Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04502/2017

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal	**Decision & Reasons Promulgated**
On 17 October 2018	**On 31 October 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NMMH
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Azmi instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent: Mr D Mills Senior Home Office Presenting Officer.

DECISION AND REASONS

1. Following a hearing at Birmingham on 26 June 2018 the Upper Tribunal found an error of law in the decision of First-Tier Tribunal which was set aside. The rejection of the appellants claims to be entitled to a grant of international protection is a preserved finding. The scope of this hearing is set out at [15] of the earlier decision of the Upper Tribunal in the following terms:

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15. Despite Mr Azmi's best efforts it is the finding of this Tribunal that the Judge has materially erred in law such that the appeal on article 3 medical grounds must be set aside and remade. Whilst there is sympathy for the Judge in light of more recent authorities these relates to the position appertaining before the Judge warranting the matter being looked at afresh. The adverse credibility findings and dismissal of the above respondent's protection claim shall be preserved findings.

Background

2. The appellant is a citizen of Sri Lanka born on 4 May 1991 who arrived in the United Kingdom on 3 February 2011 lawfully as a student with leave valid to 25 March 2012. An in-time application for further leave was rejected on 19 April 2012 as was a subsequent application. On 25 March 2013 the appellant applied for asylum which was refused. The appellant's appeal against the refusal was dismissed before both the First-tier and Upper Tribunal. The appellant became appeal rights exhausted on 15 October 2013.
3. On 6 November 2015 at Leicester Crown Court the appellant was convicted of two counts of possessing/controlling identity documents with intent and was sentenced to 6 months imprisonment on each count to run consecutively giving a total of 12 months imprisonment. The appellant is the subject of a deportation order. On 24 May 2016 further submissions were made which were rejected on 12 July 2016, and on 25 April 2017, when a decision was made refusing to revoke the deportation order including a decision to refuse the appellant's protection and human rights claims. It is the appellants appeal against this decision that came before the First-tier Tribunal.
4. The Judge did not find the appellant to be credible in relation to his protection claim and found he had not established a well-founded fear of persecution or an entitlement to a grant of Humanitarian Protection or for leave on article 2 and 3 ECHR grounds, so far as the protection elements are concerned. These are the preserved findings.
5. The Judge considered the appellant's medical claim pursuant to article 3 ECHR which was supported by a report written by Dr N Cowan, a Consultant Psychiatrist dated 1 November 2017. The Judge's treatment of this aspect of the case, limited as it was the consideration of the decision of the Grand Chamber in *Paposhvili*, is discussed in detail in the Error of Law finding of 26 June 2018 which does not need to be repeated in the body of this decision.
6. Directions were given for the provision of any additional evidence a party seeks to rely upon no later than 4 PM 24 July 2018 with witness statements to stand as the evidence in chief of the maker. No further written evidence was received but Mr Azmi confirmed the oral evidence would be limited to confirmation of the appellant's current medication which is a prescription of sertraline 50 mg prescribed by his GP, to be taken twice a day, with which the appellant is compliant and, on the evidence, stable.

Discussion

7. Sertraline is a prescriptive medication often used to treat depression, and also sometimes panic attacks, obsessive compulsive disorder (OCD) and post-traumatic stress disorder (PTSD). Sertraline helps many people recover from depression. The appellant is compliant. There is no evidence of any other form of intervention or ongoing treatment in the UK.
8. Mr Azmi referred at the start of the hearing to [6] of his skeleton argument which Mr Mills accepted was an issue that needed to be resolved as a preliminary point. Mr Azmi wrote:

> 6. IJ Andrews (at paragraphs 29, 31) places weight on the above medical reports, but does not find the Appellant to be credible, as such she found no risk the Appellant from the Sri Lankan authorities. However, she does find that the above reports support the Appellant's claim of detention and torture, but this may be due to other reasons by different people. IJ Andrews does accept the Appellant's account is consistent with the widespread practice of torture [See Key Passages pages 212 – 214, Appellants bundles]. The UT should proceed on the basis that the Appellant is likely to have been detained and tortured.

