, emotional and financial support from those individuals. He also mentioned his godmother, whom he said had played a big role in his life. From what the Appellant told Ms Davies, it can be inferred that there is some issue relating to the loss of money from the Appellant's godmother's account for which he said that he was not responsible.

27. At paragraph 3.4.8, Ms Davies states as follows:

"3.4.8. When exploring when he last experienced thoughts to harm himself or others, he reported that he cannot recall experiencing any recent thoughts to harm others and could not recall a time when he has experienced thoughts to harm others since his offence of wounding in 2012. He told me that thoughts to harm himself are, always there.

3.4.9. He told me that he has no current plans to end his life and cited his girlfriend and his son as protective factors …. He told me that he thinks about suicide when he feels upset, and reported that he thinks about suicide when he feels angry and upset, and reported that this is most days at present. He became tearful as he reflected upon writing a suicide note to his son. He also reported researching how to cut his throat with a knife, by watching videos and tutorials on YouTube.

3.4.10. When exploring the support that would be available to him in the event of being returned to Sierra Leone, [the Appellant] reported that he has no family members living in Sierra Leone and would therefore be without support. He told me that he has no grandparents or extended family members living in Sierra Leone. He has not resided in Sierra Leone since he was 4 years old and has no recollection of the time he spent in Sierra Leone. He told me that his mother is a British citizen.

3.4.11 When exploring how he would cope in the event of the forcible removal, [the Appellant] reported that 'I would take my life, I don't know anybody there and I would take my life. There is no government there that would support me and I have no family there and I don't know the country'. He told me that he has thought about how he would end his life and spoke of 'putting a bullet to my head' or hanging himself."

The Evidence of Ibrahim Bangura

28. Mr Bangura is a senior lecturer in the Department of Peace and Conflict Studies at the University of Sierra Leone. He sets out his extensive and impressive experience and qualifications in his report before setting out instructions to him from the Appellant's solicitors. He was specifically asked what obstacles the Appellant would face on return to Sierra Leone and what medical treatment would be available to him in respect of his mental health issues and how accessible that treatment would be.

29. Mr Bangura, at paragraph 5, outlines the obstacles and difficulties that the Appellant would be presented with. He states that there are non-governmental organisations (NGOs) that provide support to deportees but organisations lack resources they require to provide adequate medical and economic support to deportees and the Appellant will not be able to receive sufficient medical and economic support from them. He goes on to state that returnees rely on the support of their family, friends and

others within their social network who may be willing to provide. He gives examples of deportees who have been locked up by the authorities on return and who are now living in limbo.

30. Mr Bangura says the role of the family is of great relevance to the successful reintegration of a deportee. He states that the Appellant will have to rely on the support of his family in and outside the country for any form of support that he will require and he will not be able to rely on the government. One of the key challenges related to reintegration of deportees is the inability to access economic reintegration support.

31. Mr Bangura outlines a bleak picture of mental health support services in Sierra Leone at paragraph 6 of his report. He states that Sierra Leone has little capacity for addressing the needs of individuals with mental illnesses such as major depression, schizophrenia, psychosis, panic or anxiety disorders, bipolar disorder, complex posttraumatic stress disorder and autism. It also lacks the capacity to address the needs of individuals suffering from multiple mental illnesses. He states that "one mental health survey found that less than one percent of individuals requiring mental health treatment are able to access such treatment" and the same survey found that Mental Health Services are limited in scope and trained personnel and that the mental health system serving psychiatric patients is weak.

32. Governmental policies and plans for implementing mental healthcare in Sierra Leone have not been successfully implemented. The Ministry of Health and the rural and urban Sierra Leone health system lack the capacity to serve the mental health needs of the local population and it lacks surveillance capacity to know the overall demand for mental health services. The government provides the majority of psychiatric services and mental healthcare is serious underfunded.

33. The US Department of State 2016 report identifies that the Sierra Leone psychiatric hospital in Kissy is the only impatient psychiatric institution served persons with mental disabilities and that the government did not provide adequate funding for the hospital which relied on donations. The hospital had only one consulting psychiatrist and patients were not provided with sufficient food and restraints were primitive and dehumanising.

34. Mental healthcare has not been integrated into primary health services. Non-governmental psychiatric services actually available are concentrated in urban areas in Sierra Leone and are restricted to the distribution of pharmaceutical mediations through baseline outpatient nursing and group counselling work through NGOs like the centres for victims of torture.

35. There is a severely stressed system that lacks capacity to provide the most basic standards. Contradictory evidence is reported about non-governmental provision of mental health services. There are substantial regional imbalances:

36. There is no known government support for deportees and what exists are organisations and networks that provide support and advocacy. It will be difficult for the Appellant to get the support he requires to integrate into society.

