Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05907/2010

THE IMMIGRATION ACTS

Heard at Field House	**Date sent**
On 2 February 2012 and 12 February 2013	**On 24 July 2013**
Prepared on 11 July 2013	

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

VIJAYKUMAR THAMBIAYA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit, Counsel, instructed by Raja & Co.
For the Respondent: Ms M Tanner, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, whose stated date of birth is 1 December 1977, is a citizen of Sri Lanka. He appeals against a decision of Immigration Judge Wyman, prepared on 13 September 2010 and promulgated shortly thereafter, in which Judge Wyman dismissed his appeal against the respondent's

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decision refusing his application for asylum and also deciding to remove him from this country.

2. The appellant's immigration history as recorded in Judge Wyman's determination was as follows. He had travelled to the United Kingdom in 2000 and made an application for asylum. This application was refused and he was returned to Sri Lanka in 2003. Having returned to Sri Lanka, in the same year he made a false application for a visit visa using a different name, Sivanesan Sivan. This application was refused.

3. The appellant then left Sri Lanka on 18 September 2009 and travelled to Malaysia where he stayed for two months. He arrived in this country on 26 November 2009 using a false British passport. He claimed asylum on 10 March 2010.

4. As already noted, his application was refused by the respondent. The refusal letter is dated 9 April 2010. This was served on the appellant on 13 April 2010. On the same date, the appellant was served with notice of the respondent's immigration decision to remove him under Section 10 of the Immigration and Asylum Act 1999, as an illegal entrant/person subject to administrative removal.

5. The refusal letter is detailed and essentially the appellant's claim for asylum (and also humanitarian protection) was rejected because the respondent did not accept his account.

6. The appellant appealed against this decision and his appeal was heard before Immigration Judge Wyman, sitting at Hatton Cross. The appeal was first listed on 2 June 2010 when the appellant began giving evidence. In the course of giving evidence, the appellant claimed that during his period in detention in 2008 he had been tortured and raped. Judge Wyman has recorded at paragraph 51 of his determination that the appellant claimed that this was the first time he had ever disclosed that he was raped in custody and that "due to the shame, he did not tell anyone previously". He apparently explained that he had told his solicitors two days before.

7. Because this had not been contained in the appellant's witness statement, Mr Fripp, Counsel then representing the appellant, requested an adjournment in order to obtain better instructions, and following these instructions asked for the hearing to be adjourned in order that the appellant's solicitors could seek advice regarding their professional situation.

8. The appeal was then re-listed for 14 July 2010, but on that occasion Mr Fripp informed the Tribunal that the appellant had suffered an epileptic attack in the waiting room and was waiting for an ambulance. The hearing had to be adjourned again until 8 September 2010 when it concluded.

9. Judge Wyman has recorded at paragraph 66 of his determination that at that hearing, the appellant "confirmed that he was tortured and sexually

mistreated whilst in detention at Kaluthura detention camp in 2008". Importantly, for the purposes of this determination, the appellant stated during that hearing that "this was the only time that he had been tortured". He went on to say (this is recorded at paragraph 69) that he feared he would be tortured on return because "several things are different now from his return back in 2003". Amongst the things that were different were that "he himself was tortured in 2008".

10. As already noted above, Judge Wyman dismissed the appeal, having made a number of adverse credibility findings.

11. Some of these adverse credibility findings were challenged in the grounds in support of the appellant's application for permission to appeal to the Upper Tribunal. The essence of the appellant's argument, as set out in the grounds, is that he should have been accepted as a witness of truth. At paragraph 12, it is asserted that "the effect of [the various] errors [in Judge Wyman's determination] is that the appellant's account has not been considered in the round, taking note of all the evidence, and as such the conclusions drawn are flawed".

12. The appellant was granted permission to appeal by Upper Tribunal Judge Taylor, sitting as a judge of the First-tier Tribunal, on 12 October 2010.

