



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/03283/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 18th September 2018**

**Decision & Reasons
Promulgated
12th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**AS
(ANONYMITY DIRECTION MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Ms. B. Jones, Counsel instructed by Tamil Welfare Association
For the Respondent: Mr. I. Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision promulgated on 22 May 2018, I set aside the decision of the First-tier Tribunal. The appeal came before me to be remade.
2. I continue the anonymity direction.

3. In order to establish his claim to be a refugee the Appellant must establish that the Respondent's decision is contrary to the United Kingdom's obligations under the United Nations Convention relating to the Status of Refugees made at Geneva on 28 July 1951 (as amended) ('the Refugee Convention'), or that it does not comply with Council Directive 2004/83/EC dated 29 April 2004 ('the Directive'). Failing this, the Appellant can challenge the decision as being in breach of his rights under the ECHR.
4. The Appellant is required to show that he is currently at "real risk" of persecution if returned to Sri Lanka as a person who falls within article 1(A) of the Refugee Convention, in which case he is to be accorded recognition as a refugee under paragraph 334 of HC 395. If he does not qualify as a refugee he is required to show "substantial grounds" for believing that, if returned to Sri Lanka, he "would face a real risk of suffering serious harm" as defined by paragraph 339C of HC 395, in which case he is to be granted humanitarian protection. Alternatively he has to show that that returning him to Sri Lanka would cause the United Kingdom to be in breach of its obligations under the ECHR, as he faces a near-certainty of death such as to place the United Kingdom in breach of Article 2, or that he would be subject to a real risk of torture or inhuman or degrading treatment or punishment of sufficient severity to engage Article 3, or that the decision would otherwise constitute an unwarranted interference with qualified protected human rights.
5. Paragraph 339L of HC395 states that it is the duty of an appellant to substantiate his claim and sets out the relevant conditions to be met when assessing evidence. As well as a statement of claim, an appellant is required to produce "all documentation at [his disposal regarding] age, background (including background details of relevant relatives), identity, nationality(ies), countries and place(s) of previous residence, previous asylum applications, travel routes" and also "identity and travel documents". I have had regard to these conditions when assessing the credibility of the evidence. I have also considered the application of section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 ('the 2004 Act') to the evidence in this appeal.
6. I have also taken into account the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance, given the evidence of the Appellant's mental health.
7. The standard of proof required of an appellant is a low one, to a reasonable degree of likelihood, recognising the difficulty so often faced by appellants in proving their case. This standard applies to both past and current circumstances, and also to establishing the future risk in the country to which they will be returned.

The Appellant's given background, immigration history and general circumstances

8. The Appellant's case is set out in the record of his screening interview dated 21 August 2013, the record of his asylum interview dated 7 February 2014, the supporting evidence, the background evidence, the skeleton argument and the oral evidence at the hearing. I do not propose to set out the Appellant's case here as this is to be found in these papers and in the Record of Proceedings.

The Appellant's claim of persecution

9. The Appellant fears persecution on account of his political opinion. He fears the Sri Lankan authorities as he was detained and mistreated by the Sri Lankan authorities as they believed that he was affiliated to the LTTE. This is a reason which engages the 1951 Convention.

The Respondent's decision

10. The Respondent's reasons for refusing the Appellant's asylum claim are set out in the reasons for refusal letter dated 12 February 2015. The Respondent accepted the Appellant's identity and nationality. The Respondent did not accept that the Appellant had past involvement with the LTTE. However, the one preserved finding from the decision of the First-tier Tribunal, which was agreed at the outset of the hearing, was that the Appellant was an LTTE supporter, and assisted in the delivery of weapons and fundraising, for a period until the end of the civil war in 2009, as is set out in [87] of the First-tier Tribunal decision.
11. The Respondent accepted that the Appellant left Sri Lanka in 2009 and travelled to France with an agent. The Respondent's records confirmed that the Appellant applied for asylum in France. The Respondent did not accept that the Appellant had returned to Sri Lanka from France via Italy and Damascus, arriving back in Sri Lanka in April 2010. The Appellant had failed to provide evidence to substantiate the claim that his brothers paid for him to return to Sri Lanka and an agent organised his journey.
12. An assessment of the Appellant's claimed journey to the United Kingdom had been made. It was noted that the Appellant failed to remain consistent in his account of the document used to enter the United Kingdom on 6 August 2013. In the light of his claim to have travelled to the United Kingdom on his own national Sri Lankan passport, it was noted that the Respondent's records indicated that a visa had not been issued to him. It was also noted that he was not a biometric hit to any visa issued by the UK authorities. He claimed at his screening interview that the agent had applied for these on his behalf. However later he had stated that he had never claimed for a visa before. It was not accepted that he would have been able to enter the United Kingdom through an international airport on such a passport as that purported to have been used by him.

