IAC-AH-CJ/DH-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06024/2011

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 January, 4 April, 8 August & 23 October 2014	**On 5 October 2014**

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

MTMS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah, Counsel (for the hearings on 8 January and 4 April 2014)
Ms C Physsas, Counsel (for the hearing on 6 August 2014)
Mr P Turner, Counsel (for the hearing on 23 October 2014)
All Counsel instructed by Messrs Duncan Lewis & Co Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer (for the hearings on 8 January and 23 October 2014)
Mr G Saunders, Senior Home Office Presenting Officer (for the hearing on 4 April 2014)
Mr T Melvin, Senior Home Office Presenting Officer (for the hearing on 6 August 2014)

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DECISION AND REASONS

1. This is an appeal by the Appellant a citizen of Sri Lanka of Tamil ethnicity whose true identity is disputed by the Respondent but who claims to be MTMS born on 3 July 1976, against the decision of the Respondent dated 15 April 2011 to refuse to him the grant of asylum under paragraph 336 of the Immigration Rules, HC 395 (as amended) and also to issue directions under Section 10 of the Immigration and Asylum Act 1999 to remove him to Sri Lanka. The immigration history of the Appellant, as claimed by him, is that he left Sri Lanka on 6 March 2011 from Colombo Airport and travelled with an agent using a German passport that the agent provided to him and that he travelled on a direct flight to the United Kingdom arriving here on 7 March 2011. The Appellant claimed asylum on 31 March 2011 using the name MTMS and date of birth 3 July 1978. This is disputed by the Respondent, who contends that the Appellant was issued with a visit visa for the UK valid from 5 November 2008 to 5 May 2009 in the name of KRPM (KM) born on 3 July 1976.

2. The Appellant claims to hail from Kalmunai. His father owned a rice mill and supplied rice to the LTTE. After his death in 2006 the Appellant took over the ownership of the rice mill and continued to supply rice to the LTTE, delivered once every two weeks or once a month. The Appellant would receive instructions over the telephone from one of two people, Kala and Rohan, advising him as to the location to where the rice was to be delivered, usually Batticaloa and Kaluvanchikudy, from where the LTTE would transfer the rice from the Appellant’s vehicle to their vehicle.

3. It was the Appellant’s account that he began to suffer problems in 2008 when he was an election candidate for the Independence Party as Assistant Secretary in his local area of Kalmunai. He had been a member of the Independence Party for approximately three months prior to the election. The Appellant lost the election and following it, he was arrested by the police at his home and taken to Kalmunai police station where he was kept for one day and interrogated.

4. The Appellant claimed that his brother-in-law had contacts with some police officers as a result of which the Appellant was released, though his fingerprints and photographs were taken and he was asked to sign a piece of paper on his release.

5. The Appellant continued at interview that two days after his release, and when not at home, members of the Pillayan Group came to his house and told the Appellant’s family that they wanted to speak to him. In consequence, his brother-in-law advised the Appellant not to remain to stay at home, and took him to Colombo, some 375 kilometres from Kalmunai. The journey by van took some six and a half to seven hours, passing through checkpoints, in relation to which the Appellant showed his ID card and was allowed to pass.

6. Once in Colombo the Appellant stayed with his brother-in-law's friend for five months without problems. However, he was informed that the Pillayan Group had continued to visit the Appellant's house in Kalmunai, approximately four times, in an effort to discover his whereabouts.

7. The Appellant claimed that his brother-in-law had a house in Colombo to where he moved after five months in 2009. Whilst living at this address, there was a round-up in the area and many people were arrested including the Appellant. He was taken to Maradana police station and questioned and his fingerprints were again taken, after which he was released. He could not recall the exact date of this arrest.

8. The Appellant then went to live at a rice shop in Colombo that his brother-in-law owned. He did not suffer any further problems at that address until 11 February 2011 when by chance he met a man called Maran who was a former LTTE member. At interview, the Appellant explained that he asked Maran where he lived and expressed the view that he thought the LTTE had been defeated. The Appellant told him about the problems that he had suffered that had led him to move to Colombo.

9. After this meeting, the Appellant returned to his shop but the following day the army and the police came to the shop and arrested him.

