



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03791/2011

THE IMMIGRATION ACTS

Heard at Field House
On 29th April 2015

Determination Promulgated
On 5th May 2015

Before

UPPER TRIBUNAL JUDGE COKER

Between

N T
(Anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, counsel, instructed by HK Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. This appellant was the second appellant in the case of GJ & others Sri Lanka CG [2013] UKUT 00319 and the second appellant in the Court of Appeal case of MP and NT [2014] EWCA Civ 829. The Court of Appeal remitted the appeal of NT for reconsideration by the Upper Tribunal in the following terms:

42. It is not disputed that this appellant's separation from his family in the Chettikulam Camp occurred only two days after their arrival. Nor is it disputed that he was transferred by the CID to the Anuradhapura Camp where he was interrogated under torture many times. There was medical evidence corroborative of his evidence in this respect. There is, however, one feature of the determination of the UT that causes me concern. It stated (paragraph 424):

"it appears from the evidence that [he] was not of sufficient concern in 2009 to be one of the 11,000 active LTTE cadres who were considered to require re-education through the 'rehabilitation' programme before being reintroduced into Sri Lankan civil society."

This inference also played a part in the UT's scepticism about evidence from his mother that the security forces had visited the family home looking for the appellant and describing him as an escapee and "hard core LTTE member". The UT (paragraph 422) referred to the appellant not having been put into the rehabilitation programme in 2009 as having some significance and justifying scepticism in relation to the mother's evidence.

43. The problem with this approach is that the appellant was released following payment of a "huge" bribe only three months after the commencement of his detention. The selection process for rehabilitation or prosecution was still taking place at least until mid 2010. It seems to me that the UT failed to have regard to this fact when concluding that the appellant "was not of sufficient concern in 2009 to be one of the 11,000 active LTTE cadres who were considered to require re-education through the 'rehabilitation' programme." It is plain that the authorities knew enough about the appellant to move him to Anuradhapura Camp within two days. It is also not without significance that his cousin was still in detention four years after the end of the civil war. The UT was entitled to attach significance to the fact that the appellant has not participated in Tamil separatist activity in the United Kingdom but that is not an absolute prerequisite for protection under the guidance. Paragraph 356(7)(a) is in disjunctive form and embraces the possibility of an applicant who has or is perceived as having "a significant role in... a renewal of hostilities within Sri Lanka", absent some diaspora activity, even though such activity will usually be the touchstone. In considering whether the appellant would be perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan government, it was necessary for the Upper Tribunal to consider his case on the correct factual basis. Whilst his case was not as strong as that of GJ (whose appeal was allowed), I consider that it was a material error of law for the UT to attach significance, both in relation to the appellant and in its rejection of his mother's evidence, to his not having been of sufficient concern to be one of those considered to require rehabilitation. Accordingly, I would allow his appeal and remit his case to the UT for reconsideration.

3. On 11th September 2014 the Upper Tribunal notified the parties that they did not have full copies of evidence sought to be relied upon and a Case Management review hearing was listed for 22nd October 2014. Neither the appellant nor the solicitors then on the record appeared. I made directions in the following terms:

....