13. This appeal was then listed before me as long ago as 31 January 2011, when I found that Judge Wyman's determination had contained an error of law such that his decision fell to be set aside. My reasons were founded on a close analysis of the facts, and were as follows:

> "The IJ failed to make sufficient findings of fact to justify his conclusion that the Appellant would not be at risk on return. For example, he failed to give adequate reasons for his finding of fact that the Appellant had not been raped. He also failed to deal adequately (or at all) with the Appellant's evidence that he and his surviving brothers had been threatened by the army (see para. 17), on which there is no finding of fact.
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> Further, he does not appear to have taken proper account of his findings that the Appellant had been detained for 10 months during which time he had been beaten and threatened with rape, when considering whether he would be at risk on return.
>
> With regard to the finding at para. 142 of his Determination that "I accept the Appellant's father may indeed have been able to pay a bribe to secure the release of the Appellant. However I note that bribes were accepted where individuals were clearly of no value to the authorities. Had the Appellant been a high profile member of the LTTE, then I do not believe that a bribe, or any price, would have secured his release", this is not only not supported by reference to any background evidence, but is also beside the point, as the Appellant did not claim to have been a high profile member of the LTTE.
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> The finding at para. 135 with regard to the Appellant's "story" of having spent a year in Megombo before coming to the UK, that "I do not find that this element of the story rings true" is apparently based upon the IJ's assertion that "whilst I

accept that many people do stay with families while waiting for visas and documents, it is very rare that this takes as long as 12 months as in the Appellant's case" and that "in my experience it is rare for the process [of obtaining documents] to take as long as a year". Although there is some leeway for an IJ to rely on the benefit of his/her experience where a point is obvious, in a case such as this, which must turn on its own particular facts, such a finding is unsustainable, especially where the "experience" relied upon is not supported by reference to any background material..

The last part of this paragraph, that "it is known that the Sri Lankan authorities regularly conduct searches of houses. It is not accepted that the Appellant would have been unable to remain undetected for such a lengthy period" is also unsustainable. Given the IJ's finding that this Appellant was not a high profile member of the LTTE, it is not clear what sort of searches he had in mind that would be carried out by the authorities, such that the Appellant would have been detected.

On behalf of the Respondent, Mr Tarlow indicated that he agreed for all of the reasons set out above that the Determination contains errors of law and should be set aside. "

14. I directed that in the circumstances, none of the findings of fact made by Judge Wyman could stand, but all the evidence should be considered anew.

15. The appeal was then listed before me again on 27 May 2011 but had to be adjourned because the respondent had not located a file relating to the appellant's wife's successful appeal which needed to be before the Tribunal.

16. The appeal then came before me again for directions on 21 July 2011, when I gave a fresh time estimate of at least three hours, and directed (again) that a Tamil interpreter should be provided for the hearing.

17. The appeal was then listed for substantive hearing on 8 November 2011, but had to be adjourned yet again because on this occasion, despite the directions which I had given, an interpreter had not been booked. A fresh date (15 December 2011) was obtained and further directions given for the appeal to be heard on that date, again when an interpreter should be booked.

18. Regrettably, although the parties attended on 15 December 2011, again no interpreter had been booked, and because none could be obtained at such short notice, the appeal had to be adjourned yet again, this time until 2 February 2012 when, eventually, the substantive re-hearing commenced.

19. The appellant was cross-examined at length at this hearing, and substantial challenges were made on behalf of the respondent to his credibility. For the reasons which are set out below, I do not need to set out in full what the appellant's answers were to all the questions he was asked, or indeed as to the precise details of his claim. I will, however,

refer below to some parts of his evidence which are very relevant for the purposes of this determination.

20. It would be fair to say that there were inconsistencies within the appellant's evidence, which on one occasion the appellant explained by stating that he had "a forgetful memory". He was "taking medicine even now". However, in light of what is set out below, it is not necessary to examine these inconsistencies in any detail. There were also substantial difficulties regarding the appellant's current claim, which were carefully analysed by Ms Tanner in her submissions.

