



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/09026/2012

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 13<sup>th</sup> June 2013

Date Sent  
On 14<sup>th</sup> August 2013  
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Before

UPPER TRIBUNAL JUDGE REEDS

Between

SHAREENA ARIVALAGAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr O Thorne, Counsel instructed on behalf of Vasuki Solicitors  
For the Respondent: Ms R Petterson, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of Sri Lanka born on 16<sup>th</sup> April 1991. She appeals with permission against the decision of the First-tier Tribunal (Judge Shimmin) who in a determination promulgated on 27<sup>th</sup> December 2012 dismissed her appeal against the decision of the Respondent to refuse to grant asylum under paragraph 336 of HC 395 (as amended) and a decision to remove the Appellant by way of directions under Section 10 of the Immigration and Asylum Act 1999.

The background to the appeal:

2. The history of the appeal is as follows. The Appellant entered the United Kingdom as a student by air from Delhi on 28<sup>th</sup> September 2011. She had applied for a UK student visa on 14<sup>th</sup> September 2011 and this was subsequently issued on 21<sup>st</sup> September. Thus this gave her leave to enter the UK as a student until 13<sup>th</sup> October 2015 to study at Aston University. Before the Appellant left India she had lived with her grandparents in Trichy and they remain there with her aunt. The Appellant first contacted the immigration authorities on 27<sup>th</sup> July 2012 and was given an appointment to claim asylum which she did on 21<sup>st</sup> August 2012.
3. The basis of her claim is as follows. The Appellant was born in Trichy in the Tamil Nadu region of India. Her parents had travelled there as refugees in 1990. It was asserted that the Appellant's father was a member of the Tamil Tigers. The Appellant was educated to O-level standard and had worked as a teacher.
4. The Appellant's father returned to Sri Lanka after the Appellant's birth and remained there until 2002 when he rejoined the family group in Tamil Nadu. The Appellant claims her father was content for about one month but then the Tamil Tigers began asking him to return to Sri Lanka on the threat of death to his family. In response her father committed suicide.
5. The Appellant applied for a Sri Lankan passport at the Sri Lankan Embassy in Chennai in 2011. The Sri Lankan authorities knew that the Appellant was a Tamil refugee and so she had to make five or six visits to the embassy before she was issued a Sri Lankan passport on 11<sup>th</sup> May 2011.
6. The Appellant applied for a UK student visa on 14<sup>th</sup> September giving her leave to enter the UK to study as a student at Aston University. The Appellant's fees for studying in the UK were half paid by her grandparents in India and half by her mother from the proceeds of sale of land in Sri Lanka. The Appellant intended to study in the UK and thought that she would get a work permit at the conclusion of her studies if she did not go back to India as she would be able to obtain Indian citizenship. Before the Appellant left India she was required to obtain an "exit" from the commissioner office and this cancelled her refugee status in India.
7. The Appellant entered the UK on 28<sup>th</sup> September 2011. She had two uncles in the UK and one of those uncles "tried to misbehave" with the Appellant and the other uncle "covered up" his actions. She has since had no further contact with them or any other family members in the UK.
8. The Appellant's mother was due to provide her second year university/accommodation fees by selling more land in Sri Lanka to meet the costs. It is claimed by the Appellant that her mother returned to Sri Lanka in January 2012 to collect the money for the land and that the Appellant last heard from her on 28<sup>th</sup> January 2012, one week after she arrived in Sri Lanka. The Appellant considers her mother to be missing. It is now stated on behalf of the Appellant that her mother was arrested in Sri Lanka but that her whereabouts are unknown.

9. The Appellant stopped attending university in January 2012 and she is no longer a student. She did not claim asylum as she felt depressed and began taking antidepressants. The Appellant claimed asylum on 21<sup>st</sup> August 2012.
10. The Appellant feared return to Sri Lanka for a number of reasons. Those reasons are as follows. Firstly, she has no-one there to help her and fears that she may be of adverse interest to the Sri Lankan authorities due to her father's membership of the Tamil Tigers. She also feared that the Sri Lankan government might assume that due to her age she had returned to Sri Lanka to join the Tamil Tigers. Thirdly, she believed that if her mother is in trouble with the Sri Lankan authorities this might mean that she would also be at risk on return.
11. The Respondent in a comprehensive refusal letter dated 18<sup>th</sup> September 2012 considered the factual aspects of the Appellant's claim in respect of her fear of persecutory harm at the hands of the Sri Lankan authorities as a result of political opinion being imputed to her on account of her father's alleged membership of the Tamil Tigers and her claim that her mother had gone missing in January 2012. The Respondent accepted that the Appellant had been born in India as had been claimed and that they accepted that she had been born in the Tamil Nadu region of India as this was consistent with the background information regarding Sri Lankan Tamil refugees in Tamil Nadu and had claimed to have been part of a refugee family in India. However, the Respondent did not accept that her father was ever a member of the LTTE for the reasons given in the refusal letter and even if it were accepted that he had previously been a member, it was not considered that the Sri Lankan government or the authorities were aware of this and thus would hold no adverse interest in him. On her account it took place when she was a child and before his death a decade ago which the Respondent did not consider equated to the authorities holding any ongoing adverse interest in her. Therefore it was not accepted that the Appellant was unaware of her mother's whereabouts. At the time of the refusal letter, the Appellant's account was that her mother was missing. Thus the refusal letter did not deal with the later account given in her witness statement of 18<sup>th</sup> December 2012 that her mother had been arrested in Sri Lanka. Thus the Respondent refused the application as it was considered that the Appellant did not demonstrate a well-founded fear of persecution. The Respondent issued directions directing her removal to Sri Lanka.

The proceedings before the First-tier Tribunal:

12. The Appellant exercised her right to appeal that decision and it led to the appeal coming before the First-tier Tribunal (Judge Shimmin) sitting at Bradford on 19<sup>th</sup> December 2012. In a determination promulgated on 27<sup>th</sup> December 2012 Judge Shimmin dismissed her appeal. This was a comprehensive determination in which the judge considered the evidence before him and set out his findings of fact from paragraphs 25 to 52. At the hearing the Appellant did not give oral evidence. As the judge noted at paragraph 11, a psychiatric report had been produced stating that the Appellant was not fit to give evidence. He further recorded that Counsel who appeared on her behalf at the hearing had told the Tribunal that she had spoken to

the Appellant at length and that she was satisfied that the Appellant was able to give instructions. The judge records that “the Appellant, after receiving advice from Ms Dawes, chose not to give oral evidence.” Thus the judge heard submissions from the parties concerning the evidence and it was upon that which he made his findings of fact in this appeal. In those findings of fact, the judge dealt with the issues of credibility that had been raised by the Respondent in the refusal letter and by the Presenting Officer at the hearing before him and in the context of the evidence produced on behalf of the Appellant. As regards the account given by the Appellant as to her father’s alleged membership of the Tamil Tigers/LTTE, he noted that there had been no evidence produced of his alleged membership of the Tamil Tigers and that whilst corroboration was not required in asylum claims, he placed weight upon the Appellant’s asylum interview in which she had stated that the Sri Lankan authorities “did not know my father was connected in the past to the LTTE”. The judge found that the Appellant was inconsistent in the statement compared with her account that she could not return because of her father’s involvement being known by the authorities and her mother’s “arrest” for that reason. He found that the inconsistency damaged her credibility. Furthermore, when considering her profile and her relationship to her father, whom it was claimed was a past member of the LTTE, took into account the Appellant’s own conduct in approaching the Sri Lankan authorities when she obtained a Sri Lankan passport in 2011. He considered that the Appellant’s conduct and her willingness to seek assistance and protection of the Sri Lankan authorities was inconsistent with her claim that the authorities might consider her to be connected to the LTTE due to her father’s alleged prior activities. Furthermore he found that the willingness of the Sri Lankan authorities to issue her with a ten year passport was inconsistent with them being aware of her father’s alleged membership of the LTTE. The judge found at paragraph 31 that if the authorities were aware of her father having been such a member, it had not generated any adverse interest in her or any adverse profile because they issued her with a passport. In this context it was of more significance because they did so knowing that she was intending to travel to the UK as a student. The judge made the point that the UK was a centre for the support and fundraising for Tamils. The judge took into account the country guidance case of **TK (Tamils - LP updated) Sri Lanka CG [2009] UKAIT 00049** noting that the records of the Sri Lankan authorities kept upon persons with a history of arrest and detention had become “increasingly sophisticated” and further took into account that applications for passports were checked centrally in Sri Lanka and that if the Appellant was considered to have left Sri Lanka illegally or was present on an alert list, her passport application would have been refused.