37. There is a high likelihood of him being subjected to stereotypes and stigmatisation. His immediate family in the UK will not be able to provide him with the direct support he will require in Freetown. Being able to survive or cope with the challenges in Sierra Leone will require the socioeconomic and psychosocial support of family and friends.

38. It will be expensive for the Appellant to communicate with family members in the UK from Sierra Leone. If the Appellant can afford a smartphone with access to megabytes he may be able to keep in touch with his relatives. Other than that the maintenance of their relationship will gradually become affected as he may not be able to regularly to keep in touch with them.

Findings and Reasons

39. I am mindful that the applicant is the victim of trauma and that he has mental health problems as found by the First-tier Tribunal. I have taken into account that the Appellant is a vulnerable witness and would find it difficult to recount his experiences of trauma in the formal setting of a court. I have taken into account the Appellant's evidence before me in the light of his vulnerabilities, previous trauma and accepted diagnoses. I have applied the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive Appellant guidance.

40. It is not challenged that the Appellant is a foreign criminal[3] and a serious offender having been sentenced to more than four years' imprisonment. It was agreed by the parties that in order to succeed under Article 8, he must establish very compelling circumstances in the context of s.117C(6) of the 2002 Act. In this case the Appellant has been convicted of a very serious offence. He has failed to rebut the presumption that he constitutes a danger to the community and he is excluded from the Refugee Convention.

41. The issue before me is whether Article 3 is engaged. In order to consider this ground of appeal I must consider the evidence of Ms Davies that he is at high risk of suicide which is not accepted by the SSHD.

42. The Appellant when examined by Dr Chisholm in 2017 was found not to meet the diagnostic criteria for PTSD. However he stated that he was considered vulnerable because of past trauma and he would be at increased risk of suicide in the event of a further episode of depression.

[3] The Appellant is a foreign criminal as defined in Section 117D(2) of the 2002 Act and Section 32(1) of the 2007 Act.

43. Ms Davies' diagnosis remains the same in her more recent addendum. It was accepted that the Appellant is prescribed a dosage of 200mg of Sertraline daily. This is recorded in a care plan (Ms Davies records a daily dosage of 150 mg although Mr Whitwell did not take any issue with this and it may be that the dose has been increased).

44. The Appellant's risk of suicide was assessed on 21 February 2022 using the BSS. Ms Davies states that the Appellant has told her of three suicide attempts within the last 6 months. In her original report she referred to an increased risk of suicide in or around September 2020 when the Appellant's probation officer reports she had concerns about his mental health and "there is a report of making a serious attempt on his life by overdose in 2020".

45. There are problems arising from the level of suicide risk assessed by Ms Davies. The BSS is reliant on self-reporting. No doubt when answering the questionnaire the Appellant indicated past suicide attempts. It is evidence that Ms Davies attached significance to these attempts in her assessment.

46. The Appellant told Ms Davies of a suicide attempt in December 2020 and three suicide attempts during the six months before the 21 February 2022. In respect of the first attempt, the Appellant at the hearing described when he was at his mother's home and swallowed some bleach. He told the probation service and they called the police and an ambulance; however, when they arrived the Appellant told them nothing was wrong. While the Appellant's evidence lacks clarity, I accept that there were concerns about his mental health at this time expressed by the Appellant's probation officer. Ms Davies at para 3.6.5 of the first report states that the probation officer had called the police to conduct a welfare safety check upon him when she was worried about his mental health in December 2020. Ms Davies stated that the Appellant "recalled feeling very depressed and had taken an overdose". While the evidence of the method is inconsistent (in oral evidence the Appellant stated he had swallowed bleach), I am satisfied that the Appellant was very depressed in December 2020 and was suicidal. However, it is unlikely that the Appellant would have swallowed bleach without requiring medical treatment and in any event it does not accord with what he told Ms Davies.

47. There is no medical evidence supporting suicide attempts. Ms Davies did not have before her the Appellant's medical notes to support what she was told. She did not seek to probe him about what he told her. There is little support for the Appellant having attempted to take his own life. The Appellant was unable to give a coherent account of this in evidence. Considering his medical condition this is not necessarily surprising; however, there is no mention of the details of these attempts on his life in his witness statement or that of his sister. Ms Davies does not record that she asked any questions about these attempts or that the Appellant volunteered any further information. I find that this is a material omission because the BSS assessment is (as acknowledged by Ms Davies) based

solely on self-report and she attached weight to what the Appellant told her in her assessment. While I appreciate that there are many reasons why someone would attempt suicide and not call for medical help, there is simply no support other than what he told Ms Davies that this Appellant has attempted suicide on four occasions. It is reasonably likely that there would be a need for medical assistance, treatment or at least some physical evidence.