21. Of particular relevance to this determination are the answers given by the appellant when asked about the basis of his asylum claim in 2000. Essentially, he told the Tribunal that he had claimed asylum then because of the general problems which had existed in his country. As young boys, they had found life difficult because on the one hand if people were caught by the army they would be tortured and on the other hand the rebel movement would ask them to join them. He came here because of this fear. The appellant made it clear during the hearing that his claim in 2000 had been founded on generic fears rather than as a result of any specific ill-treatment which he had suffered. This was consistent with what he had stated in evidence in the hearing before Judge Wyman, as set out above, and also as recorded by Judge Wyman at paragraph 50 of his determination. The appellant is recorded there as having stated during the hearing "that if he was returned to Sri Lanka now, he feared that he would have more serious problems than when he returned to Sri Lanka in 2003. This is because he now has a record of being in detention, and was only released on payment of a bribe".

22. It was quite clear that the appellant was saying that whereas his case now was founded essentially on what had been done to him, personally, after his return in 2003, his claim in 2000 had not been based on any allegation of ill-treatment specific to him.

23. Because I was concerned that the file did not contain any papers relating to the appellant's earlier application, I indicated to the parties that I intended to make enquiries regarding this previous application. As a result of these enquiries, the files relating to the appellant's previous application for asylum in 2000 were located, and it was apparent that he had appealed against the refusal of his asylum application at that time and that his appeal had been dismissed by Adjudicator Mr S S Chohan, in a determination promulgated on 28 August 2001, following a hearing at Hatton Cross on 12 June 2001. At paragraph 4 of his determination, Mr Chohan notes as follows:

> "It is the appellant's claim that since 1994 he assisted the LTTE. His duties included collecting sensitive information, digging bunkers and assisting in meetings. In February 1999, the appellant claimed he was arrested by the army in Kathaidy. The arrest took place at his home following the bombing of an army camp. The appellant was taken to Navatkhuli army camp and then to another camp. The appellant was detained for six months during

> which time it is claimed he was beaten and tortured. He was tied and beaten with boots and pipes filled with sand; he was tied upside down and beaten and a bag filled with petrol was tied to his head. The appellant also claims to have been given electric shocks. As a result the appellant claims to have scars. He also claims to suffer from epilepsy."

24. At paragraph 5 Mr Chohan sets out how the appellant claims he managed to escape and at paragraph 9 Mr Chohan describes the appellant's scars which he inspected at that time.

25. At paragraph 12, Mr Chohan records that "the appellant told me that if he were to be returned he feared problems from both the army and the LTTE. He said he had escaped from custody and so they would be looking for him".

26. It is not necessary for the purposes of this determination to record everything which was said in evidence during the hearing in 2001. It is worth noting that Mr Chohan found, at paragraph 22, that "there are too many significant discrepancies in the appellant's account and as such I do not find him to be a credible witness".

27. I had indicated at the conclusion of the hearing on 2 February 2012 that if it was possible to locate the file, I would give both parties the opportunity to make further submissions as to the relevance of any material so obtained, before reaching a decision in this appeal.

28. Accordingly, because I considered that the determination of Mr Chohan clearly had a bearing on this appeal and that it would not be proper for me to reach a decision without giving both parties an opportunity of addressing me further in the light of the material which had now come to light, I arranged for the appeal to be re-listed, in order that the parties could make such representations with regard to this material as was considered appropriate.

29. I gave these directions on 29 February 2012, but although a direction had been included that the appeal was to be re-listed before me on the first available date, for further submissions, due to listing difficulties it was not possible to list this appeal again before me until 12 September 2012.

30. On the day before this hearing was due to take place, that is 11 September 2012, the appellant's solicitors sent by fax two further documents for the Tribunal's consideration, being a witness statement from the appellant and what is referred to as a "medico legal report" from Dr Raj Persaud.