9. At [29] Judge Andrew wrote:

> 29. At paragraph 12 of his witness statement at page 3 of the Appellant's Bundle the Appellant referred to letters coming to his house. When asked about these in evidence the Appellant said he was not given any details of what was in them. He had asked his mother for copies of the letters and 'they have sent whatever they have'. However, I have no further letters before me. When I consider this in the round taking into account the letter which is said to come from ALM Anver upon which, for the reasons I give above I am unable to place any weight this all leads me to find the Appellant is not credible in his claims that there is anything outstanding with the authorities which would lead to the Appellant being on the stop list and thus being a real risk on his return to Sri Lanka.

10. At [31] Judge Andrew wrote:

> 31. I accept the Appellant's account is consistent with the widespread use of torture in Sri Lanka. In this regard I have noted the key passages to which I have been referred in the Skeleton Argument. I place weight on the reports of Dr Hartree and the report of Dr Cohen. They provide support to the Appellant's claim of detention and torture. Whether this was for the reasons given by the Appellant is one possibility but there are others. The Appellant may have been the victim of an attack by people with a grudge or he may have been detained and tortured by the authorities under other circumstances. What they do not do is support the Appellant's claims that he is on a stop list and would thus be at risk in Sri Lanka in accordance with the guidance in GJ and Others (Post-Civil War: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC).

11. The invitation by Mr Azmi to proceed on the basis this is a finding the appellant is likely to have been detained and tortured is noted, as is the

preserved findings of Judge Andrew that the alleged detention and torture did not occur for the reasons the appellant claims. Judge Andrew' findings may be open to an interpretation that at some point the appellant may have been detained and tortured but there is no finding by Judge Andrew that this was for the reason given by the appellant. There is no definitive finding as to causation other than that the appellant's claim that this was at the hands of the Sri Lankan authorities as a result of activities that placed him at risk on return to Sri Lanka has not been found to be credible. I do not find it is open to make a finding that any ill-treatment the appellant experienced in Sri Lanka was at the hands of the Sri Lankan authorities for the reasons claimed by the appellant. The source of the 'trauma' leading to the appellant's psychiatric presentation has not been made out as being as he claimed.

12. The report from Dr Cowan, a consultant psychiatrist, is dated 1 November 2017 and records the appellant's reasons for coming to the United Kingdom and symptoms as reported by the appellant. In relation to past psychiatric history Dr Cowan notes the appellant was seen by Dr Hartree for a medico-legal report whilst in detention, who advised referral to the Community Mental Health Team. Dr Cowan records information from other sources, including the preliminary report of Dr Hartree before setting out his opinion at Section J of the report in the following terms:

J: Opinion

1. I am aware that the Home Office have doubts about the credibility of [N's] asylum claim.
2. In terms of the presence of any mental disorder, diagnosis often relies upon a combination of the history the patient gives, objective evidence of symptoms in an interview situation with the psychiatrist and corroborative evidence of symptoms by independent witnesses. Very few mental disorders are diagnosed on the basis of objectively observed symptoms only. Post Traumatic Stress Disorder is the mental disorder most commonly diagnosed amongst refugees and asylum seekers. For PTSD to be diagnosed, however, there has to have been a trauma. In the case of many asylum seekers, there is not always concrete proof that a trauma has occurred (e.g. police or A and E reports) and frequently, as in [N] case, the existence of the trauma is called into question.
3. [N] himself reports symptoms of insomnia, nightmares, vivid mental imagery when waking at night - which sound like flashbacks. [N] also reports panic attacks in which he experiences chest pain and his legs turning to jelly. Such panic attacks were also witnessed - and recorded - in his records from Morton Hall detention centre. The symptoms are consistent with the diagnosis of Post Traumatic Stress Disorder (PTSD) (ICD 10 Code: F 43.1).
4. [N] also describe chronic low mood with feelings of hopelessness. He feels that he is a waste of space; that he has brought trouble on everyone. At times, he says he has felt acutely suicidal. From his account he has taken an overdose, attempted to jump out of the window and has attempted to hang himself. These were not documented at the time because, according to [N] account, either he or his friends were too frightened to call an ambulance. He did report that he attempted to hang himself when in Lincoln prison. I did not have access to his records from the prison to determine whether this episode was reported by prison staff, however, his presentation at the Morton Hall RC caused sufficient concern to place him

on an ACDT (a version of an ACCT, used in prisons to look after prisoners deemed to be at risk of self-harm or suicide). These symptoms are consistent with the diagnosis of depression which would appear to be secondary to his PTSD and a response to the situation in which he finds himself (F 32.9).

