



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/00137/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 1 February 2018

Promulgated

On 19 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MR JT

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Loughran, of Counsel

For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sierra Leone. He was born on 6 June 1994.
2. He appealed against the respondent's decision dated 11 December 2015 to refuse his application for leave to remain.
3. In a decision promulgated on 16 May 2017, Judge R Cooper (the judge) allowed the appellant's appeal under Articles 3 and 8.

4. The grounds submit that the judge made a material misdirection in law and failed to resolve conflicts of fact. As regards the material misdirection of law, the grounds claim the same with regard to both Articles 3 and 8.
5. The grounds claim that the appellant's situation did not reach the severity required to engage Article 3. See **N v the United Kingdom - 26565/05 [2008] ECHR 452.**
6. As regards Article 8, the grounds claim the judge appeared overly swayed by the "*highly persuasive*" witnesses. See [67] of the decision. The grounds claim the judge's findings with regard to the witnesses was irrational, however, leaving that aside, the grounds claim there were no identifiable exceptionalities arising. See **Patel [2013] UKSC 72.**
7. Further, the judge failed to resolve conflicts of fact because she failed to carry out a proper balancing exercise of the public interest and failed to consider the cost of providing ongoing medical facilities to the appellant in the overall proportionality assessment, nor that any private life had been developed during a period of illegality in the UK. The public interest in maintaining an effective immigration control had not been afforded sufficient weight. See **EV (Philippines) [2014] EWCA Civ 874.**
8. Judge Boyes granted permission to appeal on 29 November 2017:

"3. The grounds are clearly arguable for the reasons propounded in the application."

The appellant relied upon his Rule 24 response dated 16 January 2018. Briefly, it was claimed that in a detailed and clearly reasoned decision, the judge directed herself correctly in allowing the appellant's appeal. The grounds did not identify an arguable error of law but merely sought to reargue the respondent's case.

Submissions on Error of Law

9. Mr Avery relied upon the grounds. He accepted the judge's decision was thorough; she had gone through the circumstances in great detail. Nevertheless, he drew my attention in particular to [97]. It appeared that the judge did not understand the high threshold. See what the judge said at [90] with regard to **J [2005] EWCA Civ 629.**
10. Mr Avery submitted that the judge's conclusion at [97] was inadequate in terms of how she reached her decision and did not adequately explain how in the appellant's particular circumstances, the high Article 3 threshold was met.
11. Ms Loughran relied upon the Rule 24 response. The judge had not erred.

Conclusion on Error of Law

12. The judge carried out a careful and comprehensive analysis of the appellant's claim.

13. The grounds claim that the judge did not understand the high threshold set out in all Article 3 cases but in particular in **J** with regard to suicide risk, however, the judge set out the evidence and submissions at [20]-[26]. She was aware that this was not a healthcare case but one where there was a very real risk of suicide. See [26].
14. The judge set out her analysis at [28]-[85] and her discussion and conclusion at [88]-[114]. She took into account the oral evidence of the witnesses and the expert reports and letters of Dr Bell, Dr Hussain, Dr Ahmad and Dr Cranitch.
15. There were additional statements which the judge considered as well as letters of support and a petition. The judge accepted the appellant's evidence. She found the expert evidence reliable although she was aware that the experts' views slightly differed as to the extent of risk. The judge gave cogent reasons for preferring the opinion of Dr Bell which informed his more nuanced conclusions as to the appellant's presenting diagnoses. The judge found at [76] that removal of the appellant to Sierra Leone would result in a very high risk of suicide or deliberate self harm. That was a finding the judge was entitled to come to on the evidence before her. The judge took into account the availability of treatment in the appellant's own country. She had concerns regarding some of the evidence, in particular with that of Dr Ahmad, however, after acknowledging that potentially affected the reliability of the report and the weight the judge was able to put upon it, she found that there was extraneous corroboration such that she could accept Dr Ahmad's views.
16. The judge was aware of the appropriate test and considered the same in her discussion and conclusion. She exhaustively assessed the evidence against the parties' respective claims. She was entitled to reach her conclusion at [97] that the evidence before her painted a different picture from that relied upon in the respondent's refusal. She confirmed that she was satisfied the evidence showed there was a causal link between the appellant's removal and the risk of suicide as claimed by the appellant and corroborated by the expert and other evidence.
17. It might be that the decision involved the judge in making findings as part of the setting out of the evidence rather than the analysis being wholly within her section "Discussion and Conclusion". Nevertheless, on a close reading of the decision, it is apparent that the judge considered all the relevant issues and justified her findings and conclusion.
18. In isolating [96] of the decision at ground [5] the respondent ignored the following paragraphs in particular, at [97]-[98]. After a considerable analysis and for the reasons she set out, the judge found the appellant's enforced removal to Sierra Leone would breach Article 3. She gave cogent reasons for that decision which she was clearly entitled to come to on the facts of the case and the case law framework.
19. As regards Article 8, for the reasons the judge set out, she found that the appellant met the requirements of paragraph 276ADE. She understood

the standard of proof and considered that there would be significant obstacles to the appellant's integration for the reasons she set out. I do accept that the judge failed to carry out the public interest considerations applicable in all cases under s.117, however, bearing in mind she found that the appellant met the requirements of the Rules, I find as Ms Loughran submitted, that there can be an inference that there was no public interest in the appellant's removal. In such circumstances I find the judge did not err in that regard but if she did so, the error was not material.

20. I conclude that the decision did not contain a material error of law, such that the decision of the First-tier Tribunal should be set aside.

Notice of Decision

21. The decision of the First-tier Tribunal contains no error of law and shall stand.

No anonymity direction is made.

Signed

Date 1 February 2018

Deputy Upper Tribunal Judge Peart