10. The Appellant was later informed by his brother-in-law, that Maran had given information about him to the police, as he was now identifying people with links to the LTTE, to the police and the Sri Lankan Army.

11. The Appellant claimed that he was taken to Maradana police station where he was questioned about; when he came to Colombo; what he had been doing in Kalmunai; whether he had supplied the LTTE with rice; all of which the Appellant denied.

12. The Appellant was told that the authorities were aware of his involvement with the election and asked him about people that he knew in the LTTE and as to their whereabouts. He was then taken to a room where "youngsters" were kept.

13. The Appellant claimed to have been held for six days during which time he was threatened and told to provide information about the LTTE. One day, an officer slapped his face and he was told to lie down on a table and his hands were tied together, his mouth was covered with a cloth and he was repeatedly interrogated.

14. The Appellant claimed that he was beaten severely all over his body, including his ears and his back and he fainted.

15. It was the Appellant's account that he suffered ill-treatment on two occasions in detention and claimed to have scars on his back and his legs.

16. It was the Appellant's account at interview, that on the sixth day of that detention, an officer came and told him that his brother-in-law had made arrangements to facilitate the Appellant's escape and that the following day he was to go to the kitchen where arrangements had been made with the people who brought food, to help him escape. Accordingly the Appellant went to the kitchen the following day and two men hid him in a large container and took him to their vehicle. After half an hour's drive the vehicle stopped and the Appellant saw his brother-in-law in a van and he went with him. His brother-in-law had paid 5 lakhs to the police to secure his release.

17. Thereafter the Appellant stayed with an agent in Colombo until he came to the UK. The brother-in-law had paid the agent 25 lakhs to facilitate the Appellant's journey to the United Kingdom.

18. In her Letter of Refusal dated 15 April 2011, the Secretary of State referred to her discovery of a visa for the UK on 5 November 2008 applied for using the name KM and a date of birth as 3 July 1976 that was accompanied by a valid Sri Lankan passport. She concluded that in light of the fact the Appellant had provided no evidence to verify that his identity was actually that of MTMS born on 3 July 1978, it was considered that the identity the Appellant had used to apply for his visa in 2008 namely that of KM, was his true identity.

19. In the alternative, if as the Appellant claimed he had entered the UK on 7 March 2011 using a German passport that did not belong to him, then it was considered that this behaviour fell under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and that as a result his credibility had been damaged.

20. It was also noted that the Appellant had been in the UK for three weeks prior to claiming asylum.

21. Further, given the Appellant's claim that in Colombo he stayed with his brother-in-law's friend for five months without suffering any problems until the claimed four visits of the Pillayan Group to his home in Kalmunai to discover his whereabouts, that the fact that he had remained in Colombo for such a long time, and mindful that he would have been required to register with the police in Colombo, it followed that if the Pillayan Group or the government had any interest in him as he claimed, that it was inconsistent that they would have been unable to find out his whereabouts and that he was able to continue living in Colombo for such a long length of time with no problems.

22. Insofar as the Appellant's arrest in 2009 was concerned, even if this account was accepted, it was clear that he was arrested as part of a general round-up in Colombo amongst many other people and as such, it did not indicate that the Sri Lankan authorities had any interest in him, given that he was released immediately without any reporting conditions. It was further noted that after this arrest, the Appellant went to live at a rice shop in Colombo that his brother-in-law owned and he did not

suffer any further problems until 11 February 2011, following the Appellant's meeting with a man named Maran.

23. In light of the fact that the Secretary of State did not accept the Appellant ever had any connections with the LTTE or that the Sri Lankan authorities would have any interest in him, it was considered that his credibility having been damaged, it followed this part of his claim was not accepted.

24. It was not accepted that the Appellant was arrested and detained in February 2011, and even if the claim were credible, it was considered by the Secretary of State, that if the police were willing to release the Appellant on the payment of a bribe, that this would suggest that they had no real interest in him.

25. As to the Appellant's scars on his body, no evidence had been provided of these scars or that such claimed scarring was caused in the manner described. In that it was not accepted that the Appellant was detained, it was therefore not accepted that the scars he claimed to have, were caused by the Sri Lankan authorities whilst in detention.