5. All the above described symptoms appear to wax and wane according to his circumstances. They appear to be at their worst when he was in detention in the immigration removal centre.
6. [N] describe the same symptoms consistently over many interview situations - with GPs, the CRAT, Dr Fletcher, Dr Hartree and an interview with me. Likewise there are multiple reports of objective symptoms of PTSD (e.g. panic attacks, extreme agitation) and low mood (tearfulness, lack of facial expression and slouched posture).
7. [N] is adamant that he will be arrested and placed in detention again were he to return to Sri Lanka; he fears being subjected to similar beatings and sexual assaults which he claims to have previously experienced. He became extremely tearful when describing his fate were he to be returned. I am not aware that the Home Office do not believe he was ever arrested or detained, however I do not think he would have such an intense emotional response were he to not be at risk were he to be returned to his country of origin.
8. The Home Office have commented that [N] symptoms are a response to issues unrelated to his asylum; “it is not accepted that there is a direct causal link between deportation and the risk of self-harm in your case. It is acknowledged that you stated in the report that ending your life would be preferable to return, however the author (this is referring to Dr Hartree’s report), also stated that you had felt stressed in 2013 by news from your family in Sri Lanka of your father’s arrest, your mother’s illness and your family situation… This indicates that your self-harm attempts were as a result of your family situation rather than as a result of the fear of return to Sri Lanka”. I would dispute this interpretation on the following grounds:
    a) [N] was very clear that he feels that his foolishness (in accepting the tea chest from his former schoolmates) was the cause of all his family’s problems. This includes his father’s arrest and his mother’s ill health: i.e. it directly relates to the issue of his detention in Sri Lanka.
    b) [N] has been in a psychological state of “limbo” ever since he has been in the UK. He feels he is unable to return to Sri Lanka because he believes his only future there would involve being detained and tortured again. At the same time he is unable to make a life for himself in the UK. Therefore his suicide attempts are a direct result of his situation as an asylum seeker who is currently stateless.
    c) [N] came to the UK on a student visa but whilst living in Slough from his arrival in the UK in February 2011 until he left in 2013, he neither attended the course on which he had enrolled, nor is there any evidence that he attempted to work during that period (he only attempted to work when he moved to Leicester). I find it difficult to understand why he would want to be in the UK if he did not plan to do either of these things. The only reason I can think of his reason for being in the UK is to escape the detention and torture which he described.
9. I think there is a high risk of suicide were [N] to be compelled to return to Sri Lanka.
10. I do not think there is any way of reducing the risk of suicide.
11. I think that [N] mental disorder, specifically his anxiety symptoms (which are part of his PTSD) affect his ability to give a coherent and consistent account. However, I think that he is fit to give evidence in court if allowances are made for his anxiety, that is, if the questions are asked in a calm and measured manner and if he is given adequate time to answer questions.

13. Mr Azmi also put reliance upon the reports of Dr Hartree, the second of which is dated 6 November 2017. The addendum report was prepared following additional documents being provided which were not available when the original report was prepared, including the psychiatric report of Dr Cowan.
14. Dr Hartree notes, having read Dr Cowan's report, that there are some differences between [N] account as stated to Dr Cowan and that given to Dr Hartree in July 2016. This includes [N] in the earlier assessment claiming two previous suicide attempts by way of overdose in approximately 2013 and 2015 which were described to Dr Cowan as an attempt by [N] to overdose when living in Slough, an attempt to hang himself in Leicester, an attempt to jump out of a window in Birmingham and to hang himself in HMP Lincoln. Dr Hartree has discussed in the reports various clinical reasons for discrepancies given in accounts. Dr Hartree comments upon the respondent's Reasons for Refusal Letter of 25 April 2017 together with the asylum interview.
15. Dr Hartree considers [N] level of suicide risk to be high, based not only on his reported symptoms but on her observations of his demeanour and reactions and expresses concern that an actual or anticipated removal to Sri Lanka could lead to a further deterioration in [N] mental state which would tend to increase his risk further [49]. At [51] – [52] Dr Hartree writes:

> 51. As discussed in paragraph 10.12 of my report, I cannot comment upon whether [N] reported fear of mistreatment in Sri Lanka are realistic. Subjectively, however, he described fearing he would be arrested and tortured and his family further persecuted if he returned to Sri Lanka. The suggested fears appear to be prominent in his thinking and will also manifest in signs of agitation.
> 52. In my opinion the subjective fears would tend to undermine [N] ability to access medical help, since out of fear he might try to be inconspicuous, might want to avoid people in positions of authority including doctors or clinics, and might well want to avoid discussing the causes of his ill-health, making it difficult for him to access or engage with treatment. Further, any treatment for his mental health problems is unlikely to be effective in a situation where he continues to feel unsafe and insecure (Herman 1992, NICE 2005). I am therefore concerned that [N] may in effect be unable to access or make use of healthcare in Sri Lanka. In my opinion he therefore requires treatment in a setting where he can feel subjectively safe.