13. Given the clear inconsistencies and credibility issues present in relation to his claim of travelling to the United Kingdom from Sri Lanka, considerable doubt was cast upon his claim of having returned to Sri Lanka in 2009. As a result the remainder of his claim was not accepted. However the claim to have been arrested and detained was considered by the Respondent.
14. The following credibility points cast doubt upon his claim. He claimed that between 2010 and 2013 he went back to the village and his father got a paddy field for lease, and he was engaged in cultivation. He did not claim to have had any involvement with the LTTE during this time, nor did he claim to have experienced any problems with the Sri Lankan authorities. There was little to suggest that the authorities would maintain an interest in him.
15. He claimed that his sister was arrested by the Sri Lanka authorities from his home when they came to look for the Appellant. He claimed that CID came to his home in February 2011. It was noted that he had been unable to remain consistent in relation to this claim. There were discrepancies arising in relation to the actions after his sister's arrest. Additionally it was noted that he had failed to remain consistent as the key factors of his arrest and detention.
16. Consideration was given to his claim that he was informed by the authorities that he was arrested due to the suspicion of his brothers' involvement in the LTTE. His brothers were accused of sending money to the LTTE. Despite this claim it was noted that he was not questioned about such matters during his six-month detention. It was considered incredible to claim that he would be arrested on suspicion of an offence but not questioned about it. Furthermore it was noted that he did not claim to being questioned about his involvement in the LTTE. On this basis it would appear that the Sri Lankan authorities would have no reason to arrest and detain him as claimed.
17. Further consideration was given to his claimed release from detention. It was noted that he claimed that his release was paid for by his brothers but he later claimed that his parents paid stating that they sold their land in order to pay the 25 lakh necessary. Given his continued failure to remain consistent during his claim, it was not accepted that he was arrested and detained as claimed.
18. The Respondent considered section 8 of the 2004 Act. The Appellant claimed to have arrived in the United Kingdom on 6 August 2013. Although he claimed that he travelled with the intention of escaping his problems in Sri Lanka, he failed to highlight his need for international protection on arrival. It was considered that if he was in genuine need of international protection he would have sought the assistance of the authorities at the earliest opportunity. His delay in claiming asylum undermined his claim to be in fear of his life.

19. By his own admission he claimed that he produced a passport obtained by deception as if it were a valid passport. It was noted that he had failed to remain consistent in respect of this part of his claim. His behaviour fell under section 8 and his credibility was damaged as a result.
20. The Respondent considered risk on return. His claim to have been arrested and detained by the Sri Lankan authorities had been rejected in its entirety, but consideration was given to any potential risk he may have on return. He did not claim to be involved in political activities in United Kingdom nor to be involved with the Tamil diaspora. He claimed that he had not supported the LTTE in any way since arriving in the United Kingdom. Consideration was given to his claim to have attended a single Heroes' Day celebration in London.
21. It was not accepted that it would be perceived by the Sri Lankan government as a threat to the integrity of Sri Lanka nor was it accepted that he had had, or continued to have, a significant role in post-conflict Tamil separatism. The Respondent considered the case of GJ and others (post-civil war; returnees) [2013] UKUT 00319 IAC. Any involvement he claimed to have had with the LTTE was low-level and would not cause the Sri Lankan authorities to be currently interested in him. It was considered that since he had been in the United Kingdom he did not claim to have been involved in any activities which supported Tamil separatism and therefore he would not be viewed by the Sri Lankan government as taking part in activity that would threaten the integrity of Sri Lanka.
22. Even if it was accepted that he had been detained by the Sri Lanka authorities, it was not considered this would put him at risk. He claimed to have been released from detention on the payment of a bribe, and as such it was considered that he was not of any significant interest to the authorities. He was also able to travel from Colombo airport on his own national passport. As he was able to leave Colombo airport it was considered that his name was not on a stop list.
23. The Respondent considered that there was no reasonable degree of likelihood that the Appellant would be persecuted on return to Sri Lanka. He considered that he did not qualify for humanitarian protection or that the decision breached Articles 2 and 3 ECHR. The Respondent considered Article 8 ECHR under the immigration rules but considered that he did not meet the requirements of the rules. He considered that the decision did not breach the Appellant's rights to family or private life under Article 8 outside the immigration rules.
24. The Respondent considered the Appellant's claim that he should be allowed to stay in the United Kingdom based on Article 3 medical grounds. He suffered from pain in his hand and hips after being beaten by the Sri Lankan army and he was receiving psychiatric treatment. He claimed to be receiving medication but he had not stated his dosage or medication type. The Respondent considered the documents submitted in support

including the psychiatric report prepared by Dr. Lawrence dated 10 August 2013, and other medical documents. The claim was considered in line with the case law of N v SSHD [2005] UKHL 31, and GS and EO (Article 3 - health cases) India [2012] UKUT 00397 (IAC). Although it was acknowledged that the medical facilities in Sri Lanka were not as developed as those in the United Kingdom or other European countries, it was considered that medical treatment was available for the medical conditions that he had suffered. The evidence provided did not indicate that his condition was at such a critical stage that it would be inhumane to remove him. It was not accepted that his removal reached the high threshold of severity to breach Article 3. He did not qualify for discretionary leave.