2. The basis of the appeal before the Upper Tribunal is to be determined in the light of paragraphs 41 to 43 of the Court of Appeal judgment in MP & NT (Sri Lanka) [2014] EWCA Civ 829 and paragraphs 399 to 418, 421, 425, 427 and 432 of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)
 3. No application having been made by either party to admit further oral or documentary evidence, none shall be admitted.
 4. No oral evidence.
 5. Skeleton arguments to be exchanged by both parties and filed with the Tribunal no later than 28 days after the date of service of this order.
 6. This appeal to be listed for hearing on the first available date 14 days after exchange of skeleton arguments.
 7. At the hearing of this appeal, oral submissions by both parties to be limited to 30 minutes each with 15 minutes reply.
4. It subsequently transpired that the appellant had withdrawn his instructions from his solicitors and his new (and current) solicitors had not notified the Upper Tribunal they were now acting. The current solicitors wrote to the Tribunal stating that the appellant had further evidence he wished to rely upon and a hearing listed as a full hearing on 5th February 2015, at which both parties were represented, was treated by me as a Case Management Hearing. I made the following directions
1. The appellant to file and serve a witness statement to stand as evidence in chief together with any additional evidence sought to be relied upon by 4pm on 12th February 2015. Copies to be sent to the presenting Officer's Unit marked the attention of Ms J Isherwood.
 2. The Secretary of State to file and serve any documents in response or upon which they seek to rely by 4pm 19th February 2015, if so advised.
 3. Tamil interpreter to be booked by the Tribunal
 4. Both parties to send in representatives' availability by 12 noon on 9th February 2015.
 5. The hearing will, if at all possible be scheduled for a morning rather than afternoon court, for 2 ½ hours.
5. The applicant did not comply with the directions. I was handed a small bundle of documents on the day of the hearing including a witness statement of the appellant signed on 11th February 2015 and various articles and photos showing the applicant at demonstrations. I directed that the senior partner furnish an explanation by 4pm on Thursday 30th April for what looked like a failure to comply with directions.
6. I admitted the documents together with a last minute document of an article showing attendance at a demo.
7. Mr Spurling sought an assurance, in the light of his reading of the respondent's skeleton argument dated 3rd December 2014, that the credibility findings were retained and the findings were preserved. I confirmed my understanding that the hearing would proceed as set out in my directions made on 11th September 2014 [2] as referred to in the remittal by the Court of Appeal. I confirmed that I would

look at the evidence in the round in the context of and through the prism of the findings made and preserved.

Preserved findings

8. The following is expressly preserved or was the subject of undisputed findings in GJ:
- i. The appellant was found to be credible as to those aspects of his account the First-tier Tribunal judge accepted.
 - ii. He was rounded up with others including his parents and taken to Chettikulam camp. He initially tried to pass himself off as a civilian but was rapidly identified as an LTTE cadre and moved to Anuradhapura Camp, where conditions were worse. His parents were not moved and were released quickly;
 - iii. He was not ill treated at Chettikulam camp; if it was there that he signed a Sinhalese document or documents it was “probably a benign document (perhaps a release or transfer to Anuradhapura camp), not a confession”; “The appellant’s evidence that he signed such a document both on his arrival and after his release indicates...that it is reasonably likely that this was a form of record keeping of his entry and exit from the camp” (Chettikulam camp);
 - iv. He did not sign any confession or adverse document in Anuradhapura detention camp;
 - v. He was detained for 3 months and 10 days in Anuradhapura Camp and ill treated;
 - vi. He was released informally after payment of a huge bribe to the CID at Anuradhapura and left Sri Lanka on a passport to which he was not entitled;
 - vii. His activity as an LTTE cadre had started in September 2008 when he was forcibly taken by the LTTE and initially involved checkpoint duties and then bunker digging and transporting wounded;
 - viii. There is likely to be a record of [his] presence in Chettikulam and Anuradhapura camps;
 - ix. One of the appellant’s brothers was a fighter with the LTTE and disappeared in the closing days of the civil war and is presumed dead;
 - x. A cousin (the son of his father’s brother whom he calls uncle) was detained and remained detained at the date that GJ was heard (last hearing date 19th April 2013);
 - xi. The appellant has been in London for some time, a diaspora hotspot;
 - xii. A group of officers, some carrying walkie talkies and some in uniform, visited his mother at the family home in Jaffna in September 2010 and asked his whereabouts; when she told them he was still in the camps they told her there was no-one in the camps of that name and she better find him.
 - xiii. The process of obtaining a travel document will mean that the authorities learn all they need to know about his background before issuing a travel document.
 - xiv. The authorities will know what separatist activities he undertook in Sri Lanka and what his activities have been in the UK.
9. GJ [432], having heard oral evidence from the appellant and submissions, referred to the appellant “not taken any part, still less a significant part, in Tamil separatist activity in the United Kingdom”.