26. The Secretary of State considered, what was then the relevant country guidance case of TK (Tamils – LP updated) Sri Lanka CG [2009] UKAIT 00049, that held inter alia, that events since the military defeat of the LTTE in May 2009, had not aggravated the likely approach of the Sri Lankan authorities to return failed asylum seekers who were Tamils and that if anything, the level of interest in them had decreased. The principal focus of the authorities continued to be persons considered to be either LTTE members, fighters or operatives or persons who had played an active role in the International Procurement Network responsible for financing the LTTE and ensuring that it was supplied with arms. Thus, it was considered the Appellant's claim that he was of continued interest to the Sri Lankan authorities on return to Sri Lanka was inconsistent with that country guidance.

27. The Secretary of State proceeded to consider the factors identified to established risk on return as held at the time in the country guidance decision in LP (Sri Lanka) CG [2007] UKAIT 00076 and having considered them, concluded that the Appellant would not be at risk on return to Sri Lanka.

The Proceedings

28. This is an appeal which has somewhat of a history. The Appellant's appeal against the decision of the Secretary of State was dismissed by the First-tier Tribunal promulgated on 25 August 2011, following upon which, the Appellant made a successful application for the grant of permission to appeal that decision. It was considered arguable that the First-tier Judge erred in misunderstanding that the Appellant's evidence was that he stood as an independent candidate, not that he was a member of the "Independence Party" that the Judge had found did not exist. It was also considered that the Judge arguably erred in law in failing to assess the

risk to the Appellant on return, by reference to the background material and country guidance to which he had been referred by the Appellant's Counsel.

29. There followed an error of law hearing before Upper Tribunal Judge McGeachy who in a decision promulgated on 19 December 2011 and in agreement with the parties' representatives, found there to be material errors of law and that the decision of the FtJ should be set aside, not least for the reasons identified in the grant of permission.

30. There followed a full rehearing of the appeal before UTJ McGeachy who in a determination promulgated in April 2012 dismissed the appeal on both asylum and human rights grounds.

31. Following UTJ McGeachy's refusal to grant permission to appeal to the Court of Appeal, and the subsequent refusal of permission by Jackson LJ on 21 November 2012, but following an oral hearing before Rix LJ on 25 February 2003, it was ordered that permission to appeal be granted to be listed before three Lord Justices. The essential basis for that grant related to what was claimed to be an erroneous approach by the UTJ to the medical evidence submitted by the Appellant as to the nature of and cause of his scarring, prepared by Professor S Lingam and dated 18 June 2011. It was contended that the UTJ's conclusion that the Appellant was not above arranging for himself to be beaten by a third party so that he would have scars in order to support his asylum claim, was unlawful and that the UTJ's consideration of and reasoning in relation to the medical evidence, that had led him to form an adverse view of the Appellant's claim, was irrational. A remittal of the appeal to the Upper Tribunal was sought.

32. Professor Lingam's report stated that on examination eight scars were found on the Appellant's body, six on his back and two on his calves, that was said to be typical of deliberately inflicted wounds caused by beatings.

33. Lord Justice Rix in his judgment had inter alia this to say:

> "The expression 'typical' was used by Professor Lingam with a mind to the Istanbul Protocol, in which it is the highest but one of the categories of terminology there used. Nevertheless, as Professor Lingam no doubt accurately says, one cannot distinguish between deliberately caused scarring, dependent upon whether that deliberate wounding has been done either by the Colombo authorities (which is MS's case) or (in the Upper Tribunal's conclusion, having rejected MS's credibility) that he had paid someone else to inflict the wounds upon him. He could not inflict all the wounds himself because six of them are on his back. …
>
> It seems to me that although this is ultimately a question of fact, the submission is that the rejection of the scarring report is perverse or irrational or arrived at in a procedurally incompetent manner and that in those circumstances there is an important point of principle or practice or some other compelling reason why permission should be given even subject to that difficult second appeal test, in order

to bring this question before the Court of Appeal. I have waivered in my view of the matter, because ultimately we are discussing questions of fact on which the Tribunal's findings are not susceptible to challenge, for an appeal could only be on a question of law. But nevertheless it seems to me that, put in a way that Ms Jegarajah has put it, against the background that she has explained to me, there is at least a compelling other reason why permission should be granted.