The hearing

25. I heard oral evidence from the Appellant's brother, TS1. Ms Jones informed me that the Appellant had attended the hearing centre but preferred to remain outside the hearing room. Both representatives made oral submissions. I reserved my decision.
26. At the outset of the hearing, Ms. Jones explained that TS2, another of the Appellant's brothers, could not attend the hearing as on the day before the hearing, his wife had been arrested. Due to domestic situation he had to remain at home as requested by social services. Ms. Jones did not request an adjournment.
27. However, during the course of cross-examination of TS1, Ms. Jones made an adjournment request on the basis that she had been told that TS1 had the same information regarding the Appellant's journey to Sri Lanka as TS2 who was unable to attend due to domestic circumstances. She submitted that it was clear that this was not the case and therefore sought an adjournment.
28. Mr. Jarvis opposed this. The issue of the return to Sri Lanka and the absence of evidence corroborating the Appellant's return to Sri Lanka had been raised in the reasons for refusal letter. The Appellant's brothers had not provided this evidence. It was clear from the witness statements which had been provided that the Appellant's brothers did not have the same level of information.
29. I considered that it was not in the interests of justice to adjourn the hearing. I took into account that no updated witness statement had been provided by TS2, and that which I had was dated December 2017. Ms. Jones stated that she had been told that it had been planned to take a further witness statement on the day prior to the hearing, but then the domestic issue arose. The Appellant's representatives have been aware of this issue since the reasons for refusal letter. Since the error of law decision was promulgated in May 2018, four months have passed yet the Appellant's representatives had planned to take an updated witness

statement from one of the key witnesses on the day prior to the hearing. The standard directions issued by the Tribunal indicated that this should have been done much earlier. I also considered the fact that there was other evidence before me which went to the issue of whether or not the Appellant had been detained and tortured in Sri Lanka in 2012. It was not only the evidence of his brothers on which the Appellant relied. I did not adjourn and the hearing proceeded.

30. I have also taken into account the documents in the Respondent's bundle, and the five Appellant's bundles, together with the report of Dr. John Stevens dated 11 April 2017 and the skeleton argument.

Findings and Reasons

Medical reports relating to the Appellant's mental health

31. The Appellant has provided three psychiatric reports from Dr. Robin Lawrence. The first is dated 13 August 2013 (Respondent's bundle). The two further addendum reports are in Appellant's bundle 5. I have carefully considered the qualifications and experience of Dr. Lawrence. I find that he is a psychiatrist, and is qualified to produce expert reports such as this. The Respondent did not challenge his report either in the reasons for refusal letter, or at the hearing.
32. In the 2013 report Dr. Lawrence had assessed that, while the Appellant had capacity, he was in an altered mental state and would find it extremely difficult to instruct a solicitor, and would find cross-examination extremely difficult. I find that Dr. Lawrence saw the Appellant very shortly after his arrival in the United Kingdom. His mental state examination is set out on pages 8 and 9 of the report. On page 9 he states that the Appellant is "subjectively and objectively depressed and in the mental state consistent with someone who is suffering from Post Traumatic Stress Disorder, with secondary depressive symptoms".
33. On page 10 of the report he states that he has given consideration to whether the Appellant was simulating his symptoms, and concludes that this is "extremely unlikely". He considers that the Appellant is probably not intelligent enough to be able to simulate PTSD or depression.
34. I find that this report, produced very shortly after the Appellant's arrival in the United Kingdom, is evidence that the Appellant arrived with very poor mental health which was not simulated or contrived.
35. In the most recent report, the second addendum report dated 11 September 2018 (pages 66 to 118 of Appellant's bundle 5), Dr. Lawrence states that his impression has not changed. The Appellant has PTSD caused through being tortured. His depression and anxiety are getting worse. He states that he is not fit and will never be fit to give oral evidence (page 85). He states that all the doctors seeing the Appellant

have agreed with his diagnosis of PTSD. Two doctors agree concerning his scars. Three doctors agree about his cognitive impairment and incapacity to give evidence.