Background

10. The appellant had left Sri Lanka in mid September 2009, about two weeks after “release” from the camp. He arrived in the UK on 10th January 2011 and applied for asylum on 7th February 2011. He was screened on 15th February 2011 and substantively interviewed on 23rd February 2011. His application for asylum was refused for reasons set out in a letter dated 3rd March 2011 and a removal decision served. His appeal against that removal decision on asylum grounds was heard by the First-tier Tribunal on 25th May 2011 and dismissed. The appellant did not, in his interviews with the respondent, or his witness statement submitted in support of his claim for asylum or in oral evidence to the First-tier Tribunal state that he had been involved in any “diaspora activities”. Permission to appeal that decision was granted and in a determination dated 4th January 2012 the determination of the First-tier Tribunal was set aside with the findings of the First-tier Tribunal judge as to credibility of the claim preserved; the error of law being that the First-tier Tribunal judge’s conclusion “that there was no record of the appellant’s detention was not a conclusion for which he gave sufficient reasons. Given his positive credibility findings he should have considered whether or not the issue of the appellant’s detention would come to the attention of the authorities on his return”. The resumed hearing was joined with the other matters (in what became the reported CG case of GJ) that were heard in March and April 2013.

11. The First-tier Tribunal judge says:
 42. An important part of the appellant's evidence relates to the report from his mother that in September 2010 seven or eight people, some in uniform, had come to the family home with walkie-talkies. According to the appellant his mother had told these men that the appellant was in one of the camps. However they had told her there was no one of that name in the camps and that she had better find him. These officers, presumably having checked the camp records on their walkie- talkies, had not established that the appellant was in the camps. But they had also significantly not identified any record that he appellant was an escapee who was being looked for.

 43. Furthermore the appellant in his witness statement had concluded that the authorities would now know as a result that he was missing. But if that is the case they clearly had no previous record that he had absconded from custody.

 44.And although that the authorities records are considered to be sophisticated, it is entirely apparent that he appellant in this case does not have a record. He was one of a relatively large [words missing] 2010 those visiting the family home clearly had not been able to establish that here was any record of him.

 45. I do accept that he was detained for three months and severely ill treated, as corroborated by the medical report. But that does not mean that he is presently of interest to the authorities. He was never a significant supporter of the LTTE, and indeed by his own admission he had been forcibly recruited, like many others, into the organisation after the ceasefire during the period leading up to the end of the conflict.

12. In oral evidence before the Upper Tribunal, the appellant relied upon a witness statement (the copy of which in my bundle was undated) and a supplementary witness statement dated 7th December 2011. Neither of these witness statements referred at all to “diaspora” activity.

13. In a witness statement, signed on 11th February 2015, filed for the hearing before me, the appellant set out his claimed “diaspora” activity and gave oral evidence of this and the claimed visits by the authorities to his mother.

Diaspora activity

14. The appellant claims in his most recent evidence to have been involved in diaspora activities since 2011, the first such instance being his attendance at a Heroes Day demonstration in November 2011. Since then he has attended demonstrations and meetings. His evidence was that at one such event in January 2012 he gave his mobile number to one of the organisers and since then, when there is an event, he receives a text and he goes to the event and to meetings dealing with that event; is given jobs such as marshall, taking banners or water or leaflets. There are a number of photos of him at the demonstrations wearing a reflective jacket and/or with a loud hailer. The appellant confirmed in oral evidence that he was not involved with the actual planning of events but was someone who regularly participated in them and was regularly called upon to undertake various tasks associated with large scale events.
15. He said he had not gone to any events prior to his First-tier Tribunal hearing (May 2011) because he had only been in the UK a short time.
16. His explanation for not referring to any diaspora activities prior to the witness statement dated 11th February 2015 was that his lawyers had not asked him about any such activities and it had not occurred to him to tell his lawyers about them. There was no witness statement or other evidence from the organisations he claimed would ask him to carry out duties such as marshalling. He said he had not known such evidence would be necessary and he had not asked them for a letter or witness statement.