13. The judge considered the delay in the Appellant making her claim for asylum having claimed to have lost touch with her mother in February 2012 and having ceased being a student and stopped attending university in January 2012. The Appellant did not take steps to claim asylum until 27<sup>th</sup> July. The judge at paragraph 34 to 35 considered the evidence on behalf of the Appellant that she had not claimed earlier because she was “depressed” and the judge considered the arguments put forward on the Appellant’s behalf by her Counsel at paragraph 35 namely that at the time, the

disappearance of her mother was said to have had a significant effect on her, she could not attend university and her visa was revoked. She had been sexually abused by her uncle and the psychiatric report confirmed that the Appellant suffered, and continued to suffer moderately severe depression. The judge found that if those issues, if true, when considered cumulatively would have meant that despite her intelligence, education and ability in English she was not functioning properly. He found that whilst she had made a delay in making an asylum claim and that damaged her credibility, such damage was limited. Thus he did not place much weight on that as a factor. He further noted that the Appellant's asylum claim coincided with her failure to continue her studies due to financial problems.

14. The judge also considered at paragraphs 37 to 42 the account given in her interview concerning answers that she gave and the Appellant's account that the answers recorded for her in her asylum interview were not accurate. The judge gave careful consideration to the interview and the circumstances in which it had taken place and analysed the answers given by the Appellant in her interview by reference to answers given at other stages within the interview. After carrying out an analysis of that evidence the judge recorded that he was satisfied that the Appellant at the end of the interview acknowledged that she was provided with a copy of the recording of the interview and that she had signed to confirm that she received such copy. She also confirmed that she had understood the questions put to her and understood the interviewer. He was satisfied that the evidence demonstrated that the Appellant had returned to Sri Lanka at the age of 2 and had stayed there for five or six years despite her claim to have never been to Sri Lanka.
15. Furthermore he considered that the evidence demonstrated that she had no fear of return to Sri Lanka when she had made her student visa application and placed weight upon her answer at question 28 about return to Sri Lanka at the conclusion of her student visa. Thus he found that the Appellant was willing to return to Sri Lanka in three years time and did not express any fear of doing so at that date. He found that there was "nothing in her account which would indicate that she would be safer then. She will still be a young person and the authorities might still consider her a potential Tigers recruit as she had claimed."
16. The judge then went on to deal with the Appellant's account of her mother's disappearance and the later evidence that she gave in a statement dated the day before the hearing that her mother had in fact been arrested. In this context he also took into account and made an assessment of a letter or statement from the Appellant's grandmother which was relied upon to demonstrate that the Appellant's mother had been arrested. The judge, after analysing the Appellant's evidence and that of the grandmother, reached the conclusion that he could place no weight on the evidence from the grandmother who lived in India and thus the information was likely to come from others. He found that there was no indication as to where that information about the arrest had been obtained and that throughout the asylum interview there had been no indication that the aunt living in Sri Lanka had attempted to make any enquiries as to the whereabouts of the Appellant's mother. Thus he found that the "escalation of the Appellant's mother from the missing to the

having been arrested is an attempt to embellish the Appellant's claim and damages the Appellant's credibility." He also considered the witness statement of the Appellant (paragraph 11) stating that the villagers were aware of the appellant's father's LTTE involvement and that there were informers that had been recruited to the army. He noted that this had not been suggested before and neither the Appellant nor her witnesses gave any reason for knowing this. He found that this further damaged her credibility. He further noted that the Appellant's account was that her mother encountered problems in Sri Lanka due to her husband's membership of the LTTE before his death in 2002 and that the Appellant's aunt, who lived in Jaffna, had said that her mother may have been arrested. He found that this was only speculation and was not supported by any evidence and in particular the aunt had made no effort to make enquiries about the whereabouts of the Appellant's mother.

17. The judge further recorded that even if the authorities were aware that the Appellant's father had been a member of the LTTE (which he did not accept) the Appellant at the time was a child and ten years had elapsed and he did not find it reasonably likely that the authorities would have any ongoing interest in her. In respect of her interview, the Appellant acknowledged that when she left India she knew she could not return and accordingly she must have considered returning to Sri Lanka at the end of her studies in the UK. Indeed he had dealt with this earlier in the determination when reviewing her answer at question 28 where she stated she would return to Sri Lanka at the end of her studies if she did not get a UK work permit.
18. Thus the judge found after considering all the credibility points, that many of them were "not minor or peripheral but went to the heart of the account" thus he did not find her a credible witness and did not accept that she had given a truthful factual account of her claim.
19. The judge also considered the report of Dr Krishna Balasubramaniam dated 29<sup>th</sup> November 2012. He considered that this was a report that should not be accorded any weight noting that there were concerns about the quality of the report noting that it was "descriptive, repetitive and relied on the findings of others. It contains virtually no analysis of its own." The judge also did not find that his opinion had a sound basis given the credibility issues identified and the lack of analysis. The author of the report was that she had been suffering from a "depressive disorder of a moderate to severe degree with suicidal thoughts". The judge also considered his prognosis that "deporting her to Sri Lanka is likely to worsen her condition and there is a likelihood that she may commit suicide," however he rejected that evidence because he did not accept that this was a report upon which he could place any weight thus he did not find that the Appellant would be at risk of harm on notification of or on actual return to Sri Lanka. The judge went on to state that if he was wrong in this finding and that she was suffering from the condition described, he had taken into account the background evidence that had been set out in the refusal letter that mental health services exist in Sri Lanka and that treatment, would be available of the type that she required. He also noted that the Appellant had an aunt in Sri Lanka who would be able to support her during any treatment. The refusal letter in dealing with the

objective material relevant to the issue of mental health treatment was set out at length at paragraphs 83 onwards and cited the COIS Report for Sri Lanka dealing with the availability and affordability of antidepressant and therapeutic drugs, at paragraph 23.30, the information concerning mental health provision at paragraphs 23.21, 23.22 and 23.23-23.27 thus he found that mental health services existed in Sri Lanka and that treatment would be available to her. Thus he dismissed the appeal.

