Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00147/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Sent**
On 30 July 2013	**On 11 November 2013**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

D. S. S.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms McEwen
For the Respondent: Mr Wilding

DETERMINATION AND REASONS

1. The Appellant is a citizen of Sierra Leone born in 1984. She appealed against a decision of the Respondent made on 20 December 2011 to refuse to vary her leave to remain. She was refused asylum.

2. Her immigration history, in summary, was that she arrived in the UK in February 2008 with entry clearance until April 2009 as a dependent of a student. She was subsequently given leave to remain as a dependent of a Tier 1 migrant until June 2011. In March 2011 she sought further leave to

remain as a dependent of her Tier 1 partner. However, she submitted false bank statements in support of her application and it was refused in May 2011. On 12 October 2011 she was encountered and arrested for immigration offences. She claimed asylum on 17 October 2011.

3. The basis of her claim was that she had campaigned against female circumcision in Sierra Leone. It was as a result of this campaigning that she was attacked and raped by a group of men in 2005. Soon after, her husband called her to the UK. She claimed asylum in 2011. She feared that because of her activities she would be at serious risk from people in her tribe anywhere in the country if returned.

4. The Respondent, in refusing the claim, did not believe the Appellant's account on material matters.

5. She appealed. Following a hearing at Taylor House on 30 October 2012 Judge of the First-tier Tribunal Suchak dismissed the appeal on asylum, humanitarian protection and human rights grounds. He did not believe the account for the reasons given at [25-28] stating, at [29] that he did 'not place any reliance on her story that she left Sierra Leone fearing persecution for a Convention reason'. And at [30] 'The appeal is wholly without any merit whatsoever. There is no evidence of persecution in the past or the likelihood or threat of persecution in the future'.

6. Turning to human rights (Article 3) the judge noted medical reports by Professor Katona (8 October 2012) and a letter from Dr Goldstein (12 October 2012). The judge's findings on the medical evidence are at [34-37]. In deciding not to give weight to Professor Katona's report he stated that it was 'based entirely on the history provided by the Appellant' [34]. Also, he had not explained how he had reached his conclusion that the Appellant suffers from 'complex PTSD', a category not formally recognised in diagnostic systems. Further, in light of the indication that the Appellant denied suicidal intent the judge could not see how Professor Katona reached the conclusion that she was of significant risk of suicide [35].

7. As for ongoing medical treatment the judge stated 'the background evidence shows that suitable medical treatment is available in Sierra Leone' [36]. He concluded that the Appellant failed under Article 3.

8. As for Article 8 the judge found that the Appellant had not provided any evidence that she had established a family life in the UK. On private life the judge noted that she has been here for nearly four years but concluded that she 'has not adduced evidence of sufficient elements to amount to private life' [38]. The case failed under Article 8.

9. The Appellant sought permission to appeal which was refused on 28 November 2012. Reapplication was made to the Upper Tribunal, it being claimed, in summary, that the finding that there would be suitable medical treatment available in Sierra Leone was irrational in light of the background material. Also, the judge had given inadequate consideration

to Professor Katona's report. Such included his failure to consider that the expert's diagnostic conclusions were not only based on the Appellant's own account but also on his clinical observations of her behaviour.

10. In granting permission on 17 December 2012 Upper Tribunal Judge Allen stated:

> *'It is possible, and I put it no higher than that, that the culmination of the Appellant's medical condition and the paucity of available facilities in Sierra Leone is such as to cross the relevant Article 3 or Article 8 threshold. Arguably the judge erred, as is contended at ground 1, in respect of the relevant medical facilities in Sierra Leone and also with regard to the conclusion that Professor Katona had based his report on the Appellant's own account of her experiences. On balance therefore the determination is arguably flawed as contended.'*

11. Following the error of law hearing on 13 March 2013 I issued the following decision (the later paragraphs suffice to avoid repetition):

12. ' ...

> *10. At the error of law hearing before me both parties agreed that the judge in a very brief analysis had failed properly to engage, in considering Article 3, with the background and medical evidence. There was no reference at all to the medical evidence in the consideration of Article 8. I agreed.*
>
> *11. The background material that was before the judge indicated that facilities for medical treatment in Sierra Leone were very limited. Indeed, psychiatric services were minimal.*
>
> *12. As for Professor Katona's report he did not base his report solely on the Appellant's own account of her experiences but also, as he stated, on his own observations. As he stated at 6.1 "I base my diagnostic conclusions on my objective clinical observations of (Ms S's) behaviour, speech and demeanour and not merely on the symptoms she described to me".*
>
> *13. As for the denial of suicidal intent by the Appellant the judge failed to engage with the doctor's comments. At 9.4 he stated "(She) denies current suicidal intent. However, people with major depression and those with PTSD both have increased suicidality ... In my opinion (she) would be at significant risk of suicide both in the UK prior to removal (once she had given up all hope of being allowed to remain), during the removal process and once she was back in Sierra Leone ...".*

14. In failing to give careful consideration to relevant evidence in the background material and medical evidence before him the judge materially erred.