31. The appellant's very short witness statement is as follows:

> "1. I adopt the contents in my previous witness statement as part of this statement. Give this statement is necessary at this stage to clarify the allegation made by the respondent against me in relation to the credibility issues.

2. It is true that I was arrested, detained and tortured by the Sri Lankan army during 1999 and I managed to escape from the army camp whilst I was being transported in a truck to another camp.

3. I am sorry that I told the Tribunal that I claimed asylum on general grounds. This is due to mental vulnerability as a result of my psychiatric condition.

4. I sincerely apologise for any inconvenience caused the court and humbly request the honourable immigration judge to forgive me for the same and allow my appeal."

32. This statement is dated 11 September 2012.

33. The psychiatric report from Dr Persaud, which is dated 10 September 2012 following an examination on 28 August 2012, begins by describing, in glowing terms, the "Expertise of Author of Report". Dr Persaud wishes the Tribunal to note, among other matters, that he has "been elected a Fellow of the Royal College of Psychiatrists plus University College London – the highest honour these institutions can bestow on members" and that he has worked in the NHS as a consultant since 1994. Apart from all the prizes he won which are listed, he also records that "amongst other qualifications I hold a first class honours degree in psychology from UCL" which, in case anyone was in any doubt, is said to be "the highest grade its [sic] possible to achieve". He also records that "in the recent past a national newspaper in the UK – "the Independent on Sunday" voted myself one of the top ten psychiatrists in the UK and "The Times" newspaper voted myself one of the top twenty mental health experts in the world".

34. Regrettably, Dr Persaud did not see fit to mention anywhere within his report that in June 2008 the General Medical Council had found him guilty of dishonesty and bringing the profession into disrepute and that he was suspended from practising for three months (which is a matter of public record).

35. It is also apparent from the report which he prepared that, as stated, Dr Persaud's "understanding of the basic facts of the case [was] gleaned from the client".

36. At the hearing on 12 September 2012, Mr Muquit, who appreciated the difficulties arising in connection with Dr Persaud's report, told the Tribunal that this report would "not be the high watermark of my case". He did not seek to suggest that this report added very much to the appellant's claim. He also recognised that there was a basic discrepancy between what the appellant had said in evidence (that the basis of his first claim had not been dependent upon what had specifically happened to him but had been founded on the general circumstances in Sri Lanka) and what is said in Mr Chohan's determination. He recognised that the appellant's evidence inherently would not be seen as sufficiently reliable to justify the Tribunal

making positive credibility findings. He also acknowledged that the Tribunal had a record of the submissions made by Ms Tanner with regard to inconsistencies in his evidence generally. However, the appellant's evidence was not the only evidence in this case and the Tribunal had to consider whether or not there was other evidence sufficient to persuade it that he would nonetheless be at risk on return to Sri Lanka. In particular, Mr Muquit would wish to rely on the findings made in relation to the appellant's wife by a different Tribunal.

37. Unfortunately, because of holiday leave, Ms Tanner, who had represented the respondent at the substantive hearing, was not available at this hearing and Mr Saunders, who was representing the respondent in her place, was not in a position to deal with any submissions which referred to evidence which had been given during a hearing at which he had not been present.

38. Accordingly, the appeal had to be adjourned yet again, and it eventually came back before me on 12 February 2013, when I heard submissions on behalf of both parties, who addressed me in light of all the material which was now before the Tribunal. I recorded these submissions contemporaneously, and because my notes are contained within the Record of Proceedings, I shall refer below only to such parts of the submissions as are necessary for the purposes of this determination. I have, however, had regard to everything which was said to me in the course of the hearing, as well as to all the documents contained within the file.

39. In the course of her submissions on behalf of the respondent, Ms Tanner asked the Tribunal to note that the appellant had been found to be completely lacking in all credibility by Judge Chohan in July 2001. The appellant had then claimed to have been detained and ill-treated. He claimed to have received electric shock treatment. He had suffered scars and was eventually released. The account he had given was dismissed by Judge Chohan, and he had been found to be completely lacking in credibility due to many significant discrepancies.