Visits by the authorities to his former home in Sri Lanka

17. In his evidence before the First-tier Tribunal the appellant said that his mother had told him, after he came to London, that the authorities had visited the house in Jaffna in September 2010 and asked to see the household ration book. They had seen that three of her six children’s names had been crossed out and his mother had told them that her daughter was abroad, one son was missing and that he, the appellant, was in the camps. Three children remained on the ration book – 2 daughters and one son.
18. In his witness statement dated 7th December 2011 the appellant says that his mother told him that the authorities had come looking for him 3 times since the hearing in May 2011. In her affidavit dated 30th November 2011, his mother says

.....

(9) The Sri Lankan state security and paramilitary personnel have come Three times so far in search of my son N... since 03rd July 2011. They accused my son of being an LTTE member and an escapee from detention and is wanted for further questioning.

(10) The State Security officials who came in search of my son N... On 3rd July 2011 were very abusive and they harassed and threatened Me and kept asking about my son N... and Two of them were in camouflage dresses while the rest were in plain cloths. few of them were armed and had walkie-talkies.

(11) on the night of 27th July 2011 again eight men came in search of my son N... They demanded me to report on 30th July 2011 at 10.30am at the neighbouring Army Camp....

(12) I reported to the sentry guards at the said Army camp on 30th July 2011 at 10.20am after having informed to the Grama Sevaka Officer (Village headman) of our area.....One officer spoke to me in fluent Tamil. He was accusing my son N...as a hard core LTTE Member and a jail breaker..... They demanded that I should somehow bring and surrender my son N... to them within a month or otherwise they threatened that they will come and arrest my other children at home.....

(13) on the following day I again consulted with the local village headman and an Attorney-at-Law and according to their advice and guidance we shifted from our own house to another place where I live now.

....

[sic]

19. A letter from S H K (LLB) dated 5th December 2011 confirmed that the appellant's mother had instructed him after she claimed to have had several visits from the authorities in search of her son and that he had been forced to sign a confession statement. He states he had made a few enquiries and could confirm that N was detained by the security forces from May to August 2009. He states he "understands" the security forces are "highly interested" in N. He goes on to state "I believe that since [N] was not released officially the authorities could have listed him as an 'escapee' from their custody and might have alerted the ports of entry/exit". The balance of the letter refers to matters he has been told by the appellant's mother.

20. A letter from Grama Sevaka Niladhari dated 1st December 2011 describes what he has been told by the appellant's mother and his advice that she seek the assistance/legal advice from an attorney-at-law. He gives her address as she gives it in her affidavit, which is the address she says she moved to after the claimed incidents in July 2011. He says she is a permanent resident in his area, that she approached him in July and that he "will take up the matter with the relevant authorities in [his] capacity as a Grama Sevaka Niladhari/village Headman of the area". He goes on to state that he took up the matter with the authorities and, in addition to setting out that the appellant surrendered to the army, was taken to Chettikulam camp, arrested and taken to Anuradhapura camp two days later he states the following:

...is alleged to have made a self confession statement during his investigation which is recorded in Sinhalese language and duly signed by him

.....went missing from their custody...

.....is listed as an 'escapee' and is wanted for further questioning...

.....[brother] also went missing since May 2009 from Vanni district at the height of the final war.

21. There was some confusion in the appellant's oral evidence over dates. He said that he continues to have contact with his mother and last spoke with her on the previous Sunday. His mother had moved after the visits by the security forces in 2011. He said that in addition to the incidents his mother refers to in her affidavit, the security forces had visited her home in 2013 and 2014 looking for him. He said that he knew this because the people now living in their old home had told his mother and she had told him. He said he had not referred to this in his witness statement of 15th February 2015 because he had been concentrating on his activities in the UK. His mother had not produced another affidavit because he didn't think it was serious and he had already given her statement.
22. There is no information in any of the affidavits about the conflict in address of the mother. The appellant was adamant in his evidence that his mother had moved after the claimed July 2011 incident and the address she wrote from and the addresses given by Mr K and the Grama Sevaka were her 'new' address to which she had moved.