36. I find that Dr. Lawrence has always considered that the Appellant would not cope with cross-examination. He continues to consider this to be the case having examined him as recently as September 2018. I therefore attach no weight to the fact that the Appellant did not give oral evidence bearing in mind the medical evidence provided. I find that his evidence falls to be considered with reference to the Presidential Guidance referred to above. I find in particular, that any inconsistencies relating to dates and times should be considered very carefully given his mental health difficulties.
37. The Appellant also provided a psychiatric report from Dr. John Stevens dated 11 April 2017. I have considered his qualifications and experience are set out at the end of the report. I find, having taken into account his qualifications, including his judicial experience, that his evidence can be relied on. He has set out all the material to which he had access at the beginning of his report together with the letter of instruction.
38. Dr. Stevens set out his opinion on page 12. He stated that in his opinion the Appellant has a major depressive disorder and PTSD. He states that the Appellant has a significant learning disability. These things together contributed to his impaired ability with regard to instructing a lawyer and understanding legal proceedings. He stated that he lacked the requisite mental capacity in connection with his asylum appeal hearing. He also considered that the Appellant would be most unlikely to be capable of feigning his conditions, exaggerating his conditions or malingering.
39. The Appellant's brother was appointed as his litigation friend in June 2017.
40. I note that there is a further medical evidence in relation to the Appellant's mental health for example the psychological report of Carmela Cotterell, the psychiatric report of Dr. Saleh Dhumad, and some of the Appellant's medical notes. However I have considered the most significant experts psychiatric reports, and to a large extent the material set out in the other reports duplicates that set out by Dr. Lawrence and Dr. Stevens. I have found that these can be relied on and I find that they corroborate the Appellant's claim.

Medical evidence relating to his physical injuries

41. It is the Appellant's account that he was detained and tortured in Sri Lanka in 2012, and released on payment of a bribe in 2013. The Appellant provided a medical report from Professor Sundara Lingam (pages 49 to 71 of Appellant's bundle 1). I have carefully considered this report, to which I gave some consideration in the error of law decision. In the First-tier

Tribunal it was found that Professor Lingam had the relevant qualifications and experience to produce a scarring report. I have considered his qualifications and expertise (pages 50 to 51) and I find that he has the relevant qualifications and experience to produce a scarring report.

42. I find that the Appellant was seen by Professor Lingam on 8 August 2013, only two days after his claimed arrival in the United Kingdom. The Appellant's claim is that he was beaten with metal rods and a heated metal knife (Q85). Professor Lingam finds that the Appellant's scars are diagnostic of the history that they were inflicted at the same time by two separate instruments as stated (page 54). He states that the scars are diagnostic with burning (page 55). The clinical features are characteristic of burns and cannot be anything else.

43. He addresses the age of the scars on page 56. He states:

"I have further carefully considered the age of the scars and I can confirm that the pigmentation of the scars and the healing process that they have endured is completely in line with the scars having been caused in December 2012 about over eight months ago as there is no hyperemia and the scars are not quite mature looking at the collagen on the scars. These certainly are not fresh scars meaning two or three months old.

There is no clinical pink pigmentation - hyperemia. There are no hyperemia in any of the scars thus that they are over 2 to 4 months."

44. Professor Lingam also considers whether the scars were self-inflicted or caused deliberately to mislead (page 57). He states that he has ruled out the possibility of self-inflicted injuries because the areas where the scars are located are not easily reachable. The Appellant could not have caused them himself. In relation to whether they were caused deliberately to mislead, he states that he has "clinically concluded that there is no way I nor any other medical expert in this field can scientifically differentiate between deliberately inflicted wounds [...] from wounds inflicted by any trauma."

45. I have found above that Professor Lingam is qualified to produce a scarring report. He has explained both why the scars are diagnostic of the claimed account, and he has given reasons for his opinion as to the age of the scars. He has considered the possibility of self-infliction. I find that his evidence as to the causation and the age of the scars can be relied on.

46. The Appellant also produced a scarring report from Dr. Andres Martin dated 8 July 2015 (pages 10 to 27 of Appellant's bundle 1). He sets his qualifications (pages 11 to 12). I have considered the evidence of his qualifications and experience and I find that he is qualified to produce such a medical report.