It can be understood that a person who is in truth in danger of persecution in his own home country may, in order to escape that danger, be prepared to have wounds and scarring inflicted upon himself by his own instigation. It is more difficult to suppose that someone would do so on the hypothesis (which is the Upper Tribunal's hypothesis in the light of its finding of a lack of MS's credibility) that the claimant is not in danger, for the prize of a false claim to asylum. (Emphasis added).

In these circumstances I will grant permission to appeal."

34. It would be as well for the sake of completeness to refer to another aspect of Rix LJ's judgment when he had this to say:

"The subject matter of the appeal is essentially a factual one, which is whether (the Appellant's) case of beatings and torture on being picked up by the authorities in Colombo in 2011 is to be believed. It arises against the unpromising background of a fraudulent application for a visa to this country in what is said to be a false name in 2008. Whether it was a false name or whether it was his real name is in issue in the proceedings. However it is accepted that that was MS's application in a different name. He has his photograph in a passport which was used to obtain a visa. **It is in issue as to whether he used the visa to come to this country in 2008. Although there is no evidence that he did, one might expect the matter to be capable of being dealt with one way or the other by evidence from the Secretary of State on that question.** There is no evidence from the Secretary of State either way, but nevertheless the Tribunal inferred explicitly, without evidence, that he did come to this country in 2008. He may be assumed on that hypothesis to have been here ever since." (Emphasis added).

35. In the event however and by an order of consent dated 22 November 2013, the Appellant's appeal was remitted to the Upper Tribunal for reconsideration.

36. When this matter first came before me for that purpose on 8 January 2014, the promulgation in what became known as the Tribunal's decision in KV (Scarring – medical evidence) Sri Lanka [2014] UKUT 00230 (IAC) was imminently awaited. It was understood that the central issue in the appeal of KV was that of scarring and whether it was possible to distinguish between scarring that had been caused in order to advance an asylum claim or scarring caused by state torture. There were of course, other issues, not least a consideration of the Istanbul Protocol in light of "self infliction" claims.

37. Ms Jegarajah pointed out, that given that the Respondent continued to maintain the core elements of the Appellant's account including his detention and torture had

been fabricated, the medical report of Professor Lingam assumed a critical role in assisting the Tribunal in determining whether the Appellant was a victim of torture. This was an issue that needed to be resolved and hence the importance of consideration of the pending decision in the case of KV. She therefore sought an adjournment which I recorded was strongly supported by Mr Avery for like reason. I therefore granted the adjournment request and relisted the matter for mention only before me on 4 April 2014. On that occasion I was informed that the promulgation of the decision in KV was in fact still awaited. I was given to understand that following its receipt and consideration, the Respondent might review her position and if in favour of the Appellant, the Tribunal and the Appellant would be immediately notified.

38. When the matter came back before me on 6 August 2014 for substantive hearing, I was informed by Ms Physsas, who on this occasion represented the Appellant, that she had a supplementary bundle comprising a statement from the Appellant's brother-in-law who had specifically come over to the United Kingdom from Sri Lanka on 3 August in order to give oral evidence in support of the Appellant's appeal and that he was due to return to Sri Lanka on 8 August. I was handed a copy of his passport and travel itinerary and a copy of the Appellant's driver's licence. I arranged for a further copy to be provided to Mr Melvin who on this occasion represented the Respondent.

39. Two days prior to this hearing and with a covering letter from the Appellant's solicitors dated 25 July 2014, a further bundle of documents was served upon the Tribunal that included inter alia, a further statement from the Appellant signed and dated by him on 25 July 2014; a letter from a Mr M Iynullah described as an attorney-at-law in Sri Lanka and dated 19 July 2014 certifying that the Appellant was the holder of an ID card and a passport and a driving licence and a birth certificate in the name of MS and that the Appellant hailed from a respectable family in Kalmunai, District of Ampara, Sri Lanka. Mr Iynullah certified "that the originals of those documents were shown to me in proof of those details".