Discussion on the evidence

23. There is no doubt but that the appellant has been going on demonstrations on a fairly regular basis since his appeal to the First-tier Tribunal was dismissed and that he has been photographed with a loudspeaker. I accept that he was allocated tasks at some of the events such as handing out leaflets, taking banners to the demo or bringing water. These were tasks that were given to him by the organisers of the events. He was asked to do things and he did them. He did not, on his evidence, participate in the decision making process either in terms of who should do what or whether an event should be held, how or where or why it should be held. He is no more than a willing volunteer who essentially did what he was asked to do. He did this for three separate organisations and gave no evidence whatsoever of his understanding of the different organisations ideals or political ethos. He gave no indication whatsoever of whether he agreed with one or other more or less than another. The only question he was asked about why he did these things was replied to in vague general terms that there are Tamils in Sri Lanka, he is a Tamil and he cannot give up his feelings for the Tamils. These are not the sentiments of a political activist committed to Tamil separatism or working towards the destabilisation of the unitary Sri Lankan State. Even if photographed by the Sri Lankan authorities (which it is reasonable to assume he has been) given the extent of Sri Lankan intelligence it is inconceivable that it would not be known to the authorities (assuming he is identifiable) that he was no more than a person who undertook minor tasks in relation to events, when asked to do so. It is inconceivable that the Sri Lankan authorities would consider him to be an activist working for Tamil separatism merely because of these activities. Ms Isherwood took issue with the late disclosure of his activities and that he had only started to take part in such activities after his appeal to the First-tier Tribunal had been dismissed. Whilst that is correct and his activities do smack of an attempt to bolster his claim, even at its highest, namely that he was asked to do the various jobs, those activities are not commensurate with the descriptive role submitted by

Mr Spurling as working for Tamil separatism and (or indeed 'or') seeking to destabilise the State.

24. Mr Spurling rightly relied upon the passage of time where there appeared to be confusion and inconsistency in the appellant's evidence. He reiterated that the appellant had never claimed he had signed a 'confession' but that he had signed a document that was either blank or written in a language he did not understand. He had signed this at Chettikulam (the first camp) and the findings of previous determinations had been that if such a document had been signed it was benign. He was not submitting, and the appellant was not claiming, that he had signed a confession statement at Anuradhapura camp. I accept this submission. The appellant's evidence on this has been broadly consistent and I see no reason to differ from the Tribunal's earlier finding that if such a document were signed it was benign. Although the issue of the document was not a matter directly referred to by the Court of Appeal in remitting this appeal back to the Tribunal, it is of some relevance in determining the assessment of the evidence of the appellant's mother, the lawyer and the Grama Sevaka Niladhari
25. The lawyer's letter is, as rightly pointed out by Ms Isherwood, to a great extent merely reciting what he says he was told by the appellant's mother that in turn was what she was told by the appellant. Although Ms Isherwood made much of the reference to the signed confession which was not in fact the appellant's evidence, I do not place weight on this – it is quite possible that the mother having been told by her son that he had been forced to sign a document extrapolated that to mean he had been forced to sign a confession and passed that information to the lawyer. Of more concern is that the lawyer states he had made a few enquires but does not state to whom he made those enquiries. He does not say whether he spoke with the authorities at the camp(s), the security forces, the police or the courts. His statement that he 'understands' the security forces are interested does not give any indication why he 'understands' this. Is it because of what he was told and if so by whom? Is it because he has made assumptions? If so on what basis? He states that the security forces are 'highly interested' but does not explain what is meant by this. Is it because the appellant is being treated as an escapee and they wish to make further enquires as to how he escaped or because of his previous LTTE connections? He does not say. He does not say why or how he 'understands' that, after some two years, a former forcibly recruited LTTE member who was digging bunkers and carrying wounded in the latter stages of the civil war with no previous involvement with the LTTE other than as an employee when the LTTE were in control of the area he lived in, would be someone the security forces were 'highly interested' in. This seems strange given that the appellant's brother was 'missing' and there seems to have been no interest taken in his whereabouts despite him being a fighter for the LTTE. Although he is presumed dead, there has been no evidence whether this is a presumption by the family or by the authorities; a minor point however.
26. Mr K further states that the appellant "could" have been listed as an escapee; not that he was listed as an escapee. If Mr K had made the enquiries he claims to have made such that he is able to draw the conclusion that the security forces are "highly interested" it is inconceivable that he would not know whether or not the

appellant had *in fact* been listed as an escapee. Similarly he would have known whether or not the ports had *in fact* been alerted.