16. As stated above, there is now available, since the publication of these reports, sustainable findings of Judge Andrew in relation to the appellant's credibility. Although the appellant's fear of ill-treatment on return to Sri Lanka is commented upon as a subjective aspect of his presentation it has not been found to be objectively well-founded in light of the preserved findings.
17. Account has been taken of the decision of the Court of Appeal in *Y and Z (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362* in which the Court said that even where there was no objective risk on return, there came a point at which the undisturbed finding that an appellant had been tortured and raped in captivity had to be

conscientiously related to credible and uncontradicted expert evidence that the likely effect of the psychological trauma, if return was enforced, was suicide. But it is not accepted in this case that there is an undisturbed finding the appellant has been tortured and sexually assaulted in detention as he claimed in his evidence. Causation is the matter upon which the First-Tier Tribunal Judge expressed concern but clearly rejected the credibility of the appellant's claim. I do not find this is a case in which it can be found the appellant's fear on return to Sri Lanka of a repeat of experiences at the hands of the authorities provides a credible explanation for any unwillingness not to approach the medical services in Sri Lanka.

18. Although there is comment upon the appellant's presentation and need for treatment the only treatment the appellant appears to have been given is a prescription for sertraline, indicating engagement with the medical services in the UK and an assessment of his current needs.

19. Whilst the risk of suicide is capable engage in article 3 ECHR the threshold is a very high one. In *J v Secretary of State for the Home Department [2005] EWCA Civ 629* the Court of Appeal said that in a foreign case the Article 3 threshold would be particularly high and even higher where the alleged inhuman treatment was not the direct or indirect responsibility of the public authorities in the receiving state and resulted from some naturally occurring illness whether physical or mental.

20. Also, on appeal to the EctHR in *N v UK Application 26565/05*, a case involving HIV, the Grand Chamber upheld the decision of the House of Lords and said that in medical cases Article 3 only applied in very exceptional circumstances particularly as the suffering was not the result of an intentional act or omission of a State or non-State body. The EctHR said that Article 3 could not be relied on to address the disparity in medical care between Contracting States and the applicant's state of origin. The fact that the person's circumstances, including his or her life expectancy, would be significantly reduced was not sufficient in itself to give rise to a breach of Article 3. Those same principles had to apply in relation to the expulsion of any person afflicted with any serious, naturally occurring physical or mental illness which might cause suffering pain or reduced life expectancy and required specialist medical treatment that might not be readily available, or which might only be available at considerable cost.

21. In the more recent case of *AM (Zimbabwe) v Secretary of State for the Home Department [2018] EWCA Civ 64* the Court of Appeal concluded that whilst *N* was binding authority up to Supreme Court level, *Paposhvili* relaxed the test only to a very modest extent. The boundary had simply shifted from being defined by imminence of death in the removing state even with treatment to the imminence of intense suffering or death in the receiving state occurring because of the lack of treatment previously available in the removing

22. Other cases from Europe include *MP (Sri Lanka) (Case C-353/16)* which considered *Paposhvili* and noted that the ECtHR considered there would be a breach of Article 3 ECHR where the person would be at risk of

imminent death or where substantial grounds had been shown for believing that, although not at imminent risk of dying, the person would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of suffering a serious, rapid and irreversible decline in his state of health resulting in intense suffering or to a significant reduction in life expectancy. They also considered that Article 4 of the European charter must be interpreted as meaning that the removal of a third country national with a particularly serious mental or physical illness constituted inhuman and degrading treatment, within the meaning of that article, where such removal would result in a real and demonstrable risk of significant and permanent deterioration in the state of health of the person concerned.