40. It would appear that this appellant had presented a similar account then as he was presenting now. That is beatings, torture and escape, supported by a Medical Foundation Report in July 2000 which referred to a barely visible scar on his back, a two inch scar on his left shoulder and minor marks on his face. These were found not to be significant and unlikely to attract attention on return. These findings of course still stood under *Devaseelan* principles, and this was unchallenged.

41. Moving on to the most recent claim, although the appellant had acknowledged that he had sought asylum in the UK before, he clearly had not told the truth about the substance of that claim, because he had referred to "generic risks" which he claimed to have been the basis of that claim. Clearly he had been attempting to distance himself from the true nature of that application.

42. The latest asylum application was based on a similar account of being detained and ill-treated. For the reasons set out within the refusal letter, the Tribunal was asked again to reject the core of the appellant's claim. Part of the claim related to a shop said to have been owned by his family which was located between the LTTE camp and the army camp. It was said that this camp was only 100 metres from this shop as was the LTTE camp. That is the army camp and the LTTE camp were at most 200 metres apart. This was simply not accepted nor was it accepted that either of the forces used that shop.

43. The respondent also rejected the appellant's claim that his family had helped people to travel from Colombo to Jaffna, and that part of the family business was not mentioned during the asylum interview. The Tribunal was asked to note that the appellant had said that he "forgot" but that was not accepted as an explanation nor was the account of the appellant's brother having being shot accepted, because the appellant had said it took place at a park but the Tamil.net reference, at page 96 of the appellant's bundle, referred in the fifth paragraph to "armed men who arrived at the home of Thambiaga Chandranohan [presumably the appellant's brother] and gunned him down Sunday around 6.30pm".

44. So the appellant claimed it was at a park but from that article it would appear he was shot in his home. The explanation that the appellant had given for that discrepancy is that the mistake may have been because of an error in the police report. This was not accepted as a reasonable explanation as the article in Tamil.net makes no mention of the police report.

45. Another reason for rejecting credibility was that the appellant said his brother was killed during a sports event, and it was not accepted that that venue could be mistaken for the family home, which was 500 metres away, using a short cut.

46. In addition to that, and what has emerged after the refusal letter, was of course the medical report which had been handed in at the last hearing, from Dr Persaud. (At this stage, on behalf of the appellant, Mr Muquit accepted that he could not rely on that report in light of Dr Persaud's history).

47. Ms Tanner continued by asking the Tribunal to note that in any event this report did not refer to the appellant's previous detention or the scarring said to have been present at that time, so it was not really worth the paper it was written on.

48. Another point regarding what had been claimed by the appellant in connection with his medical condition was that even if he had been so unfortunate as to choose a fairly disreputable doctor to supply a medical report, which should not on its own count against him as such, so far as the respondent was aware, no further medical report had been obtained and no further evidence as to the appellant's mental condition, or physical

condition in connection with his epilepsy. Nor had any up-to-date information been provided as to any medication he might be taking.

49. Accordingly, it could not be believed that any inconsistency or discrepancy in his latest claim could be attributed to his health, mental or physical.

50. It should also be noted that the appellant had used a false passport (see paragraph 45 of the refusal letter) and had pretended he was deaf and dumb when he passed through immigration.

51. Another aspect regarding his general credibility and how little could be believed was his application for a visa. He made that application after he had been removed from the UK following the failure of his earlier asylum claim, and that application was made in a false name. When asked why, he had said that it was in order "to come back here" (see paragraph 47 of the refusal letter).

52. These matters were all relevant when considering the appellant's credibility. All the evidence in the round did not assist the appellant, but it was accepted that the Tribunal still had to assess whether even so, he would be of any interest to the authorities.

53. In this regard, the respondent relied on the very detailed refusal letter, starting at paragraph 50, which taken into account with the relevant case law, which was still [at the time of the hearing] *LP* viewed in light of *TK*, would suggest he was not.