40. Also within the bundle, were copies of the Appellant's purported Sri Lankan passport; his driving licence, his birth certificate and a Deed of Gift (the latter piece of evidence being something which I understood was before previous Tribunals in this case).

41. The bundle also included Professor Lingam's report; a medical report from Mr Andres I Martin, a Consultant in Emergency Medicine, dated 10 July 2014 and; a series of what were described as Sri Lankan Police Message Forms, variously dated between 21 May 2008 and 12 January 2014, this being evidence not previously produced in earlier appeals in this case.

42. At the outset of the hearing, I received from Mr Melvin his skeleton argument/written submissions, but it became readily apparent at the outset, that this was prepared by him, in ignorance of the further bundle of documents above

described, that Mr Melvin told me was not in his file and he had not seen before. Indeed I had to arrange with my clerk for a copy of that bundle to be provided to him.

43. The matter does not end there, because at the outset of the hearing, I was informed by Ms Physsas (who in fairness explained to me that she had only been instructed in this case the night before) that she had in her possession a further supplementary bundle that clearly neither the Tribunal nor the Secretary of State had seen. This comprised a statement from Mr MFA, claiming to be the Appellant's brother-in-law dated 4 August 2014 that I was told, supported the Appellant's account of his past experiences in Sri Lanka. Attached to his statement, was a copy of the brother-in-law's passport and the Appellant's driving licence, the original of which I was told was in the brother-in-law's possession and which he was ready to produce. I was cross-referred to the Appellant's fresh statement which explained at page 3 paragraph 10, as to why the original had not been produced and the fact that as Ms Physsas understood through her instructing solicitors, that the Appellant's brother-in-law MFA had explained that he was fearful of carrying the original of that passport through customs in Sri Lanka.

44. I confirmed to the parties that the anonymity direction previously made remained in place and would do so throughout the course of this appeal.

45. Not surprisingly, Mr Melvin was clearly put out by the sudden production of all of this evidence, not least the supplementary evidence and the notification of the Appellant's brother-in-law who had not only provided a statement but was in the building to give oral evidence. He considered this was an abuse of the process and that in effect, the Appellant's conduct had amounted to an ambush of both the Tribunal and the Secretary of State. He strenuously urged me to grant an adjournment request, explaining that he needed to explain the new documents and formulate possibly new arguments on that basis. He also needed to consider the ramifications of the new medical report.

46. Further and insofar as the brother-in-law's evidence was concerned, he needed to track through the past evidence of the Appellant in the course of his appeal in order to determine what was said about the brother-in-law's role within the Appellant's account and to compare it with the evidence now produced by him. There was no evidence so far as Mr Melvin knew, to establish that the person waiting outside to give evidence was indeed the Appellant's brother-in-law.

47. Mr Melvin said to me "I can think of a hundred questions that I might want to ask". He explained that for the brother-in-law's evidence to be given now, would leave him in a wholly unprepared position and one of unfairness, particularly in circumstances when the cross-examination that might be conducted would in effect be so conducted with one arm tied behind his back.

48. I rose in order to give Ms Physsas the opportunity to take instructions from the Appellant's brother-in-law solely on the question of whether he could return at a subsequent date to give such evidence. In so doing I reminded Ms Physsas the onus of proof was on the Appellant.

49. On my return to the hearing room, Ms Physsas informed me that having spoken to the Appellant's brother-in-law, she was able to confirm that he would be able to return to the United Kingdom to give evidence. Apparently his present visa for this purpose expired sometime in January 2015. He could return provided that he had at least one month's notice in order to make the necessary arrangements for this purpose.

50. Nonetheless Ms Physsas asked me to consider whether the brother-in-law could give his evidence today whilst appreciating the difficulties in that regard mindful not least of Mr Melvin's representations. She also asked that in the event that the evidence could not be taken that day and the adjournment request was granted, that the Secretary of State would ensure through the court, that once her investigations into the veracity of the documents produced had been completed and particularly if it resulted in the Secretary of State taking a new position, that the Appellant's solicitors should be notified, so as to save the Appellant's purported brother-in-law the need to return to the United Kingdom to give evidence. In any event it would be appreciated that the results of the Secretary of State's enquiries were made known to the Tribunal and the Appellant before the resumed hearing. There was no objection to handing to the Secretary of State the originals of such documents that were presently in the Appellant's possession, for the Respondent's examination.