23. In *Balogun v United Kingdom (Application no. 60286/09) ECtHR (Fourth Section)* the Nigerian applicant submitted a report from a specialist psychiatric registrar which stated that he had attempted suicide after being notified of the refusal of his human rights claim. Nonetheless, it was held that the Applicant's complaint under Article 3 against deportation was manifestly ill-founded and therefore inadmissible pursuant to Articles 55(3) and (4) ECHR. The UK Government had outlined appropriate steps it would take throughout the deportation process to protect the Applicant from the risk of suicide. In light of those precautions to be taken by the Government and the existence of adequate psychiatric care in Nigeria, the Court could not be persuaded that there would be a breach of Article 3 if the Applicant was deported to Nigeria (paras 29 – 34).

24. In *Tatar v Switzerland (Application no. 65692/12) ECtHR (Second Section)* the Turkish appellant who had been in Switzerland since 1994 was being deported for shooting his wife. He needed to take psychotropic drugs and undergo therapy to prevent him suffering relapses into hallucinations and psychotic delusions. He submitted that if removed, his mental health would deteriorate rapidly, placing him at high risk of severely harming or killing himself and others. The Swiss Government submitted that although there was no psychiatric facility in the Applicant's home town, there was nothing to stop him relocating. Having regard to the high threshold set by Article 3 of the ECHR, particularly where the case did not concern the direct responsibility of the Contracting State for the infliction of harm, there was not a sufficient real risk that the Applicant's removal would be contrary to Article 3. Medical treatment for his condition would in principle be available in Turkey within 150 kilometres from the Applicant's home town and in other parts of Turkey.

25. In UK domestic jurisprudence; in *GS(India) and Others [2015] EWCA Civ 40,* Lord Justice Laws said at paragraph 46 that "the case of a person whose life will be drastically shortened by the progress of natural disease if he is removed to his home state does not fall within the paradigm of Article 3. Cases such as those before the court can therefore only succeed under that Article to the extent that it falls to be enlarged beyond the paradigms" Lord Justice Laws went on to refer to D

v UK 1997 24 EHRR 423, which he said at paragraph 66 was confined to deathbed cases, as one such example, and to another line of cases such as MSS v Belgium and Greece 2011 54 EHRR 2 where States had taken on certain obligations to asylum seekers under EU Directives. At paragraph 67 Lord Justice Laws endorsed the views in N v UK that "aliens who are subject to expulsion order cannot in principle claim any entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State".

26. The test, to be read in the light of *N v UK Application 26565/05* and *Balogun v United Kingdom (Application no. 60286/09) ECtHR (Fourth Section),* is set out in *J v Secretary of State for the Home Department [2005] EWCA Civ 629.* The Court of Appeal set out the test in Article 3 cases as follows:

(i) the feared ill treatment must be of a minimum level of severity;
(ii) a causal link must be shown between the act of removal and the inhuman treatment relied on;
(iii) in a foreign case the Article 3 threshold will be particularly high.
(iv) in principle it was possible for an Article 3 case to succeed on the basis of a risk of suicide and
(v) in a foreign case of suicide risk it would be relevant to consider whether the fear of ill treatment in the receiving state was objectively well founded; if not, this would weigh against there being a real risk of there being a breach; and
(vi) it would also be relevant to consider whether the removing and/or the receiving state had effective mechanisms to reduce the risk; if there were, this would also weigh against there being a real risk of a breach.

The Court of Appeal went on to say that the Tribunal was correct to consider separately the risk of treatment contrary to Article 3 in the UK, in transit and in Sri Lanka. In relation to the risk in the UK it was open to the Tribunal to conclude that the risk of suicide in the UK would be adequately managed by the UK authorities and that in combination with the support of the appellant’s family they could bring the risk of suicide to below the Article 3 threshold when the decision to remove was taken. In relation to the risk of suicide on route the Tribunal was entitled to infer that the Secretary of State would take all reasonable steps to discharge his obligations under section 6 of the Human Rights Act and take judicial notice of the arrangements that the Secretary of State made to escort vulnerable persons on return. In relation to the risk of suicide in Sri Lanka the Tribunal was entitled to take into account the evidence that there would be family support on return, that the claimant would have access to medical treatment, and that his fears of persecution were not objectively justified.