54. This appellant had already been returned to Sri Lanka in 2001, and therefore on the basis that his account was not going to be believed, he would have to show that he would be of interest to the authorities on return. The respondent would submit that there was no risk to him as a returning failed asylum seeker. He had no profile as a previous LTTE supporter, and what is more he had been able to travel to Colombo, passing through various checkpoints, showing his own identity cards, which was a further indication that he was not of interest to anyone.

55. Insofar as he was returning from London as a failed asylum seeker, and was a Tamil, these facts did not place him at risk, even having used a false passport, because he would only be at risk if he showed that he had become involved in sur place activities which he had not. Accordingly, there was simply not sufficient evidence on which the Tribunal could find that he would be at risk on return.

56. With regard to other family members who might have left Sri Lanka or current family members in Sri Lanka, the respondent did not accept that his brother was killed as claimed, and neither should the Tribunal. The appellant had also said that his family continues to run the business, so there did not seem to be any risk there. Apparently the appellant's wife is living in the UK and that claim was accepted. However, this appellant had

to establish his own claim and the Tribunal should take into account that the appellant's evidence was that he had had no contact with his wife, so it is hard to see how what a different Tribunal might have found in her case could make any difference to his claim.

57. At the time of the refusal letter, three years ago, no Article 8 claim had been raised, and for these reasons, the Tribunal was asked to dismiss the appeal.

58. On behalf of the appellant, Mr Muquit began by accepting on behalf of the appellant that an Article 8 claim was not, in the circumstances of this case, sustainable. As Mr Muquit put it, he "takes a realistic approach".

59. He had earlier confirmed that he did not resile from the concessions which he had made at the earlier hearing in September 2012, and he accepted during the course of his submissions that the appellant's personal credibility could not be accepted by the Tribunal.

60. Nonetheless, the Tribunal should note that the appellant is a Tamil by ethnicity, which was relevant, because whatever the truth of the individual detail which he had given as to his support for the LTTE, it was inevitable that it would be realised that he originated from an LTTE controlled area and for this reason it was likely that he had supported the LTTE, even if this was not as a fully-fledged supporter, because this would have been expected of anyone living in those areas.

61. Mr Muquit invited the Tribunal to note that the detail the appellant had given of his involvement with the LTTE was very modest, which was consistent with his position as someone who had been digging bunkers or acting as a look-out and providing funds, as the majority of people in these areas did. He did not claim ever to have been more deeply involved.

62. With regard to Judge Chohan's determination, it had to be accepted that under *Devaseelan* principles, the Tribunal was required to look first to these previous findings. It was also accepted that the appellant had told lies about that previous hearing, although to be precise, his lie was a succinct one, which was that his claim had been a general one, whereas it had in fact been based on specific allegations of abuse, which as the Tribunal had noted, had not been believed.

63. Although the appellant did not now rely on Dr Persaud's report to identify any condition he might have, beyond that report the Tribunal did have the benefit of two other reports which had not been before Judge Chohan and which manifested the inconsistencies in his testimony and provided explanations for these inconsistencies. Reliance was placed upon the report of 20 August 2010 from Dr Naganathar and a second report of 18 May 2011 from Dr Balasubramanian. These were both consultant psychiatrists who had confirmed the appellant suffered from epilepsy and they had both described him as having PTSD and before that a depressive disorder.

64. In response to an observation from the Tribunal that this appellant was known to lie about his symptoms, for example saying he was deaf and dumb which he was not, Mr Muquit submitted that now he mentioned that he had epilepsy which he had not before. The fact that he had not mentioned it before did not mean that he did not have it. However, Mr Muquit did accept that it was difficult to maintain that this appellant had any personal credibility, but nonetheless the Tribunal should accept the medical evidence.

65. Mr Muquit then referred to what he asserted were some errors in Judge Chohan's adverse credibility findings, but again he accepted that this Tribunal could not be expected to accept the appellant as a person whose evidence was credible. However the findings should be made in light of the distinct evidence which pointed to an avenue for believing him, in particular the evidence from the doctors referred to.