The appeal before the Upper Tribunal:

20. The Appellant sought permission to appeal that decision on three grounds. Ground 1 related to the judge's adverse credibility findings and it was submitted that the judge had erred in law by finding the Appellant had been inconsistent in her account as to whether the authorities in Sri Lanka knew of her father's LTTE involvement and that he had erred in law by rejecting her account of her mother going missing and of being arrested because he failed to attach weight to the witness statement of the Appellant's aunt at page 8. Ground 2 submitted that the judge had "irrationally or perversely rejected the psychiatric report of the doctor on the premise that the judge had rejected the Appellant's credibility and that no weight could be attached to the report. It was submitted the finding was at "complete odds in paragraph 35 of the determination." Furthermore the judge had irrationally attached no weight to the medical report and the medical evidence was "clinically corroborative of the Appellant's scarring and thus the judge had materially erred in law by finding that the medical report adds nothing to the Appellant's claim." Ground 3 was that the determination did not consider the country guidance decision of **TK Sri Lanka** and that the judge did not address the material risk factors.
21. On 30<sup>th</sup> January 2013 permission was granted by Designated Judge Appleyard who stated
 

"The grounds seeking permission to appeal are threefold. Firstly the judge erred in his consideration of the issue of credibility, secondly in his consideration of the medical evidence and finally in a failure to consider country guidance case law and background evidence and make specific findings. The grounds are arguable."
22. The appeal came before the Upper Tribunal. At the hearing, Mr Thorne, of Counsel, appeared on behalf of the Appellant. By way of a preliminary issue he sought to correct what were factual errors in the Grounds of Appeal as drafted by another Counsel, who also had not appeared before the First-tier Tribunal. Firstly, in respect of ground 1 it was stated at paragraph 3 that "the Appellant made it clear in oral evidence that paragraphs 11-12 of her witness statement ..." In this respect, the Appellant had not given oral evidence and therefore paragraph 3 was factually wrong. At paragraph 7, in respect of the medical evidence it was stated in the grounds that the judge had "irrationally attached no weight to the Appellant's medical report and in light of the jurisprudence mentioned above and the argument the medical evidence is clinically corroborative of the Appellant's scarring." In this respect, there had been no jurisprudence mentioned in the preceding paragraph nor was there any argument in this case that the medical evidence was clinically corroborative of the Appellant's scarring. The medical report did not deal with any

scarring whatsoever. In respect of ground 3, there were gender differences. After having pointed out those factual errors in the grounds as drafted, Mr Thorne made substantial submissions concerning errors of law in the determination of Judge Shimmin, many of which were not drafted as Grounds of Appeal. I shall set out those oral submissions as they are not reflected in the grounds.

23. The first ground relied upon related to the judge's adverse credibility findings and in particular the evidence concerning whether the Sri Lankan authorities were aware of her father's involvement in the LTTE. It was submitted that the judge erred in law by finding that the Appellant had been inconsistent in her account as to whether the authorities in Sri Lanka knew of his involvement in the LTTE. He referred to the witness statement at paragraph 11 and 12 that at the time of his involvement that the authorities were not aware but that the relatives and others were aware of this and that in those circumstances information might come to light. Furthermore, she relied upon the arrest of her mother. It was submitted the judge did not deal with one material aspect of the claim that when the Appellant's mother went back to Sri Lanka to an area where her husband had been active this raised the possibility of the Appellant's mother coming into conflict with the authorities because of her wish to reclaim land at the hands of local residents. Thus by returning to the local area it might have exposed her mother to a different degree of risk.
24. The next point raised was that the judge fundamentally erred in law by failing to deal with this Appellant who did not give oral evidence. In this respect I asked Counsel how the judge should have dealt with this issue. Mr Thorne helpfully submitted that she had not been given an opportunity to answer questions and it would be fundamentally unfair to hold that against her. The judge did not say in the determination that this was an Appellant who was not giving evidence and this gave her the loss of her opportunity and pervaded his approach to credibility.
25. The next point raised concerning credibility related to the Appellant's application for a passport. The evidence before the Tribunal was that she had been granted a passport from the Sri Lankan authorities in May 2011 and there had been a number of visits before that. It was submitted that the Immigration Judge conflated the local authorities and those concerned with the issue of passports. Mr Thorne relied upon the COIS Report for Sri Lanka at paragraph 25.18 and the exit procedures for Sri Lankans and that Sri Lankan citizens' exits are checked by the immigration authorities but the checks are limited in scope and that those who are on court bail would "flag up" thus people who would be high profile would have a "stop on them". He submitted that this contrasted with the level of checks aimed at failed asylum seekers set out at paragraph 25.22 where detailed checks are made with the returnee's home area. Thus he submitted there was a contrast between a cursory check on exit and detailed checks when returning to Sri Lanka and that therefore this was a fair inference that this would apply to passports. He further submitted there was nothing to suggest that detailed checks were undertaken by the Sri Lankan authorities when issuing passports.



26. He then dealt with the Appellant's interview. Mr Thorne acknowledged that there were concerns arising from the interview and the answers that she had given as set out in the judge's analysis. However, he submitted, there had been no consideration of her health at the time of the interview and it had been incumbent on the judge to consider her medical condition when considering any discrepancies in the interview.
27. Mr Thorne then turned to the issue of the medical evidence that had been raised in ground 2. He submitted that the judge had a report from a qualified medical practitioner who had given a prognosis and diagnosis, however the judge did not give proper reasons for rejecting the psychiatric report. He further submitted the judge did not deal with the issue of suicide and did not engage with the report. He said that even if the medical evidence was insufficient to succeed, the judge should have dealt with it in more detail. He then submitted that there had been a freestanding Article 3 claim on suicide risk although he could not be clear about this as he had not been Counsel in the case and did not have any note from the Counsel who had appeared before the Tribunal.
28. The last point relied upon was that the judge had not undertaken an analysis of the country guidance decision of **TK** (as cited) when making an assessment of the Appellant's profile. This was an error of law and the risk factors were not considered by the judge in the context of an overall assessment of the case. Thus he submitted there were demonstrable errors of law in the determination and that it should be set aside.
29. Ms Petterson on behalf of the Respondent noted that there had been no Rule 24 reply but made oral submissions. As to the issue of a freestanding Article 3 claim on suicide, she referred to the Presenting Officer's minute as to how the case proceeded before the FtT and that the case appeared to be advanced on the basis of a medical treatment case rather than a suicide case. She also made reference to the skeleton argument and compared it with what the judge had set out at paragraph 51 and that it was based on treatment available and not a freestanding Article 3 claim and in particular that the judge's response to the report was that in any event if she had mental health problems, as the case had been argued before him, the objective material in the Respondent's refusal letter demonstrated that medical treatment would be available for her on return to Sri Lanka. In those circumstances Ms Petterson submitted that paragraph 51 was more than sufficient to deal with the medical aspects of the case.
30. Ms Petterson dealt with the interview and the Appellant's case that some of the answers recorded were not accurate. She submitted that the typed interview had not been sent with the refusal but provided four weeks later in October 2012, however the Appellant applied for an adjournment which had been granted on 30<sup>th</sup> November 2012 and for a further adjournment of the hearing on 3<sup>rd</sup> December thus the hearing was adjourned for a period of two months until 19<sup>th</sup> December after two adjournment applications. She submitted that if the Appellant had problems in giving instructions as to the scope of the Grounds of Appeal against the interview, there had been a substantial time for that to have been done and the judge was

entitled to take into account the typed interview had been available from October 2012 and that the hearing did not take place until two months later. Furthermore the Appellant's bundle including her witness statement had been faxed to the court on 18<sup>th</sup> December, the day before the court hearing and her witness statement also signed on 18<sup>th</sup> December. The judge set out clear findings at paragraphs 38 to 40 based on her evidence in the interview which was correctly analysed and the judge was entitled to find that there was a discrepancy in her evidence for the reasons that he gave. In any event, it is clear from the judge's assessment that he did not place any particular weight to be attributed to this discrepancy and did not take against her because of this (see paragraph 42).