15. By consent the decision on human rights, Article 3 and 8, was set aside. The case could not proceed immediately to rehearing as, Ms McEwen indicated, an up-to-date report was likely to be sought from Professor Katona.

16. No challenge was made to the dismissal of the asylum appeal and that decision stands …"

13. At the resumed hearing before me on 30 July 2013, a psychiatric report by Dr Francis Winton, Consultant Psychiatrist was lodged on behalf of the Appellant.

14. There was no oral evidence. The parties made submissions to which I refer in my analysis below.

15. There are before me two medical reports by Consultant Psychiatrists. The first by Professor Katona, which was before the First tier judge, is dated 8 October 2012. The second by Dr Winton is dated 28 July 2013. Professor Katona, in summary, concluded that the Appellant had 'severe depressive symptoms' (5.12). Also that her 'trauma related symptoms' were in the 'severe range' (5.13). He rated the severity of her 'overall mental symptoms' as being in the 'severe range' (5.14).

16. He concluded that she fulfils the criteria of the DSM for PTSD and for Major Depressive Episode (6.2). Further, she has 'complex PTSD' caused in the doctor's opinion by 'her multiple traumatic experiences in Sierra Leone and her subsequent domestic abuse at the hands of her husband' (6.5). Her depressive symptoms 'probably have the same causes. However, other factors such as her separation from her country, her recent abdominal surgery and her continuing immigration uncertainty are likely to be contributing significantly to the severity and persistence of her depression' (6.8). Under 'Clinical Plausibility' he stated 'My impression is that (her) clinical presentation is compatible with the experience of rape and domestic abuse and does not suggest a false allegation of mistreatment' (7.1).

17. In his opinion she would benefit from a combination of antidepressant drugs and long-term specialist psychotherapy (8.4). As for the possible effect on her mental health if she were forced to return to Sierra Leone, the doctor stated that her 'therapeutic relationship with Dr Julie Goldstein would be disrupted' (9.1). It would 'significantly worsen (her) already severe PTSD and major depression' which would 'render her unable to work and support herself' (9.2).

18. As indicated there is a letter from Dr Goldstein (12 October 2012). She is a psychologist and gestalt therapist and states that she had seen the

Appellant 'for some sessions to evaluate her current health and assist to find the best suited help for her.' She considered that the Appellant had 'been traumatized from a very young age, and was raped in her country of origin and rejected by her husband on arrival to the UK, so her situation is complex and demands in (her) opinion the attention of a multi disciplinary team.'

19. Dr Winton's report includes a section headed 'Instructions' in which he is asked whether he agrees with Professor Katona's report and diagnosis. He agrees with the professor's diagnoses of PTSD, depressive illness which is of a severe form, and that she has panic attacks which are part of her PTSD (11.1.1). In addition, however, he considers that she has had 'a psychosis for several years' (11.1.2).

20. As for current prognosis he considers that to be 'poor' adding 'She had an extensive number of pre migration problems in the form of episodes of rape, assault and emotional stress due to her campaigning against genital mutilation'(11.2.1). He is, however, 'more optimistic about her psychotic symptoms as she has never been on an anti-psychotic and these symptoms may settle. Her depression with more treatment may improve as would her anxiety' (11.2.2).

21. As for prognosis if removed: 'she is seriously distressed by her past experiences of trauma and her current mental illness. If her account is accepted then she tried to make a serious attempt on her life in the form of drinking bleach …'. He would be 'deeply concerned if this highly traumatised and mentally ill person were to be removed from the UK' (11.5.1). Further, having listed six factors which the doctor considered would be relevant in the Appellant's situation if returned he concluded: 'She would be single, unemployed, isolated, in poverty and mentally ill. Combined together these are high risk factors for suicide'.

22. In her submissions Ms McEwen, who both sides agreed should speak first, in summary, accepted that the threshold for Article 3 was high. However, in this case it was satisfied. The Appellant if returned would have no access to support. Her father is dead, and mother's whereabouts unknown. She has no siblings. There is a stigma to people with mental health problems.

