Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01185/2014

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Determination Promulgated**
On 18th May 2015	**On 22nd June 2015**
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Before

UPPER TRIBUNAL JUDGE COKER

Between

SAHR FAYIA MANINGO
(No anonymity order)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Mackenzie, counsel, instructed by Coram Children's Legal Centre
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was convicted of two counts of rape and sentenced to five years concurrent on each count on 14th December 2012. On 11th June 2014 a deportation order was made by virtue of s32 (5) UK Borders Act 2007. His appeal on Article 3 and 8 grounds was heard and dismissed in a determination promulgated on 3rd September 2014. Permission to appeal was granted by UT Judge Chalkley on Article 8 grounds; he did not refuse permission to appeal on Article 3 grounds and Mr Mackenzie confirmed that he wished to pursue the appeal on Article 3 grounds in addition to

that on Article 8 grounds although he did not seek to pursue the appeal on the grounds that the First-tier Tribunal had not applied the correct test as regards Article 3 in failing to follow the guidance in GS & EO [2012] UKUT 00397 (IAC).

Background

2. The appellant, a national of Sierra Leone born in 1990, arrived in the UK on 5th July 2007 aged 16 as a dependant of his mother who had leave to remain in the UK. He was granted indefinite leave to remain on arrival. On 10th August 2010 he received a caution for travelling on a railway without paying a fare. On 10th December 2012 he was convicted of two counts of rape and on 14th December 2012 he was sentenced to two periods of five years imprisonment to run concurrently.

3. He has a partner, Alana (who is a British citizen), with whom he has never lived; they have a son born in the UK on 9th November 2012.

Grounds seeking permission

4. The grounds seeking permission to appeal are essentially

   (i) that the First-tier Tribunal erred in law on Article 3 grounds in its approach to the psychiatric evidence in going behind the uncontroverted finding of the expert psychiatrist who concluded that the appellant presented a risk of potentially fatal self harm;

   (ii) that there was no evidence entitling the judge to conclude that the appellant would have access to counselling in Sierra Leone on an out patient basis; and

   (iii) when considering Article 8 the First-tier Tribunal had erred in separating the effect of removal on the appellant's health from the effect on his private life.

Law

5. The appellant has been sentenced to a period of imprisonment in excess of four years. In so far as Article 8 is concerned he falls within s117C (6) Nationality Immigration and Asylum Act 2002 namely that the public interest requires his deportation unless there are very compelling circumstances over and above those described in Exceptions 1 or 2 (s117C (4) or (5)) This is reflected in paragraph 398 of the Immigration Rules HC395 as amended.

6. In so far as Article 3 is concerned, the recent case of GS [2015] EWCA Civ 40 sets out the relevant jurisprudence applicable to what can be termed 'health' cases and in particular those with a mental health element, as here.

First-tier Tribunal determination

7. The First-tier Tribunal determination sets out the evidence both oral and documentary and the submissions. The judge made the following findings:

(i) He accepts the explanation for having denied having a child in the past [25];

(ii) He accepts the appellant is the father of a British Citizen child born on 9th November 2012 [25];

(iii) That such family life as there is at present is 'embryonic' [25];

(iv) The best interests of the child lie with having the appellant around as he grows up [25];

(v) It would not be in the best interests of the child to relocate with his father and mother to Sierra Leone due to the lower standard of living he would enjoy there [25];

(vi) The child's half brother and the appellant's half sister and brother enjoy him visiting them and given that continuity is preferable to disruption it is in their best interests that the appellant remains in the UK [26];

(vii) In November 2013 the appellant was suffering from PTSD and depression [28];

(viii) Any risk of suicide, if it exists, would be adequately managed by the respondent both on removal and in transit;

(ix) He has an uncle, aunt and possibly a sibling in Sierra Leone; family support would be available.

(x) There was no reason why the appellant could not benefit from remittances sent to him by his mother;

(xi) On return he would be able to live with family members;

(xii) Family life in the Kugathas sense does not exist between the appellant and his mother and he has only limited family life between him and his half siblings.