48. I find that the Appellant has exaggerated his suicidality. I do not accept that the risk of suicide is high or very high bearing in mind the problems with the Appellant's evidence. I have no doubt that the Appellant is unwell and that he has suicidal ideation. While he has exaggerated active suicidality, he does have mental health problems. However, I must consider whether he meets the threshold test.

49. Any risk of suicide on removal or on being told of the negative decision would be managed. It is what will happen on return to Sierra Leone which is the issue for me to consider. The Appellant has PTSD and depression. His mental health condition will worsen on his return. He will not have the protective factors of his family in the United Kingdom including his son on return to Sierra Leone.

50. The Appellant has been diagnosed by one psychologist and not a physician. However, there is no challenge to the evidence based on this. The SSHD accepts that he is mentally ill. I accept that the Appellant is a seriously ill person.

51. I do not accept that the Appellant would be exposed to a real risk of a significant meaning substantial reduction in his life expectancy arising from a completed act of suicide or a serious, rapid or irreversible decline in his state of mental health resulting in intense suffering failing short of suicide following return. This is because I find that any deterioration in his mental health can be managed. While Mr Bangura's picture of mental health services in Sierra Leone is bleak, this Appellant has not established that he would be relying on the little that the government or non-governmental organisations could give him. Mr Bangura does not assess whether the Appellant would be able to access privately funded health care and medication with the help of his family in the United Kingdom and support of wider family in Sierra Leone. Mr Bangura does not engage with the findings of the First-tier Tribunal that the Appellant has family in Sierra Leone. The availability of medication and care funded by his family in the United Kingdom and the support of family in Sierra Leone is likely to mitigate the difficulties on return, including stigmatisation. The First-tier Tribunal found that the Appellant was not a credible witness and it was not accepted that he does not have family in Sierra Leone. There is no reason for me to depart from this finding.

52. The Appellant has not established that anti-depressants would not be available to him notwithstanding the lack of government support or that he would not receive financial help from family in the United Kingdom and

help from extended family in Sierra Leone in order to access medication and care funded by his family in the United Kingdom. I accept that there will be some deterioration in his mental health following removal, however, the Appellant has been found to have family in Sierra Leone and it can be reasonably inferred from this that he will receive some support from them to access privately funded treatment. The Appellant's appeal cannot succeed on Article 3 grounds.

53. The Appellant's condition will worsen upon removal and there may be serious and detrimental effects. However, he has not adduced evidence capable of demonstrating that substantial grounds have been shown for believing that he would face a 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 "intense suffering".

54. The appeal is dismissed under Article 3.

55. While the Appellant has not been to Sierra Leone since he was aged four, I find that he has not established that there would be very significant obstacles to integration. The Appellant's mother is from Sierra Leone. He has not established that he does not have family there or that he would not have access to medical care. He has not been straight forward about the links that he has to Sierra Leone. I find that he is enough of an insider to form a meaningful private life there. The evidence does not establish that the Appellant does not have some knowledge of the 'cultural norms' of his country of origin. While there may be an element of "culture shock", this does not amount to a very significant obstacles (SSHD v Olarewaju [2018] EWCA Civ 557).There is no reason for me to go behind the findings of the First-tier Tribunal in respect of Exceptions 1 and 2.

56. The Appellant is a serious offender excluded from protection of the Refugee Convention. The offence that he committed is extremely serious. I remind myself of the Judge's sentencing comments. The Appellant has been found not to have rehabilitated by the First-tier Tribunal. While I accept that he has not been charged with further offences, he has been recalled to prison by the probation service which would indicate non-compliance with terms of release on licence. I find that he is at high risk of re-offending.

57. The factors in the Appellant's favour are that he will be returning to a country that I accept he left aged four. He has been found not to have been trafficked, but he is the victim of childhood abuse which has contributed to his mental illness and which will no doubt exacerbate the difficulties he will face on deportation. I accept that there is stigma attached to mental illness in Sierra Leone. I accept that the Appellant's mental health will deteriorate following deportation. He will have to leave his family including his son in the United Kingdom. This will be very difficult for him and a tragedy for his son whose best interests lie in his

father being able to remain here. The Appellant has been here for a significant period of time. He has, however, been found by the First-tier Tribunal not to be socially and culturally integrated and there is no reason for me to go behind that finding. There was no live evidence from his family before the UT. I attach weight to the Appellant being seriously ill and that he will be separated from his son and family in the UK ; however, these factors together with all I have heard in the Appellant's favour do not amount to very compelling circumstances in the context of s.117C (6).

Notice of Decision

The appeal is dismissed under Article 3 ECHR.

The appeal is dismissed under Article 8 ECHR.

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 their 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.

Signed Joanna McWilliam Date 18 January 2023

Upper Tribunal Judge McWilliam