31. Ms Petterson then dealt with the credibility findings in relation to the father's involvement in the LTTE and the issue of the Appellant obtaining a passport from the Sri Lankan authorities. The interview at questions 19 and 20 demonstrated that she had gone to the Sri Lankan authorities in Chennai and that she had had to take letters with her and that they knew that she was a Tamil refugee in India. She submitted that the judge did not fall into error when considering the Appellant's history and that whilst procedures are different for people applying for documents from abroad, the evidence from the Appellant herself was that the Sri Lankan authorities knew that she was a refugee in India but issued her with a passport in full knowledge that she was travelling to the UK as a student (which the judge found to be a place known to the authorities as one where activities were undertaken) and that she had gone to the authorities on five or six occasions before the passport was issued and that they had asked her a number of questions. The judge was entitled to take the view that the Appellant's case that her family were known by the authorities to have LTTE connections was not made out. Whilst it had been submitted that the Appellant's case was that it was only in 2011 when her mother disappeared that they knew, the judge gave reasons as to why he did not accept the Appellant's account that she had been arrested which was the account that she gave much later on in her chronology. The judge found that she had speculated about her mother's disappearance originally when she gave her account in her interview and that the letter or statement given from a family relative was "extremely vague" and this was a finding entirely open to the judge bearing in mind the content of that letter referring to "somebody informed". Furthermore, her own evidence was that no-one had made enquiries as to what had happened to the Appellant's mother and that the judge was entitled to consider why no enquiries had been made and the vagueness of the account given that she had been arrested.
32. Ms Petterson submitted that Counsel had referred to the mother's disappearance being due to a possibility that the local people were upset about her reclaiming land and that this might be a reason for the mother's disappearance and risk from the authorities. She submitted that this had not been argued before the First-tier Tribunal and that the judge was entitled to take the view that the Appellant's record and profile, and that they had her father's name on the birth certificate would have been of relevance in deciding whether to issue a passport or travel document. The Appellant's own evidence was that the process was bureaucratic on the basis of there being a number of visits being made before the passport was actually issued and

questions that were asked of her. This is understandable if not actually in the country and that the authorities would need to be clear about a person's heritage and background before producing a passport. In this context various birth certificates were submitted (see F6 and F7) the birth certificate shows registered at Chennai in Sri Lanka and born in Tamil Nadu and registered as a birth of Sri Lankan parents. In those circumstances the judge's conclusions on the passport were entirely open to him and were supported by references within the COIS Report referred to in the refusal letter at paragraph 45 relied upon by the Respondent.

33. As to the medical evidence, it was open to the judge to place little or no reliance upon the report. It was not entirely clear how the psychiatrist could reach the conclusion that there had been a "few attempts of suicide" when the letter that he had referred to in the report and annexed at page 20A stated that there was "no mention of active thoughts of self-harm". This was a letter from a telephone consultation in July. Even if taken in conjunction with the letter of 9<sup>th</sup> October where it made reference to a suicide attempt, the psychiatric report was factually wrong by stating that there had been "a few attempts of suicide". That was not supported by any evidence whatsoever. Furthermore there were no proper details of what had happened, or in what circumstances or any treatment or analysis arising from that. The judge was entitled to give little weight to the report. For the reasons given by the judge, he could place no reliance upon the report due to the matters set out in it.
34. Dealing with the final issue relating to the question of risk factors in **TK**, the refusal letter dealt with this at paragraph 34. The judge made some reference to **TK** at paragraph 32. However, the Appellant did not fall into the risk categories, her personal history showed that the majority of her life was spent in Tamil Nadu, she had no criminal record, had made no confession. As to scarring there was simply a mark to her ankle, it was not indicative of any combat or military training. Whilst she would be coming from London, she had been admitted to the UK with a valid visa as a student and therefore she had not left illegally and whilst she may have made an asylum claim, she had entered the UK as a student and continued to have a visa. It had not been accepted by the judge that her father was a member of the LTTE. In the alternative, even if he was, he had been dead since 2002 and there was no evidence that he was of any adverse interest nor any other family member was of any adverse interest. She was therefore not someone to be perceived to be of any interest to the authorities and thus it was not necessary for the judge to consider those factors in the light of the findings of fact that he made. She was not at risk on return to Sri Lanka.
35. By way of reply Mr Thorne submitted that the medical report, did refer to a few attempts at suicide but there was evidence of a suicide attempt in the statement of Mr Hussain. It was not clear when that had taken place from the statement and he did not give evidence. As to the issue of land, he submitted that there was a good reason for someone to denounce her if it meant that she could not have the land.
36. I reserved my determination.

My conclusions:

37. The judge's findings of fact and his analysis of credibility are comprehensive and are set out at paragraphs 25-32 of the determination. Whilst there have been points raised concerning specific paragraphs relating to credibility findings, it is important in my judgment that the findings are read and taken as a whole.
38. The first issue relates to the inconsistency found by the judge concerning whether the Sri Lankan authorities were aware of the Appellant's father's involvement in the LTTE. At paragraph 29 of the determination he records matters set out in the refusal letter (see refusal letter [35]-[38]) that the Respondent did not accept that her father was a member of the Tamil Tigers. This was based on the fact that no evidence had been produced to the Respondent concerning his alleged membership. The Appellant in her interview (question 37) was asked what he did for the Tamil Tigers. She was not able to give any evidence concerning this stating "I don't know - never spoke about it." Thus she could give no details concerning the alleged position he held or any work he did for the LTTE.
39. The judge made the point that the basis of her claim to be at risk of harm was that the authorities would know of his links to the LTTE and it would be imputed to her but he noted, "however at question 52 of the Appellant's asylum interview the Appellant states that the Sri Lankan authorities 'did not know my father was connected in the past to the LTTE.'" The judge records the inconsistency as one between her insistence that she was at risk from the authorities because of her father's profile when at the same time she was stating that the authorities did not know that her father was even in the LTTE (see her answers to questions 39 and 52 of the interview). At the time of her interview, her account according to her own evidence was that her mother had simply disappeared; she had no evidence to say what had happened to her other than she was unable to contact her (see screening interview at questions 28, 36, 42 and 46). She speculated that her mother's disappearance was as a result of the father's connections with the Tamil Tigers but as the judge recorded at paragraph 29, that was inconsistent with her evidence that the authorities had no knowledge of her father's involvement. When the judge used the word mother's "arrest" the whole sense of the paragraph is referring to the mother's "disappearance" rather than arrest. The paragraph also falls to be read alongside and in conjunction with paragraphs 43-45 of the determination. In those paragraphs the judge deals with the claim made in her later witness statement at paragraphs 11 and 12, which appeared substantially after the interview, that in fact her mother had been arrested and the evidence that she put before the judge in this respect.
40. The judge said this:-
- "43. The Appellant has in her screening interview stated 'my mother went back to Sri Lanka in 2012 to sell some land to be able to keep supporting me in the UK. Since she left India in January 2012 I have not been able to contact her.' In the asylum interview the Appellant recounts at questions 28, 36, 42 and 46 her aunt's speculation that her mother's disappearance is as a result of her father's connection to the Tamil Tigers. In the Appellant's witness statement at

paragraph 12 the Appellant states 'my aunty and grandma confirm that my mother was arrested due to the fact that the Sri Lankan authorities got information and arrested my mother. Since her arrest her whereabouts is not known.' In the statement of the Appellant's grandmother, Nadanathevar Sarojamallar, at paragraph 6 she states '... her mother was arrested when she was in Sri Lanka. We understand that she was informed by someone and got arrested. Her whereabouts is not known we lost her. The former LTTE and others are informing the army and working with them for money and to safeguard their lives ...' I note that the grandmother lives in India and therefore her information is likely to come from others. There is no indication as to where that information about the arrest has been obtained. Throughout the asylum interview there is no indication that the aunt living in Sri Lanka has attempted to make any enquiries as to the whereabouts of the Appellant's mother. I find the escalation of the Appellant's mother from the missing to having been arrested is an attempt to embellish the Appellant's claim and damages the Appellant's credibility.

44. Furthermore, the witness statement of the Appellant states that villagers are aware of the Appellant's father's LTTE involvement and that there are informers, some recruited to the army. This has not been suggested before and neither the Appellant nor her witnesses give any reason for knowing this. I find this further damages her credibility.
45. The Appellant suggests that her mother has lost touch as she might have encountered problems in Sri Lanka due to her husband's membership of the LTTE before his death in 2002. The Appellant's aunt, who lives in Jaffna, says that her mother may have been arrested but this is only speculation and does not claim to be supported by evidence. The aunt has made no effort to make enquiries about the whereabouts of the Appellant's mother."