8. The challenged findings include:

(i) that the conclusion of Professor Katona that in his opinion there was a "significant risk that [the appellant] would develop suicidal thought which could in turn spill over into (potentially fatal) self harm" conflicts with the lack of any evidence of self harm having occurred to date, that the appellant had denied any suicidal intent and that there was a lack of objective country-based evidence to suggest that the appellant would on return be faced with the images and experiences that had upset him as a young child"[28];

(ii) that the First-tier Tribunal was not satisfied that a risk of suicide exists [31];

(iii) having specifically denied any thoughts of self harm and although he had received two adverse decisions no instances of self harm had been recorded or suspected; that his low mood has not translated into anything more serious;

(iv) At its highest the appellant is not someone who requires in-patient treatment and if he were to require counselling on return, as to which the judge was not satisfied, the judge was not satisfied that it would not be available in Sierra Leone;

(v) There are not very compelling circumstances over and above those in s117C (4) and (5);

Article 3

9. Mr Mackenzie submitted, in essence, that in the absence of good reason then the expert evidence was to be accepted. He referred to the experience and expertise of Professor Katona who expressed a reasoned and sustainable view that the appellant's mental health would deteriorate. The approach by the First-tier Tribunal to the assessment of future mental health, based on past mental health, was, he submitted, erroneous in the light particularly of Professor Katona's report. He referred to the treatment the appellant had been receiving in prison and that although a previous suicide attempt may be an indicator of future risk it was not a pre requisite. He submitted that the judge had failed to give adequate reasons for disagreeing with the expert and had misunderstood Professor Katona's report as to re- traumatisation, which was not based upon seeing atrocities but on a return to the place where he had previously witnessed atrocities and on separation from his family.

10. Mr Mackenzie submitted that the findings of the judge that he would be able to access adequate treatment was not supported by the evidence; there was no evidence that counselling or out patient treatment was available. He submitted that the only treatment available was as an inpatient; there was no evidence to the contrary and there was no serious possibility of any treatment other than as an inpatient and that treatment as an inpatient would amount to a breach of Article 3. The First-tier Tribunal judge had, he submitted, failed to make a finding on that because he had failed to find that treatment was only available as an inpatient.

11. Although Mr Mackenzie accepted that the appellant denied current suicidal ideation he submitted that the references in Professor Katona's report to the appellant's mental health for example looking at the floor most of the time were matters upon which Professor Katona was best qualified to pronounce; the appellant was not the best judge of his own mental health and an experienced professional was best placed to know how a person would react in the future.

12. Mr Walker submitted, in essence, that the First-tier Tribunal judge had considered Professor Katona's report; that the appellant had not required counselling under the care of the prison authorities; he had denied any

suicidal thoughts either now or in the future; he had family support available if suicidal ideation became apparent, and that the medical evidence had been adequately considered and dealt with by the judge. The judge had found that the appellant would not need counselling but had considered the availability of facilities in the event that he did; his findings as to that were adequate.

Article 8

13. In so far as Article 8 is concerned Mr Mackenzie submitted that the approach of the judge was incorrect in separating consideration into two separate tranches – one considering the appellant's moral and physical integrity and the other his private and family life. He submitted that the consideration should have been a holistic consideration and drew attention to findings that had been made which were favourable to the appellant and that these should have been considered with the appellant's health as a whole.

14. Mr Walker accepted that the appellant did not have an appalling immigration history as referred to in the Rule 24 response. He submitted that the judge had considered family and private life and that although the judge had formulated the conclusions in the way he had, given the findings as regards his health there was nothing that would have led to a different conclusion.

Consideration

15. The appellant was examined by Professor Katona, in English, on 14th October 2013. He had before him the appellant's prison health care notes and his Home Office Subject Access file. He was asked to specifically comment upon three issues: whether he was suffering from any mental health condition; if so did it relate to his experiences in Sierra Leone and finally whether he would be at risk of self harm or suicide if deported to Sierra Leone.

16. In response to a question put by Professor Katona during the examination as to whether he ever felt life was not worth living he said he "sometimes just sits and looks at the floor". Professor Katona confirmed his clinical impression using a psychological rating that he had moderate depressive symptoms and that his score for the severity of his trauma related symptoms was indicative of severe trauma related symptoms.