23. Turning to the medical reports it was clear that her prognosis had got worse since Professor Katona's report. Dr Winton had noted complex PTSD, depressive illness and psychosis. Further, she had made an attempt on her life. The doctor has experience in West Africa. He found she was not exaggerating her symptoms. As for medical facilities these are woeful with almost no psychiatric facilities. Both doctors stated that she needs specialist care for her complex PTSD, care which would not be available in Sierra Leone.

24. As for Article 8, return would clearly amount to an interference with her right to a private life. As for proportionality, her conditions at present

were more or less under control. If returned as a woman with complex psychiatric needs to a country with almost no psychiatric services or anti-psychotic medicines such would be disproportionate.

25. In reply, Mr Wilding, in summary, submitted that the two reports were undermined by what they did not do. Professor Katona found that the Appellant's symptoms were due to a traumatic event. However, it had been found that the Appellant's account of having suffered such an event, namely rape, had been rejected. Also Professor Katona's assessment was at best pre-emptive. He had failed to apply the DSM criteria which required that he see the patient again to assess the claimed duration of the symptoms. Yet his diagnosis came from one assessment. His assessment was inadequate.

26. As for Dr Winton's report he had simply adopted Professor Katona's findings rather than reach his own findings. It was clear also that Dr Winton had not been given a copy of the First tier judge's determination which would have shown him that the historical account had not been believed. Thus his assessment was also inadequate.

27. In further comments Mr Wilding questioned the claim that the Appellant had attempted suicide. No chronology or evidence had been given about this. Professor Katona had specifically noted that she was not suicidal.

28. It was significant also that Dr Winton indicated that the Appellant was now receiving no treatment. Such hardly seemed to be the actions of someone with significant PTSD.

29. Mr Wilding noted Dr Winton's comment that the Appellant had been depressed since childhood. Yet there was no reference in Professor Katona's report to any depressive history dating back to childhood. Mr Wilding questioned whether it was possible that the Appellant had always had a depressive illness and had learned to live with it, but who, her marriage having broken down and her visa expired, had fabricated her claim.

30. It was significant, Mr Wilding submitted, that she had lived in Freetown on her own with no particular problems. She had also reported that she missed working as a carer. Her situation was clearly nowhere near as hopeless as claimed. Also there is training in Sierra Leone for health care workers.

31. As for the suggestion that her treatment is inadequate in the UK it was noted from Dr Winton's report that she had stopped going to see Dr Goldstein. On the issue of her drug regime she was receiving Fluoxetine, an anti depressant. Even if it is not available in Sierra Leone there are other drugs which are.

32. On the totality of the evidence, in Mr Wilding's submission, the Appellant's situation came nowhere near reaching the Article 3 threshold.

33. As for Article 8 Mr Wilding questioned whether the Appellant had even established that she had private life. There had been no evidence from her uncle or friend who it was said in Dr Winton's report she had been staying with. As for her mental health with the problems in respect of the medical reports it could not be said that removal would be disproportionate.

34. In a final response Ms McEwen pointed out Professor Katona's comment that his conclusion had been reached following objective observations. He was an experienced clinician.

35. In considering this matter, as indicated, Professor Katona diagnosed the Appellant to be suffering from complex PTSD and to have severe depressive symptoms. I note his comment that he based his diagnostic conclusions on his 'objective clinical observations' and not merely on the symptoms she described. He goes on to state that in keeping with his clinical impression she fulfilled the criteria of DSM both for PTSD and Major Depressive Episode.

36. I find merit, however, in Mr Wilding's comments that Professor Katona's conclusions do not appear to comply with the DSM criteria in that he examined the Appellant only for two and a half hours. Appendix 1 requires for the diagnosis of PTSD that the duration of symptoms is more than one month; as for the criteria for diagnosing Major Depressive Episode, five of the symptoms must have been present during the same two week period (Appendix 2). That together with the fact that the Appellant's account of her claimed trauma in Sierra Leone and, indeed, all material aspects of her historical claim were disbelieved, a conclusion which has not been challenged, must in my judgment cause no significant weight to be given to Professor Katona's conclusions that she suffers from PTSD caused principally by trauma in Sierra Leone and that such trauma is a factor in her depression.

37. As for Dr Winton's report, he too saw the Appellant once only, for one and three quarter hours. I find merit in the criticism that Dr Winton's conclusions are inadequate. First, he, too, takes as a source of the information from which he reaches his conclusions the statement of the Appellant, the contents of which in relation to her claimed account of rape and her wider history, have been found not to be credible. He does not appear to have been given a copy of the First tier judge's determination.