27. The letter from the Grama Sevaka Niladhari was criticised by Ms Isherwood on the basis that it was hearsay. Again there is nothing wrong with the Grama Sevaka Niladhari recounting what he has been told by the appellant's mother; he has not spoken with the appellant directly and can only relate what he has been told which is what he does. He also refers to having taken the matter up with "the relevant authorities". He does not state who they were or the status of the person or persons he spoke to but as a result of those conversations he *confirms* the dates the appellant was in the camp, that the appellant is alleged to have signed a confession, that he is listed as an escapee and wanted for further questioning and his brother is missing. The appellant's evidence is *not* that he signed a confession. The Grama Sevaka is confirming an allegation that a confession was signed. What does that mean given he has confirmed this after investigation with un-named relevant authorities? Either the "relevant authorities" would confirm that a confession had been signed or not; or the people he spoke to were not in a position to give him information. As to being listed as an escapee, this is in contradiction to the investigations made by the lawyer who says he 'could' have been listed as an escapee. There is no indication whether the un-named person the Grama Sevaka spoke to had higher authority than the un-named person the lawyer spoke to or why there is different information. There is no indication that the missing brother (a fighter) was being sought.
28. The Grama Sevaka also describes the mother as a permanent resident in his administrative area. This appears to indicate that although she may have moved she did not move out of his administrative area because he considered himself responsible for her and able to make relevant enquiries.
29. The appellant in his oral evidence refers to two more visits from the security forces in 2013 and 2014. By the time of these visits his mother had moved but his evidence was that the present occupants had told his mother of these visits. There was no evidence, despite his mother having been told that she had to produce the appellant within a month failing which her other children would be arrested and because of this she moved, of any visit between July 2011 and a visit in 2013, some two years later. Then despite his mother no longer living there they visited again a year later. And despite the extent of Sri Lankan intelligence and despite the current occupants clearly knowing where the mother lived and despite the Grama Sevaka knowing where she lived and that he had made enquiries on her behalf (and she appeared to be living in the same administrative area), the security forces did not visit her where she is now living. There was no evidence that the Grama Sevaka had been asked anything.
30. It is inconceivable that the current occupants would not tell those making enquiries where the mother was now living – if only to avoid being tainted by possible adverse repercussions if they were living in the house of former LTTE activists who were wanted by the authorities.
31. Dr Gunaratna's evidence to the Upper Tribunal ([273] of GS) to the effect that the GOSL was more selective now as to who requires rehabilitation was accepted.

There had been a qualitative change in the purpose of rehabilitation ([318] of GS). Reference was made in GS that the GOSL now looks abroad to the diaspora and its activities for any risk of resurgence or of the conflict resuming with the country ([277] of GS). [306] of GS refers to the debriefing by the security services of thousands of Tamils at the end of the civil war, to the GOSL's access to sophisticated, high quality intelligence that enabled it to evaluate and assess risk posed by particular individuals both within and without Sri Lanka. [311] and [349] of GS refer to the current concerns and that connections with the LTTE are of concern as regards whether the person is a destabilising threat in post conflict Sri Lanka. Rehabilitation applied to all identified cadres at the end of the war but that is not the purpose of rehabilitation now. Now it is used where a person is considered to be involved in the possible resurgence of the LTTE. As stated in [351] of GS:

“Sri Lankan Tamils returning from the diaspora who did not undergo rehabilitation during 2009 – 2011 are not for that reason at risk now, unless they can be shown to come within the risk factors presently identified”.