47. Dr. Martin's report is consistent with that of Professor Lingam. He considers the scars to be diagnostic of the treatment which the Appellant claimed to have received (pages 15 to 16). He considers the possibility of self-infliction by proxy but considers that this is no more than a remote possibility. He concurs with Professor Lingam that it is scientifically impossible to differentiate, but considers that there is no other factor making self-infliction by proxy more than a remote possibility. He refers to Professor Lingam's report and states that the scarring found is the same as found during his examination, but it was at a much earlier stage of healing when seen by Professor Lingam. In relation to determining the age of the scars, he says that it was possible only to give a very approximate range of time when they could have been caused (page 17). He said that the scars appeared matured and this was consistent with injuries which occurred more than two years ago. This is consistent with the Appellant's claim and also with the report of Professor Lingam.
48. He sets out his conclusion on page 18. He does not have any doubt that the scars on the back and upper arm were caused by intentional injuries by being hit by a hot implement. With reference to the Istanbul protocol, he states in his expert opinion that the scars on the back and upper arms/shoulders are diagnostic of intentionally caused injuries and were likely to have been caused by a third party as described by the Appellant. I find that I can rely on the evidence of Dr. Martin.
49. I have also considered the Rule 35 report dated 26 August 2013 (pages 28 to 31 of Appellant's Bundle 1). This corroborates the claim that the Appellant was a victim of torture.
50. Taking the two scarring reports into account, having found that I can rely on the authors due to their qualifications and experience, I find that they are consistent, and that the medical evidence corroborates the Appellant's claim to have been detained and tortured in 2012/2013. I find that it is reasonably likely that the scars were caused in the way claimed by the Appellant. I find that the scars were caused in 2012. Taking into account the medical evidence, I find that there is no reasonable likelihood that they were caused by self-infliction by proxy, but that they were caused in the way claimed by the Appellant.

The Appellant's account

51. It is against the background of the medical evidence that I consider the evidence of the Appellant and of his brothers in relation to the return to Sri Lanka in 2010. I accept that there are some deficiencies in the evidence, particularly in relation to the provision of corroborative evidence of travel and money transfers. However, I take into account the passage of time, as well as the fact that the Appellant has consistently claimed that all of his travel was arranged by agents.

52. I have carefully considered the Respondent's reasons for rejecting the Appellant's claim that he was detained and tortured in Sri Lanka in 2012/2013. The main reason for rejecting the Appellant's claim to have been detained and tortured was due to the fact that the Respondent did not accept the Appellant's claim to have returned to Sri Lanka in 2009 due to the "clear inconsistencies and credibility issues present in relation to his claim of travelling to the UK from Sri Lanka" [60].
53. I have stated above that I have considered the Appellant's evidence in accordance with the Presidential Guidance. I have carefully considered the evidence given at screening interview, asylum interview and in his statements, particularly the first witness statement in which he addressed the reasons for refusal letter, and I find that the core of the Appellant's claim has been consistent.
54. One of the reasons given by the Respondent was that the Appellant claimed to have fled Sri Lanka in 2009 due to fear of the authorities, but he returned to Sri Lanka out of his own free will. I have carefully considered the evidence regarding the Appellant's return to Sri Lanka in 2010. I have considered the evidence given by the Appellant at his asylum interview. At Q75 he said that he registered himself in France to claim asylum but the agent held me in a room and "at the time I had treatment for the mental problem and I had taken something to commit suicide so the agent sent me back to Sri Lanka".
55. In his witness statement dated 8 July 2015 the Appellant said that when he was in France he had attempted suicide by taking plant insect killer, having been told that he was due to be removed from France to another country. He stated that he continued to have suicidal thoughts and due to this the agent decided to return him to Sri Lanka in 2010 to live with his family (page 6, Appellant's bundle 1). When commenting on [57] of the reasons for refusal letter, he stated "I did not return to Sri Lanka out of my own free will. The agent returned me to Sri Lanka after I had attempted to take my own life. The agent did not want this to happen as he did not want to be blamed for my death - so the agent decided to return me to my family in Sri Lanka" (page 7).
56. In his witness statement, the Appellant's brother TS1, stated that he was aware that the Appellant had attempted to take his own life when he was in France "because he did not want to continue to live any longer". He came to learn of this from his other younger brother in the United Kingdom, TS2. He stated that he believed that the Appellant was not in good health during the time he spent in France in 2009 [4]. At [6] he stated that he contributed financially to the Appellant's return to Sri Lanka from France with the assistance of an agent. His knowledge of the events leading to the Appellant's return from France was limited because it was his younger brother he was dealing with these matters in the United Kingdom [10].