38. He also, essentially, adopts Professor Katona's conclusions (which were based on a single two and a half hour interview and a historical account which has been found to be untruthful).

39. Dr Winton having agreed with Professor Katona's findings of PTSD and depressive illness does make some additional comments. Mention is made of a suicide attempt by swallowing bleach 'if her account [of that incident] is accepted' (11.5.1). However no indication is given as to when this incident took place. Why he did not seek to find out is unexplained.

Her friend Mr S. who was said to be present and who stopped her, did not attend nor was there a statement from him. In the circumstances I do not give weight to that claimed incident. It is of importance because no such incident is reported in Professor Katona's report. Indeed she denied current suicide intent. Professor Katona stated that 'people with major depression and those with PTSD both have increased suicidality'(9.4). However, in light of the unsatisfactory evidence about that incident and the disbelieved evidence more generally about her history, and my comments (above) about the claim that PTSD and depression were the result, substantially, of trauma in her home country, I do not accept on the evidence before me that she is at risk of suicide.

40. I do not place significant weight on Dr Winton's conclusion that she has a psychosis. I reach that view because it came as the result of one short interview and because although she was displaying symptoms at the time such has to be seen in the light of Professor Katona's report in which he made no such observations despite Dr Winton's comment that he was 'reasonably confident that she has had a psychosis for several years.'

41. Dr Winton, as indicated, agrees with Professor Katona that the Appellant has a depressive illness. She told him that she had been depressed since childhood. That also is something that was not mentioned in Professor Katona's report where the indication is that it began following her rape at the age of 19.

42. In seeking to assess the medical reports, for the reasons stated, I do not give significant weight to the conclusion that the Appellant suffers from PTSD the main cause of which was trauma which occurred in Sierra Leone. She has been prescribed Fluoxetine (Prozac). It appears to be the only medication she has been prescribed. Such is a treatment for depression. It may well be that the Appellant has suffered from depression since childhood but was able to cope with it when she lived in Sierra Leone. It may also be that her depression has become worse as a result of her marital breakdown and the uncertainty of her situation following the expiry of her visa. I do not accept that the trauma of rape in Sierra Leone (such trauma being found not to have taken place) is a factor in her depression.

43. I have considered carefully the comment by Professor Katona that his conclusions were based not just on what he was told about her history by the Appellant but also on his 'objective clinical observation' (6.1). I consider however that in light of the brief, single examination and the disbelief of her account of past events, such observation can be given very limited weight.

44. In light of my findings I next consider the consequences for the Appellant if returned.

45. The Appellant has argued that return would breach her rights under Articles 3 and 8 of ECHR.

46. It seems clear from the background material before me (eg WHO Mental Health and Service Development report 2012) that psychiatric services in Sierra Leone are almost non-existent. Also the availability of drugs to treat psychiatric conditions is very limited.

47. It is well known that a contracting state may infringe Article 3 if it returns a person to a country where she would be at substantial risk of inhuman or degrading treatment. However, the imposition of a 'high threshold' is equally well-established and this is underlined by the test of exceptionality illustrated by the **D** case (**D v UK [1997] 24 EHRR 423**) and **N (N v SSHD [2005] UKHL 31**). Ultimately the question is whether what is likely to befall the Appellant crosses the high threshold and the test of exceptionality. Whether or not the required level of severity is reached in a particular case depends on the circumstances of that case.

48. The Appellant is an adult who may have a depressive illness for which she is receiving drug treatment. There is no doubt that on return to Sierra Leone she would receive treatment inferior to that which she is presently receiving in this country. However, the circumstances fall significantly short of the high threshold. Some of the material relevant to this conclusion is better considered in the context of Article 8.

49. Turning to consider Article 8 the House of Lords in **Huang [2007] UKHL** made it plain that a step-by-step approach as laid down in **Razgar [2004] UKHL 27** was the appropriate way to proceed. The first question is whether the proposed removal would be an interference with the exercise of the Appellant's right to respect for family or private life.

50. There is no claim to family life. As for private life she has been in the UK since February 2008. Before the Respondent she adduced some elements of private life namely her previous work for which she had completed some informal qualifications and occasional attendance at her mosque. Nothing has been heard from any friends including Mr S. who, it is claimed in Dr Winton's report, saved her during her suicide attempt. Even though the evidence is extremely limited I am prepared to find that she has established a private life through her time here and her associations. There is also the matter of her right to physical and moral integrity which is an important aspect of her private life.