66. Mr Muquit then referred to evidence suggesting that he had had a business in Sri Lanka on his return, and there was some further discussion about particular aspects of his evidence which might have been accepted. With regard to his assertion that he transported people from Colombo to Jaffna, it was accepted there was a lack of detail with regard to his evidence and that if the Tribunal was looking at his evidence in isolation, he lacked credibility. However, this was not necessarily determinative, and, it was asserted, should not be a basis for the Tribunal rejecting other evidence.

67. Mr Muquit then tried to explain how some of the apparent inconsistencies in the appellant's evidence might have occurred, such as that the newspaper article, which was a summation of the incident, a short account of a general incident, may have got specific details wrong when it was said that the incident had occurred "at the hone". It was not clear that the newspaper was saying that the shooting happened "at the home". He also relied on the evidence with regard to the appellant's sister, which although not strictly evidence in this case, had been positively adduced by the appellant. Although Mr Muquit acknowledged, in answer to a question from the Tribunal, that the appellant's sister had not been present to be cross-examined, it was nonetheless evidence which was "capable of being considered". It was asserted further that given the "lack of contamination" regarding this evidence it had not been undermined.

68. Although the appellant had entered this country under a false passport, claiming to be deaf and dumb, it was his case that he did what he was told to do. He was acting under the influence of someone pretending to be his aunt or mother. With regard to his failure to claim asylum earlier, although this was a factor which under Section 8 the Tribunal was bound to consider, this should not be determinative, if it was in the context of a direction that had been given to him.

69. With regard to his having applied for a visa in a false name, that was consistent with someone who did not want to stay in Sri Lanka. It was not

inconsistent with his later claim. Mr Muquit acknowledged, however, that "like a good tailor, I have to cut the cloth with the material I have".

70. Mr Muquit then dealt with the appellant's risk on return on the basis that the Tribunal accepted, as had been argued on behalf of the respondent, that the appellant could not be believed at all and that therefore the only factors to be considered were that he would be returning as a Tamil failed asylum seeker. He accepted that on the basis of the country guidance current at the time of his submissions, a return from London in these circumstances might not of itself be sufficient. However, everything was fact specific, and in this case the Tribunal would be considering a person who would be returning as a failed asylum seeker, who had been in London for a significant period of time, having arrived in 2009.

71. It was accepted that the appellant had not participated in demonstrations in this country, which would lead to risk, but the authorities were concerned with the risk to someone who might be perceived, because of his or her profile, as being in need of investigation. Even if the appellant's account was rejected, there might still be sufficient features to suggest that there was a real risk that he might be questioned beyond a cursory level, because the issues he would have to deal with regarding his presence here, which were the details of his family, his general background and various other matters might still create a real risk for him on return.

72. The question was whether or not this appellant would be regarded as somebody who needed to be investigated. Mr Muquit was not prepared to concede that the appellant would not be at risk, primarily because he was awaiting the decision in the country guidance case which was currently being argued elsewhere before this Tribunal, in order to see what guidance would be given.

Discussion

73. The primary issue which must be determined first is whether or not anything this appellant now says can be believed. An attempt has been made to explain the numerous inconsistencies in his evidence on the basis of his claimed psychiatric condition, supported in the main by a psychiatric report prepared by Dr Persaud. However, Dr Persaud's evidence, even if he was a reliable witness, which he is not, having been suspended by the GMC because of his dishonesty which he did not see fit to disclose in his report, is in any event unreliable because it is largely based on what the appellant has told him, which has in major respects been shown to be untrue. This appellant is a proven liar with an appalling immigration history. He made a false claim for asylum in or about 2000, and his evidence was disbelieved by Judge Chohan because of numerous inconsistencies, and this is my starting point. He then applied for a visa in a false name. He then arrived in this country, again using false papers, claiming at that time to be deaf and dumb and then, at a substantially

later time, made a further claim for asylum in the course of which he told what we now know to be deliberate lies with regard to his previous claim.