27. In *AA (Iraq) [2012] EWCA Civ 23* the Court of Appeal acknowledged a distinguished between "domestic" cases, where the risk is of suicide in this country on being told of the decision or of suicide in transit, and "foreign" cases, where the risk relates to the situation after arrival in the receiving country. The Court said "Any Immigration Judge is entitled to take the view that the risk of suicide in the UK upon learning of a final decision to remove her would be adequately managed in this country by the relevant authorities: see J, ante, paragraph 57. ... Moreover, the Immigration Judge would be entitled to assume that the Home Secretary would take appropriate measures to guard against any suicide attempt during the relatively brief transit to Belgium, including the provision of appropriately qualified escorts: see J, paragraphs 61 and 62."
28. Although Dr Cowen claims there is no available remedy for the appellant’s suicide, Judge Andrew records at [44] of her decision:

    > 44. The Appellant is presently prescribed sertraline. There is nothing before me to show that this drug would not be available in Sri Lanka. I also accept that the Appellant appears to have been reluctant to accept mental health care from teams in the United Kingdom.

29. I make a finding it has not been established that mental health services are not available in Sri Lanka both by way of inpatient, outpatient, and prescriptive medication of the type similar to that being taken by the appellant, even in light of the material provided by Mr Azmi to support the claim the conflict in Sri Lanka has had an enormous impact upon mental health services. It has not been made out that the appellant would not have access to such mental health services as are available. This is not a case in which it will be necessary for the appellant to undertake a full mental health assessment as the diagnosis of depression has already been made in the UK and can no doubt be communicated to the authorities in Sri Lanka on return. It is not made out that those services that are available are not sufficient to meet the appellants health needs.
30. Considering the test set out by the Court of Appeal in *J v Secretary of State the Home Department* I find as follows:

    1. The required minimum level of severity of ill-treatment the appellant would suffer if removed is not made out sufficient to engage article 3. No credible ill-treatment has been made out at the hands of the Sri Lankan authorities in light of the adverse credibility findings made. In particular the appellant has not established that he will suffer serious ill-treatment amounting to an affront to the fundamental humanitarian principles on return to Sri Lanka.
    2. As the appellant has failed to establish a credible risk or threatened acts of inhumane human treatment violating article 3 rights, it is not made out that the respondent’s action in removing the appellant from the United Kingdom to Sri Lanka will have as a direct consequence exposure of the applicant to the prescribed ill-treatment he asserts.

3. The appellant fails to establish the article 3 threshold discussed above. In light of the adverse credibility findings causation of the appellant's presentation is not made out. All that can be said is that his presentation has not been found to be for the reasons the appellant claims.
4. It is not disputed an article 3 claim can, in principle, succeed in a suicide case.
5. It is not made out the appellant's fear of ill-treatment in Sri Lanka upon which the risk of suicide is based can be said to be objectively well-founded which weighs against there being a real risk that his removal will be a breach of article 3.
6. It is not made out the United Kingdom will not have in place an effective mechanism to reduce the risk of suicide which will be in place both prior to and during the removal process. It is not made out the appellant will not have access to appropriate treatment in Sri Lanka to assist on return. The appellant, in addition to medication has not made out he has no family support available to him on return.

31. Whilst it is accepted that mental health could engage article 8, even if the article 3 threshold is not reached, in *SL (St Lucia) v Secretary of State for the Home Department [2018] EWCA Civ 1894* the Court of Appeal commented that the focus and structure of Article 8 is different from Article 3. They were unpersuaded that *Paposhvili* had any impact on the approach to Article 8 claims. An absence of medical treatment in the country of return would not of itself engage Article 8. The only relevance would be where that was an additional factor with other factors which themselves engaged Article 8. Razgar was referred to for the proposition that only the most compelling humanitarian considerations were likely to prevail over legitimate aims of immigration control. The approach set out in *MM (Zimbabwe)* and *GS (India)* was unaltered by *Paposhvili*.
32. It is not made out the appellant's return would be contrary to article 8 which is not a matter considered in any detail, the scope of the hearing being identified as whether article 3 ECHR is engaged.
33. In conclusion, it is not made out this is a case in which it is arguable that to return the appellant to Sri Lanka will result in a profound mental collapse, possibly amounting to a destruction of his personality, sufficient to infringe his rights under Article 3 to protection against torture and inhuman treatment, or which might qualify as one of those very exceptional cases in which medical services in Sri Lanka might constitute a bar to his deportation from the UK.

Decision

34. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

35. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……………………………………………….
Upper Tribunal Judge Hanson

Dated the 22 October 2018