51. Having found that there is private life, turning to the question (ii), the Court of Appeal has stated that the threshold for establishing an interference with family or private life is not a high one. In **AG Eritrea v SSHD EWCA Civ 801**, Sedley LJ said (at [28]):

> 'While an interference with private or family life must be real if it is to engage Article 8, the threshold of engagement (the "minimum level") is not an especially high one. Once Article 8 is engaged, the focus moves, as Lord Bingham's remaining questions indicate, to the process of justification under Article 8(2). It is this which, in all cases

which engage Article 8(1), will determine whether there has been a breach of the Article.'

52. I conclude on the facts that the threshold is made. The threat to her private life and the medical help she enjoys in the UK and that a removal decision if implemented might lead to adverse effects on her physical and moral integrity could scarcely be dismissed as of insufficient gravity and thus an invasion of her private life requiring justification under Article 8(2).

53. That the decision is in accordance with the law is not disputed. Further I am satisfied that the decision does pursue a legitimate aim. The question remaining is whether or not the decision is proportionate given all the circumstances of the case.

54. In considering proportionality I note first the Appellant's immigration history. Although she entered the UK in February 2008 lawfully and remained lawfully until May 2011, she then overstayed, only coming to the attention of the authorities when encountered by the police in October 2011 when she claimed asylum, a claim which has subsequently been found to have no merit. Such does not favour her in the balancing exercise.

55. Further, she came to the UK at the age of 23. The vast majority of her life including her formative years were spent in Sierra Leone. Such also does not favour her.

56. As indicated there is only limited evidence of any ties or connections built up in the UK. It was not suggested she has property or work. Such, in addition, does not greatly assist her.

57. The emphasis is on her mental health condition. I have found that she may well suffer from a depressive illness. As indicated it is clear that the provision of psychiatric services in Sierra Leone is much less than in the UK. The indication is also that Fluoxetine, the only medication she appears to receive at present may not be available. Such is a matter that I weigh in her favour in the balancing exercise.

58. Dr Winton in his prognosis of the Appellant should she be removed concluded that she would be 'single, unemployed, isolated, in poverty and mentally ill. Combined together these are high risk factors for suicide'. He considered six points which led him to reach that conclusion. The first is that she would have 'limited finance'. It is unclear on what basis he reached that conclusion. The second is that she would not be able to afford medication which would lead to a deterioration in her mental state. Having noted that Dr Winton's involvement with the Appellant lasted one and three quarter hours, that she is on a regime of only one drug, an anti depressive, and that she is 'no longer seeing Julie Goldstein, psychologist' and 'apart from occasional outpatient appointments she is not receiving any further input' (8.1), I do not feel able to place any great weight on that comment. On the issue of availability of drugs, I note from the WHO report

that in 2010 a partnership between the Sierra Leone psychiatric hospital and the iNGO Plan International Sierra Leone led to a donation of 20,000 USD for psychotropic medicines for the hospital to be provided from a Netherlands-based supplier. (p31).

59. Third, 'being socially isolated thus increasing her experience of threat'. This conclusion does not hold weight when considered with the First tier judge's findings that according to her visa application for entry to the UK she had been living in Freetown for a year.

60. Fourth, 'her concerns of being assaulted would be reinforced by her psychotic experiences and beliefs'. Again, the doctor has reached his conclusion on the basis of one brief assessment, and apparently having not been made aware that the Appellant's account of trauma (including rape) had been found to be not credible.

61. Fifth, he gained the impression that she has no close family left in Sierra Leone. One might wonder why if this was a concern to the doctor he did not ask about her about family or others with whom she might have spent time during her year in Freetown before coming to the UK. There is nothing to indicate that she had problems there as a lone woman.

62. Finally, she would have no job to go to and would find it difficult to hold it down. In light of the finding by the First-tier judge that she has a good level of education and was working in the UK from 2008 until June 2011 and, as Dr Winton himself noted, she had been working in a hotel and also as a care assistant and told him she misses the work (3.3) it is difficult to see on what basis the doctor reached that conclusion. I note further that the background material (WHO report p30) indicates that there are some training opportunities for health care workers in Sierra Leone.

63. For the reasons stated I do not feel able to place any great weight on Dr Winton's conclusions, nor on Professor Katona's As such the medical reports do not significantly assist the Appellant in the balancing exercise.

64. Seeking to make a balanced judgment of risk to the Appellant in light of all the material facts, I conclude that the removal of the Appellant is proportionate to the legitimate end of immigration control. The case also fails on Article 8 grounds.

Decision

The appeal is dismissed on human rights grounds (Articles 3 and 8).

Anonymity Direction

Under Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005, unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. 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 Date

Upper Tribunal Judge Conway