17. In his report of 14th October 2013 Professor Katona recommends a course of 8-12 CBT one-to-one sessions with a trained therapist. He comments that it is unclear from the notes whether he has received such a course and notes he has not been prescribed anti- depressants. He refers to the NICE emphasis that CBT be considered as first line treatment and medication as second line. He then recommends a combination of both CBT and medication. He concludes that the appellant's symptoms of PTSD

were relatively mild whilst living in the community but that the "stress of imprisonment together with the threat of deportation to Sierra Leone, has however resulted in marked worsening of his PTSD symptoms."

18. Professor Katona concludes that the appellant

> "...is not currently at significant risk of suicide. However PTSD is associated with increased suicidality (Foote et al 2008). Mr Maningo's PTSD symptoms would be likely to worsen under the stress of deportation to Sierra Leone because of separation from his partner and son, his separation from his mother, and the strength with which he associates Sierra Leone with fear and threat. As a result of his worsening PTSD there is in my view a significant risk that Mr Maningo would develop suicidal thoughts which could in turn spill over into (potentially fatal) self harm."

19. The First-tier Tribunal judge held as follows:

> 28. This case does not involve someone who is "close to death". Professor Katona found in November 2013 that the appellant was suffering from PTSD and depression, and there is no specialist evidence indicating that his condition has changed since then. However, when Professor Katona concluded that in his opinion there was a "significant risk that Mr Maningo would develop suicidal thoughts which could in turn spill over into (potentially fatal) self harm", I find this conclusion conflicts with the lack of evidence of any self harm having occurred up until now and the fact that the appellant denied any suicidal intent when he was interviewed for the professor's report. There is also a lack of objective country-based evidence to suggest that the appellant would on return be faced with the sort of images and experiences which upset him as a very young child – namely, scenes of fighting and of someone he knew being shot. In addition, I take into account that an adult is better placed to cope with such images than a child, and the appellant is now an adult.
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> ...
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> 31. In this case, I am not satisfied that a risk of suicide exists. The appellant has specifically denied any such thoughts and although he received adverse decisions in January 2013 (the notification of liability to deportation) and June 2014 (the deportation decision), no instances of self harm have been recorded or even suspected. As referred to in section 6 of Professor Katona's report, the appellant has complained to the prison authorities of difficulty in sleeping and this has been found to be due to his low mood and worry about his future. However that low mood has not translated itself into anything more serious and the appellant has not been assessed by the prison authorities as requiring any form of medication for his mental health state.
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> 32. Accordingly I find that any risk of suicide, if it exists, would be adequately managed by the respondent both on removal and while in transit. On arrival in Sierra Leone he would not have to live on his own, in view of the evidence that his uncle and aunt are still there- and despite what the appellant said, his mother said that her other son was also in Sierra Leone living with her brother. With family support available to the appellant on return, and in view of the changed country conditions since the time the appellant was present during the

civil war, I am not satisfied that substantial grounds exist for believing there is a real risk of suicide in Sierra Leone.

20. The submission that the judge had failed to give adequate reasons for rejecting Professor Katona's report is not made out. The judge was faced with conflict in the information before him – that according to Professor Katona his PTSD symptoms "would be likely to worsen", "as a result… there is…a significant risk" that he "would develop" suicidal thoughts which "could" in turn spill over to potential fatal self harm. On the other hand there had been no previous self harm attempts; despite Professor Katona linking the risk of self harm to adverse decisions, there had been no such instances or even concern about the possibility of such instances after the receipt of two adverse decisions and that although the prison records indicates reports of difficulty in sleeping and low mood this has not been considered to translate into anything more serious. Whilst accepting that a lack of previous suicide or self harm attempts is not necessarily indicative of a lack of future risk, the fact of no previous incidents in the circumstances where Professor Katona has indicated there may be such attempts, is a matter that the judge was entitled to take into account. Furthermore although Mr Mackenzie submitted that Professor Katona was better placed to identify the appellant's mental health than the appellant, the appellant himself says he has not had thoughts of self harm and there is nothing in the report to suggest that such an assertion from the appellant himself was not safe to be relied upon. The response to that assertion that the appellant spends a lot of time "looking at the floor" was not translated by Professor Katona to indicate suicidal ideation and it cannot be credibly suggested that such behaviour can have that result without more analysis – such analysis being missing from Professor Katona's report.