41. It is plain from those paragraphs that the judge considered her earlier account that the father's activities were not known by the authorities and that she had speculated as to her mother's disappearance and considered the new account given that the aunt and the grandmother had confirmed to her that her mother had been arrested due to the Sri Lankan authorities obtaining information and that "since her arrest her whereabouts were not known."
42. The judge made a critical appraisal of that evidence noting that the grandmother (who was said to have provided the information) lived in India and that the information could not have been known to her personally or by way of direct evidence but by others, that there was no indication as to where that information about the arrest had been obtained from and importantly, that throughout the Appellant's evidence in her interview there had been no indication that the aunt who was actually living in Sri Lanka, and had known of the disappearance for a significant number of months, had not made any attempts to make enquiries as to the mother's whereabouts. As the judge stated at paragraph 45, the Appellant's aunt who lives in Jaffna claims that the mother may have been arrested but that it was not supported by evidence and reiterates that the aunt had made no effort to make enquiries about the whereabouts of the Appellant's mother.

43. The written grounds at paragraph 5 submit that the judge erred in law by rejecting the Appellant's account of her mother going missing and having been arrested and that the judge irrationally failed to attach sufficient weight to the witness statement of the Appellant or the evidence from the aunt and grandmother. I reject that submission. The judge made plain the reasons why he attached no weight to that evidence for the reasons that he gave. There is nothing irrational or perverse about his consideration of that evidence and in my judgment, he was fully entitled to reach the conclusion that he did on the evidence before him when taken as a whole that "the escalation of the Appellant's mother from the missing to having been arrested is an attempt to embellish the Appellant's claim," and that that was a matter which undermined the core of her account to be at risk of harm and the credibility of her account.
44. A further point raised by Mr Thorne is that the judge did not deal with a material part of the Appellant's claim that when the Appellant's mother returned to Sri Lanka that it raised the possibility of the Appellant coming into conflict with local residents due to her wish to reclaim the land which she wished to sell to raise money for the student fees. I reject that submission. Also, as Ms Petterson submits, this was not argued before the First-tier Tribunal and the Appellant did not suggest that the local residents had come into conflict with her on the basis of her reclaiming her land. Mr Thorne has not put before the Tribunal any evidential basis for such a submission which is entirely speculative. In any event, such a submission ignores the Appellant's own evidence that the Appellant's mother had already sold some family land to cover her "up-front fees" in order for the Appellant's studies when she applied to study in the UK (see question 21 of the interview).
45. It has been submitted on behalf of the Appellant that the judge erred in law by failing to deal in the determination with the Appellant who did not give oral evidence. It was submitted that as she had not been able to give evidence she was not given an opportunity to answer any questions and that in those circumstances the judge did not take that into account (that is the loss of opportunity to make her case) and this pervaded his approach to credibility.
46. It is plain from the determination that the judge did deal with this issue at paragraphs 10 to 11 of the determination. As set out in those paragraphs he was fully aware of the fact that the Appellant did not give oral evidence and at paragraph 11 dealt with the reasons why she did not give oral evidence. It is further plain from the determination that he dealt with the appeal on the basis of the evidence that was presented before him on behalf of the advocates including the documentary evidence (which appears to have been faxed to the Tribunal on 18<sup>th</sup> December the day before the hearing) and despite the non-attendance of Fazial Hussain, who had provided a statement at page 7 of the bundle. There is no indication whatsoever that he took as a factor against her that she did not give oral evidence. Indeed he carefully considered her case on the evidence that was presented on her behalf by her legal representative. It is difficult in my judgment to see what else the judge could have done or should have done other than make a careful appraisal and assessment of the evidence before him, applying the anxious scrutiny that he should and ensuring that

he considered that evidence in the round when reaching a conclusion. I am satisfied that he did consider the appeal correctly and fairly notwithstanding the lack of oral evidence on her part.

47. A further point in respect of credibility related to the Sri Lankan authorities' issue of a ten year passport to the Appellant. At paragraphs 30 to 32 the judge dealt with this issue. He found that the Appellant had approached the Sri Lankan authorities for a passport in 2011 and this was inconsistent with her claim that the authorities were aware or may be aware of the Appellant's father's alleged membership. Furthermore he found that the issue of the passport demonstrated that if the authorities were aware of her father having been a member of the LTTE, that this had not generated any adverse interest in her or any adverse profile because they indeed issued her with a passport. Importantly, in the context of the current background material, the judge found that the authorities did so knowing she was intending to travel to the UK as a student, the UK being a centre for support and fund-raising for the Tamils.
48. It is submitted on behalf of the Appellant that the judge conflated the issue of the local authorities and that of the Sri Lankan authorities, relying on the different scrutiny given by the Sri Lankan authorities to the scrutiny of documents on exit by contrast to the level of checks made on those returning to Sri Lanka. It is submitted that the background evidence demonstrated that detailed checks were made on returnees compared with those leaving the country and that it was a fair inference that this would apply to the issue of passports.
49. The background evidence does give an insight into the procedures and checks that are undertaken. At paragraph 25.20, it notes that at check-in passengers produced their passports for the airline staff and they are routinely checked for identity against passport details and the validity of the passport. At the security gate, they are then required to produce their passport to the Department of Immigration and Emigration area (the DIE). The Immigration Officer scans the details of the passport on the DIE border control system database and non-Sri Lankans will be checked against existing database records. At paragraph 25.21 it records that the DIE are only notified when the court decides to impound the suspect's passport or when a warrant is issued. Details will be placed on an alert list within the database. The other method which is rare and case-specific is where state intelligence services inform the Immigration Officers of individual suspects or terrorist activity or those on a wanted list and those details are put on the DIE database.
50. The entry procedures are also dealt with at paragraph 25.22.
51. I do not find that the evidence gives rise to any inference in the way suggested that only a cursory check would have been made upon the issue of the passport by considering that particular material. There was evidence before the Tribunal as to how passports are issued in the form of evidence from the Respondent and from the Appellant herself. The Respondent provided information to the Tribunal considering the issue of passports at paragraph 44 of the refusal letter. The refusal letter stated that

“The website of the Sri Lankan Department of Immigration and Emigration states that, ‘a Sri Lankan citizen can apply for a new passport or passport renewal, while he is in another country, through the Sri Lankan mission in that country or the nearest country, where a Sri Lankan mission is not available in the resident country). These applications are processed by the overseas missions branch at immigration head office. Passport applications such as the one obtained by you in India in 2011 are considered and checked centrally in Sri Lanka by the DIE. It is therefore considered that if you were perceived to have left Sri Lanka illegally or were present on the alert list your passport application would have been denied.’ The Respondent referred earlier to paragraph 25.31 of the COIS Report dated 7<sup>th</sup> March 2012 who reported the systems in place to identify those who had left Sri Lanka illegally stating ‘DIE had access to an alert list. This list contained information relating to court orders, warrants of arrest, jumping bail, escape from detention as well as information from Interpol and the SIS computer system. The DIE computer system had its own alert system related to the alert list but this did not indicate the exact reason for the alert. Following an alert, DIE refer these people to CID or SIS to establish the position.’”