57. I find that, given his mental state, when he was suicidal and had attempted to take his own life, that to describe the Appellant returning to Sri Lanka of his own free will is not accurate. I accept the evidence that the Appellant's mental health was very poor at the time and so it was decided to return him to his family in Sri Lanka. While it may seem a somewhat strange course to take having got the Appellant as far as France, given that he had tried to kill himself in France, I accept that the agent may have wanted to return the Appellant to his family rather than risk him killing himself in France.
58. The Respondent also noted that the Appellant had failed to provide any evidence substantiate his claim including boarding passes, copies of documents used or bank statements. In his witness statement the Appellant said that he was not given the opportunity to retain any of this documentation which the agent took from him once he returned to Sri Lanka. He said that the agent did not permit him to retain any travel documents and it was the agent who had made arrangements for people to collect him from the airport and take him back to his family (page 7, Appellant's bundle 1). I find this to be a credible explanation and I would not expect to see any evidence of the Appellant's travel to Sri Lanka from France, given his mental health, and given that he was returning home with no reason to believe that he would need to prove that he had taken this journey at some point in the future.
59. In his witness statement TS1 stated that he made a contribution to his younger brother and he believed that it was his younger brother who sent the combined financial contribution to his father in Sri Lanka via Western Union. He believed that this money was paid by his father to the agent [8].
60. Again, while no corroborative evidence has been provided in relation to this by the Appellant's brothers, I take into account the passage of time and that there was no reason to believe that they would have to prove at some future time that the Appellant had taken this journey. It is the evidence of TS1 that it was TS2 who had coordinated the money being sent to Sri Lanka in 2010.
61. The other reasons for rejecting the Appellant's journey to Sri Lanka from France as set out in the reasons for refusal letter at [58] relate to the assessment of the Appellant's journey to the United Kingdom in 2013 from the evidence in the screening and asylum interviews. I have taken into account in particular the evidence of the Appellant's mental health from his examination by Dr. Lawrence shortly after his arrival in the United Kingdom when considering the answers given at the screening and asylum interviews.
62. In his witness statement commenting on [58] the Appellant said that he believed he had travelled on a genuine Sri Lankan passport because he was not stopped anywhere on his journey to the United Kingdom. He said

at the same passport had been present at all immigration checks but he was never stopped or questioned about its authenticity. He considered the passport to be genuine as it contained his name, date of birth and a photograph that looked like him. He said that the passport was taken from him when he arrived in the United Kingdom. I find this credible. He was only in possession of the passport for short periods was approaching immigration control, and again I find this to be credible.

63. Given that the Appellant claimed to have travelled to the United Kingdom with an agent, who arranged his travel for him, I do not find it of any significance that the Respondent's records indicated that a visa was not issued to the Appellant. The Appellant never claimed to have applied for a visa himself and there is therefore no inconsistency between the Appellant's claim that the agent had applied for a visa on his behalf, and his claim that he had never claimed for a visa before. I find that there is no reason for doubting the Appellant's claim to have entered on the passport which he claimed to have used. The Appellant has not claimed that it was a genuine visa. I find that the Appellant did what the agent told him to do. On page 7 of his witness statement he said that his father told him that the passport and visa were ready for him to use, but did not give details of the type of visa.
64. I do not find that there are "clear inconsistencies and credibility issues" present in relation to the Appellant's claim of travelling to the United Kingdom from Sri Lanka as set out in [58] and [59]. The Respondent rejects the Appellant's claim to have returned to Sri Lanka due essentially to the evidence given about the documents used to enter the United Kingdom on 6 August 2013. The Appellant's evidence has been consistent that it was the agent who facilitated his entry into the United Kingdom, and that it was the agent who applied for a visa. I find that this alone is not a sufficient reason for doubting the Appellant's claim to have returned to Sri Lanka.
65. Regarding the lack of corroborative evidence from his brothers, I find that the lack of such evidence does not outweigh the evidence contained in the medical reports which indicates that the Appellant's scars were caused by events which took place in 2012, and there is no evidence to suggest that they did not take place in Sri Lanka, nor was any such submission actively made by Mr. Jarvis.
66. When considering the account of his detention and torture, many of the Respondent's objections to his evidence are concerned with discrepancies and dates (see [63] to [65] of the reasons for refusal letter). Bearing in mind his mental health problems, which were evidenced at the time by a psychiatric report, I attach little weight to these inconsistencies. Further, the Appellant explained that at the time of his Rule 35 report he was not feeling well (page 8 of Appellant's Bundle 1).

67. In relation to the issues raised at [66] of the reasons for refusal letter, at Q101 of the asylum interview the Appellant said that he was asked about his brothers. Therefore by Q125 he had already said that he had been questioned regarding his brothers. Considering the asylum interview record as a whole, particularly Q100 and Q101, I find that the Appellant did state that he had been questioned about his role and that of his brothers.
68. I find, having preserved the finding from the decision of the First-tier Tribunal, that the Appellant assisted with the delivery of weapons and fundraising for the LTTE prior to leaving Sri Lanka in 2009. I have further considered the other parts of his account which he claims support his claim to have been detained and tortured, in particular in relation to his sister, and that the authorities have enquired about his whereabouts.
69. In relation to his sister, the Appellant said at his screening interview that his sister had been missing since 21 March 2012 (Q6.6). In his witness statement he clarified that his sister been taken in 2011, and that he had made a mistake in his interview when he said it was 2012 (page 7 of Appellant's Bundle 1). At his asylum interview he said that the authorities visited his home in February 2011 and took his sister (Q81). He said that the authorities said that if the Appellant was brought to them, they would release his sister. They had heard nothing more from his sister since this time (Q84). His brother TS2 stated in his witness statement that his younger sister was missing (page 13, Appellant's bundle 5). He said that she was arrested and taken away in 2011. I attach no weight to the mistake made regarding the date. The Appellant has been consistent in his claim that his sister was taken by the authorities.
70. TS1 gave evidence that his father had told him about the disappearance of his sister. He gave evidence that he had found out was from TS2, but he had also spoken directly to his father about it.
71. While I find that TS1 was not able to answer all of the questions put to him, partly because some of the information is second hand insofar as it was TS2 who was the brother who took the lead in communicating with his family in Sri Lanka, particularly in relation to the Appellant and his sister, I found TS1's evidence regarding his own contact with his father credible. If he did not know the answer, he was prepared to say as much rather than hazard a guess. He said that he had not discussed his sister's disappearance with his father earlier as he had found out about it from TS2, and his father was elderly and he did not want to bring it up again and again, causing his father more stress. I found this to be credible, and if TS2 was in frequent contact with his father and discussing these issues, I accept the evidence of TS1 that he did not feel the need to discuss it with his father as well. I find that it is reasonably likely that she was taken as claimed and has not been seen since.

