Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13085/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 5 August 2019	**On 20 August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

NGKS
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Ell, Counsel, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Background

The Appellant is a citizen of India born on 28 October 1996. An application for international protection was refused on 1 November 2018. Judge Siddiqui sitting in Manchester on 1 April 2019 dismissed the appeal. The application for permission to appeal was granted by Judge Scott-Baker on 25 June 2019 on three grounds.

Firstly, the test in **J v Secretary of State for the Home Department [2005] EWCA Civ 629** has not been applied. The Judge should ask not whether facilities exist to treat severe depression and reduce a suicide risk, but whether they are sufficient to be an effective and timely mechanism to prevent the Appellant committing suicide in India or on route.

Secondly, **Paposhvili v Belgium (Application 41738/10)** relaxes the test in relation to Article 3 in that if returning him to India would lead to a serious, rapid and irreversible decline in his state of health, resulting in intense suffering and a significant reduction in life expectancy as a result of the increased risk of suicide, his appeal should succeed.

Thirdly, the recent decriminalisation of attempted suicide in India does not mean there is an effective and timely mechanism to prevent the Appellant committing suicide.

Submissions

The Respondent submitted a Rule 24 notice which essentially asserts that **J** has been properly considered. **MM (Malawi) [2018] EWCA Civ 2482** sets out that the test of suicide assessment is still that of **N [2005] UKHL 31**. The very high threshold is still appropriate notwithstanding the guidance in **Paposhvili**. In the context of a foreign case, the Article 3 threshold is particularly high simply because it is a foreign case. It was submitted orally that mental health support is available in the process of removal, and services are available in India.

Mr Ell submitted that the Judge cited the **J** test in [32 (e)] but did not apply it. The application of **J** was with reference to the assessment in **Pretty v UK [2002] 35 EHRR 1**, where it is said that suicide is self-evidently a type of serious harm and if the evidence established that removal would expose a person to a real risk of committing suicide on return, then a decision requiring him to return could give rise to a violation of Article 3. The Judge applied the **N** test, rather than the **J** test. Regarding Ground 2, **MM** was relevant, and this is a case of access to services. Regarding Ground 3, society is not ready for the decriminalisation of attempted suicide cases as it is so recent.

I was made aware that Mr Ell wished to submit further evidence in relation to ongoing mental health problems the Appellant is unfortunately suffering. Mr Ell accepted that the fresh evidence is not relevant to the question of whether the Judge made a material error of law on the evidence before her.

Discussion

One only has to read the decision to see that the Judge considered all the evidence, the Respondent's refusal letter, and in [32] all the relevant authorities including **J** and **MM**. From the refusal letter at [99-102] the Judge was able to identify that mental health services exist in India. Treatment is available and there is a substantial health programme in India, emergency facilities and emergency services for mental illness shall be the same quality

and availability as those provided to persons with physical illness, and in principle, government health services are available to all citizens under the tax-financed public system. Mr Ell conceded that such services exist.

The Judge found, and was entitled to find at [35], that the Appellant had family support available, they had relocated to an area where there is no imminent threat from loan sharks, and treatment is available in India. It is unarguable that the Appellant would have access to medical support while here and on removal. The Judge was plainly entitled to find that the Appellant would have access to treatment in India. Accordingly, whist it may have been better if the Judge had stated the **J** test, I am satisfied she applied it. Neither Ground 1 or 2 are therefore made out.

Regarding Ground 3, as Mr Ell identified, the law in India changed prior to the hearing and attempted suicide was decriminalised. I do accept that the fact that it had recently been decriminalised means he will not get access to services as there was simply no cogent evidence of that before the Judge. Ground 3 is therefore not made out.

Notice of Decision

There is no material error of law.

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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to Contempt of Court proceedings.

Deputy Upper Tribunal Judge Saffer
16 August 2019

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Deputy Upper Tribunal Judge Saffer
16 August 2019