52. The Respondent also produced documents exhibited at E1 and E2 from the Department of Immigration and Emigration in Sri Lanka and the information referred to at paragraph 44 can be found by accessing the hyperlink from those documents.
53. There was evidence before the Tribunal that the application was therefore processed at the overseas mission but that such applications are checked centrally in Sri Lanka by the Department of Immigration and Emigration. Indeed the application for a visa, the details of which are contained within the Respondent’s bundle demonstrates that the passport itself was issued in Colombo. There are a number of documentary requirements that the Appellant was required to produce before the authorities including birth certificate or identity card and also attestation from a person of standing on the list provided.
54. The judge relied upon the matters set out in the refusal letter and the background evidence set out at paragraph 25.31 of the COIS Report set out earlier. As the passports are checked centrally in Sri Lanka by the DIE, the judge was entitled on the evidence before him to find that if she was perceived to have left illegally or to be present on an alert list, there is a reasonable likelihood that the passport application would have been denied. Therefore her ability to be provided with a passport demonstrated that she was of no interest or was not an individual perceived to be an LTTE sympathiser or family member.
55. In any event, the Appellant’s own evidence undermines the submission made that a cursory check was made of her background before issuing the passport. Her evidence before the Tribunal was that the normal time to take for a passport issue was a lot shorter than it was in her particular case. She stated that it had taken a lot longer to obtain her passport and she was required to attend on five or six occasions



at the department before a passport was issued. During those visits she states that she was questioned about the Tamil Tigers and whether she had joined or would join the Tamil Tigers (see question 50). Furthermore, she confirmed that they knew she was a refugee living in India, the inference from that is that there may be some LTTE links. The authorities had also her father's full name as it was recorded on the birth certificate necessary for the issue of the passport and thus they would have been able to make checks via the information that they had. The judge was therefore entitled to take the view that the Appellant's record and profile, having been a refugee in India, having spent time there as a child, having produced a birth certificate, the delay in the issue of the passport, being questioned on five to six occasions before the issue of the passport, the questions that she was asked and the authorities' knowledge that she was applying to study in the UK a place of support and fund-raising for the Tamil Tigers, demonstrated that there was nothing adverse to her profile of any interest to the authorities.

56. It is further asserted in the written grounds that it was the Appellant's case that the authorities may not necessarily have known at the time of the issue of the passport that he was a member of the LTTE and that they only knew later as evidenced by the mother's arrest. That submission fails to take into account not only the Appellant's evidence concerning the difficulties that she had in obtaining the passport and the questions asked of her concerning the Tamil Tigers and her own past history but fails to take into account that the judge rejected the Appellant's account and did not believe that her mother had been "arrested" as she had claimed.
57. It is plain that he has serious concerns about the evidence that had come to light at a very late stage including the vagueness of the wording of the letter relied upon to confirm such an arrest and that the aunt that was actually in Sri Lanka and had known about the alleged disappearance for a significant period had done nothing at any time to make enquiries about her whereabouts. They were all matters that the judge was entitled to take into account to undermine her account that her mother had been arrested.
58. It had further been submitted that the judge was not entitled to place weight upon her interview although it was acknowledged by Counsel that there were some concerns about the answers that she had given in her interview. It was the Appellant's case that some answers recorded were not accurate. It is clear from the determination that this was an issue that the judge gave careful consideration to. The determination deals with that issue at paragraphs 37 to 42. The judge noted that at no point in the interview did she indicate any problems, she acknowledged that she had been provided with a copy of the recording and signed to confirm that she had received such a copy and also confirmed at the conclusion of the interview that she understood all the questions put to her and had understood the interviewer. It was noted that if she had disagreed with the recording of the interview the representatives would have been at liberty to have produced the record and have indicated which questions were either wrong or in dispute. It is also clear from the evidence that the typed interview was not sent with the refusal but was provided four weeks later in October 2012. There were two applications for adjournments the

first one made on 30<sup>th</sup> November 2012 for the case to be adjourned until December and then on 3<sup>rd</sup> December a further adjournment was asked for a further two weeks until 19<sup>th</sup> December. Thus the Appellant's representatives had from October until December, a period of two months to raise any issues. If the Appellant had problems taking instructions as to the scope of the appeal, the judge was entitled to take into account that the taped interview was available for a period of two months. The judge dealt at paragraph 38 with the issue that the Appellant disputed at question 6 of the interview which related to whether or not she had ever been or lived in Sri Lanka. In the interview on more than one occasion as the judge had noted she had given an account of having lived in Sri Lanka. After the interview it was asserted that she had never lived in Sri Lanka. The judge therefore made a careful analysis of the relevant questions but in the context of the interview as a whole. In doing so at paragraph 41 he was satisfied after carrying out his analysis that the Appellant had returned to Sri Lanka at the age of 2 and had stayed there for five or six years despite her claim to have never been to Sri Lanka contained in her witness statement at paragraph 9. The judge went on to state that he was not clear why she should be inconsistent about such a factor as it did not seem to be particularly material to her claim. Nonetheless, it demonstrated a further inconsistency in her evidence and damaged her credibility.

59. He further took into account the interview record but noted that she did not challenge her answer to question 28. That was a question in which she was asked "so if you had been unable to get a UK work permit in 2015 would you have gone to Sri Lanka?"

Answer "yes but my mother has to pay my second year fees ..."

The judge notes in respect of this,

"Therefore I find that the Appellant appears to have been willing to return to Sri Lanka in three years time and did not express any fear of doing so at that date. There is nothing in her account which would indicate that she will be any safer then. She will still be a young person and the authorities might still consider her a potential Tiger to recruit as she has claimed."

Thus the judge dealt with a further credibility issue that had been raised by the Appellant as to why she should not return to Sri Lanka.

60. I am satisfied having considered the determination in the context of the interview, the answers that she gave and the general background to that interview including the submission that she was suffering from depression at the time that I find that the judge did make a careful analysis and was thus entitled to make those findings based on her evidence.
61. I now turn to the issue of the medical evidence. The judge first of all considered the medical evidence at paragraphs 34-35 of the determination in the context of her failure to claim asylum. Her evidence before the judge was that she did not claim earlier due to depression. The judge considered the Respondent's submission that

the Appellant was an intelligent and educated individual with excellent English (bearing in mind she was studying at Aston University) and had access to advice and guidance in the university, the medical profession and friends in the UK and that there would be no impediment to her taking steps towards claiming asylum before the six months had elapsed following her mother's disappearance and the curtailment of her studies. The judge considered by way of response at paragraph 35 the submissions made on behalf of the Appellant noting that there was no immediate requirement to regularise her status as she had a student visa valid until 2015, the disappearance of her mother was said to have a significant effect on her, she could not attend university, her visa was revoked, she had been sexually abused by her uncle and estranged from her family in the UK and had financial difficulties. The judge noted that the psychiatric report confirmed that "the Appellant suffered, and continued to suffer moderately severe depression, there had been one suicide attempt." The judge found

"I find that these issues, if true, when considered cumulatively, will have meant that despite her intelligence education and ability in English, the Appellant was not functioning properly. It was not until she received advice from her GP that she claimed asylum. I find that in the light of these issues although the Appellant's delay in making an asylum claim damages her credibility that the damage is limited. Thus the judge did take into account the medical report at that stage in reaching a finding concerning the delay. Although it is clear that the delay of six months was found to damage her credibility but that it was only to a limited degree."

The judge dealt with the report itself at paragraphs 50-51 of the determination. The judge said this:-

"50. I have considered the report of Dr Krishna Balasubramanim dated 29<sup>th</sup> November 2012. The Respondent does not take issue with his qualifications and expertise but I am not confident as to the quality of the report. It is descriptive, repetitive and relies on the findings of others. It contains virtually no analysis of its own. I have found the Appellant not to be a credible witness and therefore I do not accept what the Appellant has told Dr Balasubramanim is true. Therefore, I find that his opinion does not have a sound basis. His opinion is that the Appellant is suffering from a 'depressive disorder of a moderate to severe degree with suicidal thoughts.' He considers that, 'deporting her to Sri Lanka is likely to worsen her condition and there is a likelihood that she may commit suicide.' Because of my lack of confidence in the report, I find that the Appellant would not be at real risk of harm or notification of or on actual return to Sri Lanka.

51. If I am wrong in this finding and the Appellant is suffering from the mental condition described I note from the background evidence set out in the reasons for refusal letter that mental health services exist in Sri Lanka and treatment would be available. I note that the Appellant has an aunt in Sri Lanka who could support her during her treatment."