72. In relation to the visits to his home after he arrived in the United Kingdom, I have given this very careful consideration, especially given the submission of Mr. Jarvis set out below in relation to risk on return [78]. In his witness statement the Appellant said that he was in contact with his family and his father had told him that the non-uniformed CID had come to the family home enquiring about the Appellant and asking where he was (page 8 of Appellant's bundle 1). In his additional witness statement (page 7 of Appellant's bundle 2), he stated that he received a telephone call from his father who had been approached and stopped by four men on 19 February 2016. He said that these men were from EPDP, Eelam People's Democratic Party. He said that the four men had asked the Appellant's father questions about the Appellant including his whereabouts. His father told them that he was living with his brother, but did not state where. The men asked his father why the Appellant could not return to Jaffna, and his father said that he did not want to the Appellant to return to live in Jaffna. His father told him that the men had said that they would need to speak to his father again about the Appellant's whereabouts.
73. At the hearing TS1 was asked whether he was in contact with his father, and he said that he spoke to him four or five times a month. He said was asked whether his father had told him of any problems with the Sri Lankan authorities since 2011. He said that his father told him that the authorities came quite often in search of the Appellant. He could not remember the first time that his father had told him. As set out above, I accept the evidence of TS1 regarding contact with his father. I accept his evidence that his father has told him that the authorities come looking for the Appellant quite often. I find that this corroborates the claim in the Appellant's statement that the authorities have come looking for him in the past, and I accept the evidence of TS1 that this interest is ongoing. The Appellant's sister is still missing, and she was taken when the authorities came looking for the Appellant.
74. GJ is clear that the fact of someone being released on payment of a bribe does not point to the authorities' lack of interest in an individual (paragraph 275). It is also clear from this paragraph that it is possible to leave through the airport even when a person is actively being sought. Neither the fact that the Appellant claims to have been released on payment of a bribe, nor the fact that he claims to have left through the airport without problem cast doubt on his claim to have been detained as claimed.

Section 8

75. I find that there was no significant delay in the Appellant's claiming asylum. He claimed asylum on 21 August 2013 having arrived in the United Kingdom on 6 August 2013. In his witness statement he said that he had attended the Respondent's offices on 10 August 2013 but was told

to return on 21 August 2013. Even on the later date, there is only a period of some two weeks which I find is of no significance.

76. I have considered the fact that he claimed asylum previously in France. I accept his evidence that he was told he was going to be removed and then attempted to take his own life. I find that he then returned to Sri Lanka. The events which led to this claim occurred in Sri Lanka in 2012/2013, and are not the same as the basis on which he would have claimed in 2009.
77. Taking into account all of the evidence, and all of my findings above, according significant weight to the medical evidence provided, I find it is reasonably likely that the Appellant was detained and tortured in Sri Lanka in 2012/2013 as claimed on account of the fact that he worked for the LTTE for a period until 2009. I find that he returned to Sri Lanka from France in 2010 as claimed. I find that his sister was taken by the authorities in 2011. I find that he was arrested in 2012, detained and tortured. I find it is reasonably likely that he was released on payment of a bribe in 2013, and that he then travelled to the United Kingdom with the assistance of the agent. I find it is reasonably likely that the authorities have continued to search for the Appellant, and still have an interest in him.

Risk on return

78. Considering my findings above, I turn to the issue of risk on return to the Appellant. Mr. Jarvis accepted that, if I were to find that the Appellant was detained and mistreated in Sri Lanka as claimed, and if the evidence regarding ongoing interest from the authorities was reliable, the Appellant would be at risk on return as there would be an ongoing adverse interest in him. He submitted however that I could not put weight on the evidence regarding any ongoing interest from the authorities. I have found above at [73] that I can place weight on the evidence of ongoing interest.
79. The country guidance set out in paragraph 356 of GJ states:

“(7)The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:

(a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.