74. The appellant's current claim is not only riddled with inconsistencies, but bears striking similarities to his earlier false claim which had been disbelieved.

75. As Mr Muquit told the Tribunal, he had "to cut his cloth with the material I have" but although he has done his best, he has not come close to persuading me that I can accept the truth of anything which this appellant has said. He has no credibility as a witness whatsoever.

76. Nor can I accept that the appellant has any medical condition which could possibly explain the inconsistencies in his evidence. His explanation for giving what was obviously a dishonest account concerning his previous asylum application, namely that this was "due to mental vulnerability as a result of my psychological condition" (coupled with an apology and a request that the Tribunal "forgive" him) is risible. The only believable explanation for the various inconsistencies in the appellant's evidence, coupled with his having given an account regarding his previous hearing which has subsequently been shown to be untrue is that over many years and in the course of very many hearings, he has persistently and dishonestly attempted to advance a false claim.

77. Given my credibility findings, which are that I accept none of the appellant's account, on the basis of the country guidance existing as at the time of the hearing, as has been accepted by Mr Muquit, the facts that someone was both a Tamil and a failed asylum seeker would not of themselves have then been considered sufficient to put him at risk on return to Sri Lanka. However, I have had in mind that Mr Muquit had stated in his closing submissions that he did not concede this point, because he was awaiting the decision in a country guidance case which was then being argued before this Tribunal.

78. While writing this determination I also was aware that a differently constituted Tribunal was considering its determination in the country guidance case referred to by Mr Muquit, which was in fact argued before it on 5 - 8 and 11 - 12 February 2013, and then further on 15 March 2013 and 19 April 2013 (that is contemporaneously with and then subsequently to the date on which the closing submissions were made in this appeal). Having made enquiries, I ascertained that one of the arguments which had been advanced in that case was precisely whether any returning Tamil who was a failed asylum seeker would be at risk for these reasons alone, and for this reason I considered it appropriate to delay giving this determination until that country guidance decision had been promulgated.

79. The country guidance decision having been promulgated on 5 July 2013, I am now able to consider the only argument which could possibly be advanced on behalf of this appellant, which is that as a failed asylum

seeker, who was also a Tamil, for these reasons alone he would be at risk on return, even though none of his evidence had been accepted.

80. Having given careful consideration to this very recently promulgated country guidance decision (*GJ & Others (post-civil war; returnees) Sri Lanka CG [2013] UKUT 00319*), I am able to conclude that on the basis of my finding that none of the appellant's account of what has happened to him can be believed, he is not at risk on return. This appellant has not established, to any standard of proof, that he has or ever had any profile as a LTTE supporter or as a supporter of any similar Tamil separatist organisation, and nor (as was accepted by Mr Muquit on his behalf) is there any evidence of any sur place activities such as would of themselves put him at risk.

81. I note in particular the country guidance now given (which is to replace all existing country guidance on Sri Lanka) as set out at paragraph (8) of the head-note of *GJ* and is as follows:

> "*8. The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the Diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the northern province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan government.*"

82. This appellant has, on my findings, no history as a Tamil activist and would not be perceived by the Sri Lankan authorities, whose approach is based on sophisticated intelligence, as having any such profile.

83. Mr Muquit was realistic enough to concede that any Article 8 claim must, in the circumstances of this case, be bound to fail, and he was right to do so. Whatever private life this appellant might have built up in this country (of which there has been scant evidence) in the light of his appalling immigration history, and the persistent lies he has told, his removal is obviously proportionate for the legitimate purpose of the economic wellbeing of this country, through the maintenance of a fair and effective system of immigration control.

84. It follows that this appellant's appeal must be dismissed.

Decision

I set aside the determination of Immigration Judge Wyman as containing a material error of law and substitute the following decision:

The appellant's appeal is dismissed on all grounds.

Signed: Date: 17 July 2013

Upper Tribunal Judge Craig