62. The medical report can be found in the Appellant's bundle at pages 9 to 18. I should summarise that report. The report was written by Dr Balasubramanim who describes himself as a consultant psychiatrist for the past twenty years. For the

purposes of this report he reviewed the Asylum Interview Record and refusal letter, a letter from a GP dated 9<sup>th</sup> October and a letter from the Birmingham and Solihull Mental Trust dated 20<sup>th</sup> July 2012. His diagnosis was that she was suffering from a depressive disorder ICD coding F32 of a moderate to severe degree with suicidal thoughts. He considered that the disorder was brought about by various tragic events in her life which were, her family being displaced by internal conflict in Sri Lanka and her parents moving to India as refugees, the fact that she was born in India, her father committed suicide in 2002 and she and her mother underwent more hardship, her mother went to Sri Lanka and was arrested and she could not be contacted and she became ill, that she had financial difficulties, and that her uncle had abused her sexually. At paragraph 5 the doctor said that she had been traumatised by the suicide of her father, the loss of her mother in Sri Lanka and the sexual assault that she had suffered at the hands of her uncle. In terms of treatment he said that she required close monitoring by the health treatment team and required psychological treatment for up to a full year. He found that she was not fit to give evidence and that she would be likely to improve after a two month period. In his conclusions, he referred to her as having “made a few attempts at suicide.” He further stated “deporting her to Sri Lanka is likely to worsen her condition and there is a likelihood she may commit suicide.”

63. The judge is criticised for the way that he dealt with the medical evidence. The judge was not bound to accept the report of Dr Balasubramanim. The position is summarised by Stanley Burton LJ in the case of **SS (Sri Lanka) v SSHD [2012] EWCA Civ 155** at paragraph 21 of his judgment where he said:-

“21. Generally speaking, the weight if any, to be given to expert (or indeed any) evidence is a matter for the trial judge. A judge’s decision not to accept expert evidence does not involve an error of law on his part provided he approached that evidence with the appropriate care and gives good reasons for his decision. Ultimately, therefore, there are only two issues as to the Senior Immigration Judge’s treatment of the medical evidence: did he address that evidence with appropriate care and did he give good reasons for his conclusion? Those two questions are inter-related. It is difficult to conceive of a case in which a judge gives adequate reasons for his conclusions on expert evidence yet he is held to have exercised insufficient care. His reasons demonstrate his care.”

64. **SS** was a case which involved expert evidence which had not been the subject of cross-examination, of a psychiatrist who had diagnosed complex post traumatic stress disorder. Further it had been opined that the applicant would be likely to become extremely disassociated and unable to provide a coherent account in court. In that case on its particular facts, it was held that the judge was entitled not to accept the expert report for the reasons given.
65. I have set out earlier the findings made by the judge and the specific criticisms made by him concerning the quality and content of that report. The medical report was indeed repetitive; the summary and conclusions at paragraph 2 were repeated again at paragraph 8 of the conclusions at length. He referred to future treatment in the summary and the conclusions at paragraph 2 and repeated this again at (c)

management plan. The judge found the report to be one which relied on the findings of others and contained virtually no analysis.

66. In this respect the Appellant's previous history should have been of relevance. The report makes no reference to having asked or having seen any general practitioner's notes. He makes a reference to two letters; one from a GP dated 9<sup>th</sup> October and a letter dated 20<sup>th</sup> July. There is no reference at any time of any treatment sought by the Appellant between January 2012 (when she claimed that she had to leave college due to depression and July 2012). The first reference is set out in the letter of 20<sup>th</sup> July which refers to a telephone appointment (rather than a face-to-face appointment) at the Birmingham Health Authority on 19<sup>th</sup> July and then nothing further until September 2012. The author of the report simply recites what he has been told by way of history of the Appellant without making any reference to any notes to obtain a consistent picture.
67. It is also right to record that the doctor is factually incorrect. It is not clear how he came to the conclusion that there had been a "few suicide attempts." In the report on two occasions at paragraph 2 and paragraph 8 he states that the Appellant had made "a few suicide attempts." However it is plain from the letter at page 20A (which records the telephone consultation that took place with the Appellant in July) that at that time she had no active thoughts of harming herself. Whilst the interview that took place in August 2012 at question 60 she said sometimes like "harming myself" there was no evidence of any attempts to do so at the interview in August 2012 nor in July. Whilst there was a letter from Fazial Hussain at page 7 of the bundle, who did not give oral evidence before the Tribunal, he said that on one occasion she tried to commit suicide by taking tablets. No date was given for that and as noted in July she had no active thoughts and in August she made no reference to that either. In any event, even taken in conjunction with the letter of 9<sup>th</sup> October which made reference to an attempted suicide attempt in Birmingham, there is no evidence whatsoever to support the doctor's description of her having attempted suicide on a few occasions. Importantly as the judge notes there are no proper details of what happened in this regard, when the attempt was made or the circumstances surrounding that. All of those matters of course are relevant in making a proper analysis and diagnosis.
68. The doctor gives no proper description of her presentation at paragraph 6 under the heading "mental state examination." He states at this point

"During the examination I found Miss Arivalagan a Sri Lankan lady of average height, who spoke spontaneously and coherently in Tamil which is her native language. In her mood she appeared depressed. She is preoccupied with the traumatic memories of what happened to her in the past. Examinations of her cognitive functions indicated that her concentration was poor."

He gave no detail or examples of her presentation to support his diagnosis at paragraph 7 where he said she was also suffering from traumatic stress as evidenced by flashback experience of past trauma.

69. As to the prognosis, he stated that the depression would improve over a period of twelve months. He said that deporting her to Sri Lanka would be likely to worsen her condition as firstly, she would be moving to an environment where her family had suffered, that she had not ever visited Sri Lanka, that she had no links with Sri Lanka and had been brought up in India, and that she had said her life was in danger like her mother.
70. As the judge has noted, there was no analysis of those factors and he has not taken into account the evidence that was set out from the immigration authorities that was before him in the interview that firstly, she had intended to return to Sri Lanka after her studies and therefore it was in contemplation that she would return there despite her earlier experiences which had led her to living in India. She had also given evidence that contrary to the view that he had expressed in his prognosis and diagnosis, that she had lived in India for a period of five to six years as a child, that there was no evidence that her family had suffered in Sri Lanka, and that she had links with Sri Lanka as her aunt lived in Jaffna. As noted in the decision of **HH (Ethiopia) [2007] EWCA Civ 306**, the more a diagnosis is dependent on assuming that the account given by the Appellant was to be believed, the less likely it is that significant weight will be attached to it. Further the author of such a medical report needs to understand what is expected of them if a critical and objective analysis of the injuries or symptoms displayed. They need to be vigilant but ultimately whether an Appellant's account of the underlying events is or not credible or plausible is a question of a legal appraisal.
71. It is clear from a consideration of the report made by the judge that he criticised the quality of the report for the reasons given and thus could attach no weight to it. I do not find that the judge erred in law in his consideration of the report. It was not the type of report that was intended in effect to corroborate her account as some reports do that are put before the Tribunal, for example, to support ill-treatment and torture in their country of origin. All it demonstrated was that at the present time she was suffering from moderate to severe depression for a number of reasons. Those life experiences did not mean that she was a refugee or demonstrate that her mother was arrested and it was not capable of corroborating her claim to be at risk of harm at the hands of the Sri Lankan authorities. All the report could do was to demonstrate that she had been diagnosed with symptoms of depression and there were a number of reasons given relying on past events, which were not relevant to refugee status, for example, financial difficulties which the judge found at paragraph 36 coincided with the Appellant's asylum claim (the claim coinciding with her failure to continue her studies due to financial problems), the fact that her visa was cancelled, possible sexual abuse by her uncle and estrangement by her family in the UK and social isolation. The report did not nor could it, offer significant and separate support for her claim. In those circumstances, the criticisms made of the judge's treatment of the report are not made out.
72. It is further submitted that the judge did not deal with the issue of suicide and did not engage with the report. The matters set out in the preceding paragraphs are relevant to this issue. It is plain from the determination when read alongside the

report that the judge had concerns concerning the quality of the report, the diagnosis and the failure of the report to deal with relevant issues concerning past history, there being no reference to what happened between January and July, no attempt to obtain the GP's notes to obtain a proper history, the factual mistake referring to a few attempts of suicide when that was not the evidence and even in relation to the suicide attempt referred to in the letter in October, there being no information whatsoever as to the circumstances of this. It was open therefore in those circumstances for the judge to place no weight upon that report in making any assessment of this risk.

