



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/01343/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 3rd June 2014

Determination

Promulgated

On 24th June 2014

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BALASUPRANIYAN NAVASUTHAN

Respondent

Representation:

For the Appellant: Mr David Mills, a Senior Home Office Presenting Officer
For the Respondent: Ms K Smith instructed by Greater Manchester Immigration Aid Unit

DETERMINATION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department. To avoid confusion I shall refer to the Secretary of State as “the respondent”, as she was before the First-tier Tribunal and I shall refer

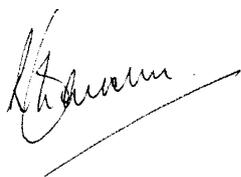
to Mr Navasuthan as “the appellant”, as he was before the First-tier Tribunal.

2. The Secretary of State appeals the decision of a First-tier Tribunal Panel, comprising First-tier Tribunal Judge Crawford sitting with Dr de Barros, who, in a determination promulgated on 24th October, 2013, allowed the appellant’s appeal against the decision of the respondent taken on 13th June, 2013 to refuse to revoke a deportation order by virtue of Section 5(2) of the Immigration Act 1971.
3. The Tribunal dismissed the appellant’s appeal under the Refugee Convention and also dismissed his humanitarian protection appeal. They allowed his appeal on human rights grounds under Article 3 and allowed his appeal against the appellant’s deportation order. The Secretary of State sought and was granted permission to appeal. In granting permission Designated First-tier Tribunal Judge Murray said this:-

“The grounds of application state that the Tribunal misdirected itself in law by misapplying the appropriate test. They state that medical care is only relevant to Article 8 where an individual’s ties to the UK have a direct bearing on his prognosis: - *MM Zimbabwe* [2012] EWCA Civ 279. They refer to *GS and EO India* [2012] UKUT 00397 relating to Article 3 health cases and state that this is a case which makes it clear that by withdrawing medical treatment in the host country, thus shortening life expectancy, is not in itself capable of engaging Article 3 unless the circumstances are exceptional. They refer to *N* [2005] UKHL 31 and *N* [2008] 47 EHRH 39 stating that any extension of the principles in *N* will be for the higher courts.

In the determination, the Tribunal finds that the appellant cannot return to Sri Lanka, because of his mental health issues. There seems to be no analysis of what treatment there will be for the appellant on return to Sri Lanka. The appellant finds that his treatment in Sri Lanka on his return and in preparation for his return will cause him significant trauma, but much of this is based on supposition and conjecture. The Tribunal may have misapplied the appropriate test.”

5. Before me, Mr Mills indicated that having carefully prepared the appeal, he believed that good reasons had been given by the First-tier Tribunal in allowing the appeal under Article 3 and in all the circumstances this is one of those very exceptional cases where it appears that the appellant will be at risk on return to Sri Lanka, because he will be returning on a travel document and will, therefore, be questioned on his return at the airport. Depending on his responses to the questions put to him, he may be at risk. Mr Mills accepted that the appellant’s response was not likely to be good given his apparent illness. He confirmed that in his view there was no error in the Tribunal’s determination.
6. I am very grateful to Mr Mills. I believe that he was correct to concede that the determination was not flawed. I uphold the Tribunal’s decision which will stand.



Upper Tribunal Judge Chalkley