21. Professor Katona records the appellant's description of the incident that led to his conviction. He does not record that the appellant was convicted after a trial and, from the description given to Professor Katona, that he continues to deny he had committed any offence (a denial which continued before the First-tier Tribunal). Professor Katona does not incorporate into his assessment the fact that the appellant was convicted for offences he denied committing and that as a result of that he was separated from his partner, child and other family members for a lengthy prison sentence. He makes no comment or assessment on the effects this may have had on his PTSD and depression.

22. The First-tier Tribunal judge found that the appellant did not require counselling – he had not received any since being in the UK, but that in any event any such counselling would be available albeit not to the same standard as in the UK. The judge referred to the extreme lack of mental health facilities in Sierra Leone and the submissions by the appellant that there were no out patient facilities. Mr McKenzie referred to the lack of outpatient facilities and that therefore the appellant would, in order to receive treatment, be required to be an inpatient and the facilities for such

treatment were inhuman and degrading and amounted to a breach of Article 3.

23. The First-tier Tribunal judge referred to the lack of counselling received by the appellant during the time he had been in the UK. He did not receive any such counselling after his arrival in the UK or after conviction or after separation from his partner and child and other family members or after receipt of adverse immigration decisions. He has not been prescribed any medication to deal with mental health issues. Professor Katona, although concluding the appellant would benefit from counselling and medication has not, in reaching that conclusion factored into his diagnosis the failure of the appellant to acknowledge his guilt and the resulting lengthy prison sentence for something he claims he did not do. Despite this, which on the face of it one would have expected to have a considerable impact on the appellant's mental health, the appellant has not been considered to require mental health treatment since his incarceration other than in Professor Katona's report. The finding of the judge that the appellant does not require treatment was a finding open to him on the evidence before him.

24. In so far as the facilities available in Sierra Leone should he require treatment, there are some outpatient and counselling facilities run by NGOs, private and religious based organisations – see for example the references to these organisations in the appellant's bundle Section D pages 27, 39, 41, 45, 81, 85, 96 and 99. These are very limited but they do exist. It does not follow, as submitted by Mr Mackenzie, that the appellant would have to be treated as an inpatient were he to require counselling or medication. He may have difficulty accessing treatment but that difficulty does not translate into a breach of Article 3; particularly because the finding of the First-tier Tribunal judge that the appellant does not require counselling was a conclusion that was plainly open to him on the evidence before him.

25. I am satisfied that there is no error of law in the finding by the First-tier Tribunal judge that there is no breach of Article 3 if the appellant is deported to Sierra Leone.

26. In so far as the possible breach of Article 8, the appellant does not challenge any of the findings of the First-tier Tribunal judge as regards his family and length of residence, the challenge being restricted to the separation of consideration into two headings and the failure to consider the appellant's health holistically with other matters and, it was submitted, had that been done, the high threshold of very compelling circumstances could have been met.

27. The judge separated his consideration into two headings – physical/moral integrity and private/family life. Although consideration of the possibility of a breach of Article 8 should be considered holistically and take into account all the evidence, in this instance that error, such as it is, is not such as to result in the setting aside of the determination of the First-tier

Tribunal. The consideration of the appellant's circumstances was undertaken on the basis of the information provided and the judge had particular regard to his integration in to British society, his language, employment, partner and child, other family members. Although the judge does not factor into his assessment of the impact on private and family life the appellant's health and the effect on that of removal, in the light of the findings of the judge in relation to the lack of suicide risk and the lack of a need for counselling such omission is not significant.

28. The First-tier Tribunal judge accepted that the appellant was suffering from PTSD and depression but did not accept he required the treatment suggested by Professor Katona. Those findings were open to him. Even if the judge had not separated his consideration into the two headings, it is inconceivable that the appellant's health as found by the judge after consideration of the medical evidence, would sustain a finding that reached the high threshold of very compelling circumstances.

29. There is no error of law in the First-tier Tribunal determination in its consideration of Article 8 such that the decision be set aside and remade.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision be set aside.

I do not set aside the decision

Date 8th June 2015

Upper Tribunal Judge Coker