73. It was further submitted that a freestanding Article 3 claim was put forward before the Judge. Mr Thorne was not Counsel before the First-tier Tribunal and he had no note from Counsel who had appeared. Different Counsel had also drafted the grounds. Ms Petterson, Home Office Presenting Officer, checked her minute and noted that what was in it reflected paragraph 51 of the determination that the judge did consider her medical condition and that the case had been advanced on the basis whether medical treatment was available to her. The judge made reference to the extensive background evidence set out in the refusal letter concerning the mental health services that existed in Sri Lanka for someone suffering from depression of the type identified by the psychiatrist, notwithstanding the concerns raised by him by the judge. The background material at paragraphs 83 onwards dealt with the material from the COIS Report relating to the availability and affordability of anti-depressive and therapeutic drugs, the information from the World Health Organisation relating to mental health policy in Sri Lanka (paragraphs 23.30, 23.21, 23.22). It noted that Sri Lanka had the world's tenth highest suicide rate and citing material at paragraphs 23.23 and 23.24 and citing paragraph 23.25 noting that a consultant psychiatrist had stated that every district in Sri Lanka apart from Monaragala, had a hospital offering treatment for mental illness. Colombo having two hospitals apart from the NIMH offering the facility. The judge in his determination at paragraph 51 placed reliance on that background evidence noting that mental health services existed in Sri Lanka and that treatment would be available. In respect of assistance to her, he further took into account that she had an aunt in Sri Lanka who could support her during treatment.
74. Having considered the judge's treatment of the medical evidence, I do not find that the judge's approach to the medical evidence was flawed. In the decision of **Y and Z v SSHD [2009] EWCA Civ 362**, the Court of Appeal held that no Tribunal is bound simply to accept everything that an expert says but the Tribunal must give acceptable reasons for rejecting such evidence and acknowledge that the factuality of an Appellant's account might be so contravened by the Tribunal's own findings as to undermine the psychiatric evidence. The judge did not find that the Appellant had given a credible account as to the circumstances in Sri Lanka for her and reached the conclusion that she would not be at risk of harm from the authorities on return.
75. As to the other issues that were raised in the report, concerning other life events, the doctor did not consider the other evidence that was contained in the immigration authority's material in making any analysis of those factors. In those circumstances it

was open to the judge to reject the report in the way that he did. The facts in **Y and Z** are entirely different. In that case the material findings were that the two Appellants were so traumatised by their experiences and so subjectively terrified at the prospect of return that they would not be capable of seeking the treatment that they need. The court had found that the chances of finding a secure base, with no known family left in Sri Lanka from which to seek the care that would keep them from taking their own lives, were on any admissible view of the evidence, remote. The court acknowledged that none of the reasoning represented a licence for emotional blackmail by asylum seekers and an Immigration Judge would be right to continue to scrutinise the authenticity of such claims with care.

76. I do not find that it has been demonstrated that the judge's approach to the medical evidence was flawed and consequently find that he was entitled to reach the view on the evidence before him that there would be medical treatment available in Sri Lanka for the Appellant that could be accessed by her alongside the support that she had from her aunt, notwithstanding the depressive symptoms she had been experiencing.
77. The last point raised relates to Ground 3 of the written grounds that the judge did not take into account the country guidance case of **TK Sri Lanka (LP Updated) Sri Lanka CG UKAIT 0049** and that there was no assessment of the Appellant's profile against the risk factors set out in that decision.
78. The risk factors set out in **TK** are as follows:

- "(i) Tamil ethnicity.
- (ii) Previous record as a suspected or actual LTTE member or supporter.
- (iii) Previous criminal record and/or outstanding arrest warrant.
- (iv) Bail jumping and/or escaping from custody.
- (v) Having signed a confession or similar document.
- (vi) Having been asked by the security forces to become an informer.
- (vii) The presence of scarring.
- (viii) Returned from London or other centre of LTTE activity or fund-raising.
- (ix) Illegal departure from Sri Lanka.
- (x) Lack of ID card or other documentation.
- (xi) Having made an asylum claim abroad.
- (xii) Having relatives in the LTTE.



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79. It is plain from the determination that the judge made findings about the credibility of the Appellant's evidence and rejected her claim and did not find on the facts as established that she would face a real risk of persecution on return to Sri Lanka for the reasons that he gave at paragraphs 25 to 52 of the determination. I have set out earlier in this determination that those findings, notwithstanding the grounds for permission to appeal, were ones that were open to him and findings that he was entitled to make on the evidence that had been presented before him.
80. It is right that he did make reference to the country guidance case of TK at paragraph 32 and the refusal letter dealt with those factors that I have outlined earlier within the refusal letter. Whilst the judge did not go through those risk factors, even if he had done so, the only outcome on the findings of fact that he made would have been to have dismissed the appeal noting that she would not be at risk of harm. The Appellant's account was not accepted by the judge and the assessment of risk would have to be seen against those findings of fact. I asked Counsel to identify to the Tribunal the risk factors that he said would be relevant. He identified that she was of Tamil ethnicity and would be returning from the United Kingdom. As to scarring, the only evidence was of a mark to her ankle. That was not likely to be seen as being caused by combative or military training even if seen. The COIS Report at paragraph 25.53 makes it clear that the strong anecdotal evidence was that scarring in the past was used to identify suspects and was used to identify whether suspects had undergone military style training. Contacts in government ministries suggested that the practice had either ceased or used less frequently. At the very least, the security forces only conducted these searches when there was another reason to suspect an individual and were not looking for particular scars as such, but anything to show the suspect as having been involved in fighting or military training. There was no recent evidence that examinations were routinely carried out on returnees. Whilst she had also claimed asylum, it would be right that she would be returning with a visa in her passport having been granted a student visa until 2015. Importantly, the judge did not find that she had signed any confession, that she had any family links to the LTTE or that she would be suspected of any links to the LTTE thus the factors that were identified would not have been sufficient to demonstrate that she was at any real risk of harm upon return. In those circumstances, there was no requirement on the particular facts of this case for the judge to go through those factors identified in TK.
81. In conclusion, I am satisfied that the judge did give careful and anxious scrutiny to the current appeal, that he did not take as a matter against her that she was not able to give oral evidence but gave a careful consideration of the material before him including the medical evidence. In the anxious scrutiny that he gave to the material, I am satisfied that it has not been demonstrated that the credibility findings were not open to him or were wrongly made as asserted in the grounds. For this Tribunal to set aside the decision, it must be demonstrated that the judge made an error of law that was material in his approach but having given the matters raised careful

consideration, I do not find that it has been demonstrated that the judge made any error of law in his approach to determining this appeal.

82. Mr Thorne informed the Tribunal that there was a likelihood that the Appellant's condition may require a further report. In those circumstances, it would be open to the Appellant to make a fresh claim based on any new evidence. However on the evidence that was before the Tribunal, which I am to have regard to, for the reasons that I have set out it has not been demonstrated that the judge made any errors of law. For those reasons the decision shall stand.

**Decision**

83. The original Tribunal did not make an error of law. The decision stands.

Signed

Date: 5/8/2013

Upper Tribunal Judge Reeds