(b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.

(c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.

(d) A person whose name appears on a computerised “stop” list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a “stop” list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.”

80. I have found above that the Appellant was detained and tortured in 2012/2013 due to his previous involvement with the LTTE. I have considered the submissions made in the skeleton argument in relation to the time that the Appellant was arrested [49]. His arrest occurred at a time when, according to GJ, the authorities were no longer arresting Tamils in generalised round-ups. Instead their activities were intelligence led, which suggests that they had reason to suspect that the Appellant’s arrest was intelligence-led, and that he was of adverse interest. I find that there is some weight in this submission, following GJ. I find that he was released on payment of a bribe. I have found above following the case of GJ, that the seriousness of a case against an individual is not determinative of whether or not a bribe can be paid (275). I also find, following the case of GJ that someone who has been released on payment of a bribe is likely to have been recorded as escaped from detention and the details put into a database (146).
81. I am mindful of the established principle of asylum law that past persecution provides a serious indication of a well-founded fear of persecution. I have found that the Appellant has been persecuted in Sri Lanka.
82. I was referred to the “Report of a Home Office Fact Finding Mission Sri Lanka: treatment of Tamils and people who have a real or perceived association with the former Liberation Tigers of Tamil Eelam (LTTE)”, July 2016. At 8.1.22 it states:
- “People returning from the UK with a previous LTTE connection would be subject to torture and harassment and their families will be harassed”.
83. At 10.4.1 to 10.4.3 it states:

“In general, if a person has a previous connection with the LTTE, then arrest and detention will happen. Ill treatment happens in PTA [Prevention of Terrorism Act] detention. The authorities monitor the houses of people who have left the country. A person who is ill-treated could report the incident to the HRC.

10.4.2 Most of the time when people return [from outside the country] there is the possibility they will be arrested. So for this reason many people refuse to Page 33 of 106 return. The military keep a watch on their houses and the family remaining in Sri Lanka, but this will only be if the person has committed a serious crime in the past. Even if the crime or death/murder through conflict was 20 years ago, the person will still be investigated. In these cases, if torture is to be used to get information, they will not hesitate to use it. The possibility is always there for torture to be used.

10.4.3 The culture is slowly changing; people who are arrested may go through ill treatment. Their treatment will be based on previous LTTE involvement.”

84. At 15.1.16 it states:

“People returning from the UK with LTTE [Liberation Tigers of Tamil Eelam] connections would be handed to the TID because their faces would be recognised and their passport numbers match the ‘blacklist’.”

85. The use of the PTA continues as set out in the Country Information and Guidance, Sri Lanka: Tamil separatism: June 2017.

“Reinforcing the stigmatization of the Tamil identity is the continued application of the Prevention of Terrorism Act, which affects the Tamil population disproportionately. Despite the heavy criticism it has received nationally and internationally for allowing prolonged detention without due process, the Government has reportedly continued to rely on the Act to make new arrests, including exiled Tamils returning to Sri Lanka.” [8.2.5]

86. I find that this indicates that the situation has not changed significantly since the Appellant was detained and tortured in 2012/2013. There has been no significant change therefore since the last time that the Appellant was detained and tortured on account of his involvement with the LTTE. I find it is reasonably likely, given that there has been no significant change, that the authorities will still perceive him to be a threat.

87. I find that Appellant has an additional vulnerability due his mental health condition and poor cognitive ability. Since his arrival in the United Kingdom in 2013 his mental health has been very poor and getting worse according to the medical expert reports provided. He has been considered unable to face cross-examination and would not be able to cope with questioning by the authorities.

88. Taking all of the evidence into account, including the Appellant's previous detention and torture in Sri Lanka, and the continuing interest of the authorities in the Appellant, I find that the Appellant meets the criteria set out in GJ and will be "perceived to be a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka." Given that the authorities are interested in him, internal relocation would not be possible.

Conclusions in relation to refugee protection, humanitarian protection, and Articles 2 and 3 ECHR

89. Considering all the above, I find the Appellant's claim to be a genuine refugee in need of international protection to be well founded. I find that there is a real risk that he will suffer persecution on return to Sri Lanka, and so his claim succeeds on asylum grounds. As I have allowed his appeal on asylum grounds, I do not need to consider his claim to humanitarian protection. I find that returning him to Sri Lanka would cause the United Kingdom to be in breach of its obligations under Articles 2 and 3 of the ECHR.

Notice of Decision

90. The appeal is allowed on asylum grounds.

91. The appeal is allowed on human rights grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. 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 8 October 2018

Deputy Upper Tribunal Judge Chamberlain