32. Although it is accepted that the appellant's mother was visited in 2010, it cannot be concluded on the lower standard, that the visit was because he was known to be an escapee. That was not the evidence given and had those who visited her thought or had a record that he was an escapee it is inconceivable that they would not have said so to her and would not have said to her that this was why he was being sought. It is inconceivable that had such been said to her that she would not have told the appellant. What was said was that there was no one in the camps of that name. If there had been and he had escaped it would have been said to her – harbouring or failing to produce an escapee could result in far more serious punishment. It is inconceivable that having not been recorded as an escapee in 2010 (a year after he had escaped) he would then be recorded as an escapee the following year.
33. Mr Spurling submits that transfer to Anuradhapura camp resulted in one of two things only – being sent for rehabilitation or prosecution and that there was no third way of release. There was no evidence to that effect. The evidence was that on being identified as an LTTE cadre, transfer took effect. Background evidence indicates that release through bribery does not mean that a person is recorded as an escapee; the person or persons who take the bribe will seek to cover their tracks.
34. Taking all of these matters into account and bearing fully in mind that the appellant's account of detention and transfer to Anuradhapura camp was accepted and that he was ill treated and tortured and accepting that if he signed a document it was benign and accepting that his brother is missing and a cousin remains in detention and that his mother was visited by the security forces in 2010, I am not satisfied to the lower standard of proof, that the appellant's mother was visited by security forces in 2011, 2013 or 2014.
35. Nor am I satisfied that the security forces or the Sri Lankan authorities have recorded the appellant as an escapee from Anuradhapura camp. There was, in 2010, no record of him being in the camp; nor a record of him having escaped.

36. The finding that the security forces visited the mother in 2010 was preserved and I do not go behind that. But when considered with the evidence as a whole I am not satisfied that the visit was anything more than the security forces checking on the whereabouts of a young man who had been known, by his own admission, to have had some involvement with the LTTE in the very latter stages of the war. Such interest as there was was minimal because his mother was not, according to her evidence visited again for nearly a year in any event, although I am not satisfied that visit took place in any event.
37. Mr Spurling submits that each of the elements of the appellant's accepted account may not, on their own, be sufficient to sustain a finding that the appellant is at risk on return to Sri Lanka but that the combination of his specific circumstances are such that he is at risk.
38. [307] and [308] of GS sets out the process of obtaining a Temporary Travel Document. Of critical importance is the underlying acceptance that an individual cannot be expected to lie in order to protect himself from the threat of persecution. TTDs are issued from Colombo; it is more likely than not that the Sri Lankan authorities can distinguish those waging an alternative war and those who are not involved with attempts to revive the LTTE in the diaspora (see [323] of GS). From the high level of intelligence the security services have of individuals both within Sri Lanka and in the diaspora, it can be assumed that the authorities are aware that the appellant was in the camps and is now in the UK; has attended demonstrations and handed around leaflets and shouted using a loudhailer etc. It can be assumed that the authorities know and have a record of his activities for the LTTE – including manning a checkpoint when the LTTE controlled the area and his forcible recruitment to dig bunkers and help with wounded in the closing stages of the war; of his brother's disappearance and the incarceration of his cousin.
39. It cannot be concluded that the applicant's activities in the UK are significant political activities that would attract the adverse attention of the GOSL as being intended to destabilise the State.
40. Even though the applicant had been in the camps and not gone through the rehabilitation process, the concern of the GOSL now is not what happened then but what an individual might do in the future. As [351] of GS says, Tamils returning from the diaspora now who have not undergone rehabilitation are not for that reason at risk.
41. The applicant would not have to lie or dissemble as to his activities both in the closing stages of the war, in terms of his sojourn in the UK or his attendance at meetings in the UK. He is, quite simply, not involved in activities at anything approaching a significant level designed to threaten the Sri Lankan State and the activities he undertook in 2009 are now of little interest to the GOSL.
42. If, because he is known as a former LTTE cadre returning from the diaspora, he is placed on a watch list, that is not persecutory. There is no credible evidence that anything more than that would happen to him.

43. For all of these reasons I am satisfied that the appellant would not be at real risk of persecution if removed to Sri Lanka. His appeal is dismissed.

Decision

I dismiss the appeal

Anonymity

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

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

Date 3rd May 2015

Upper Tribunal Judge Coker