51. I reminded Ms Physsas of the requirements of Rule 15(2)(a) of the Upper Tribunal Procedure Rules 2008 in terms of any application to admit fresh evidence. In considering that application, I bore in mind that no objection was raised by Mr Melvin to the production of the evidence, provided the Secretary of State was given a reasonable and ample opportunity to consider it before proceeding with the substantive hearing.

52. There was no doubt that the manner in which this evidence had been produced, not least the evidence now before me, was most regrettable. I consider that Mr Melvin was perfectly entitled in such circumstances to make his adjournment request which was entirely reasonable given what had taken place. The Secretary of State was a party to this appeal and was entitled to the same sensitivity that the Appellant would expect to receive from the Tribunal. Fairness in the interests of justice therefore demanded that I grant his request. In so doing, I made it clear that my permission was to enable the Respondent to consider the new evidence now served upon the Tribunal and the Secretary of State and to enable her to make enquiries of the documentation in terms of, for example, the driving licence and the Police Report Forms as to their veracity. It was right that the Secretary of State should have the time and proper opportunity of considering these documents. Further, at

the last minute Ms Physsas produced her skeleton argument, again a document that neither the Tribunal nor indeed Mr Melvin had yet had an opportunity to consider. It was right to say that Mr Melvin's skeleton argument was also served on the day of the hearing.

53. Insofar as the evidence of the Appellant's purported brother-in-law was concerned, I was gratified to learn that he would be in a position to return and I was therefore able to tell the parties that I had ascertained from the Tribunal listing (mindful that Mr Melvin had in any event told me that the Secretary of State would need at least eight weeks to consider the veracity of the documentation now produced) that the hearing in this matter could be restored before me on 23 October 2014. That would therefore be the date of the resumed hearing and I decided in all the circumstances and given the history of this matter to allocate a time estimate of one day in order to hopefully ensure that the hearing and oral evidence could be adduced on that date and without the need for further adjournments.

54. In the circumstances I gave Mr Melvin permission, if the Secretary of State so chose, to produce and serve upon the Tribunal and upon the Appellant any further evidence upon which she might seek to rely. In particular I directed that the Secretary of State serve no later than ten days before the restored hearing, if not sooner, both upon the Tribunal and the Appellant's solicitors, the results of her enquiries into the veracity of the documents the Appellant had now produced. Further, if in the light of those enquiries and any review the Secretary of State might undertake, she altered her position, then similarly the Tribunal should be notified as soon as possible.

55. I was able to clarify with the parties that the original of the documents were to be handed to Mr Melvin as part of the process of checking their veracity. This was done with the permission of the Appellant who confirmed that he had no objection to those originals being handed over for this purpose.

56. Those documents are as I have above referred.

57. Mr Melvin confirmed to me that these were all the documents the veracity of which would be checked, some of which would be sent to the Entry Clearance Officer.

58. I reminded Ms Physsas that one of the originals missing was that of the 2006 passport of the Appellant where only a copy had been provided. It was of course a matter for the Appellant on whom the burden of proof lay, as to whether he was able to or wished to produce the original. It was an evidential matter, but in fairness, I suggested to Ms Physsas that this might be a matter that should be considered between the Appellant and his legal representatives, but that was a matter for them.

59. I was told by Mr Melvin that the birth certificate produced was still only a copy. The Appellant stated that he had the original of his birth certificate at home in Sri

Lanka but he was able to obtain it and would ensure it was produced as quickly as possible. I made an appropriate anonymity direction in accordance with the requirements of Rule 45(4)(i) of the Asylum Immigration Tribunal (Procedure) Rules 2005.

60. Upon resumption of the hearing of this appeal on 23 October 2014, I read over to the parties my contemporaneous record of the proceedings of 6 August 2014. In that regard I observed to Mr Avery, that despite Mr Melvin's assurances that formed the basis upon which I had been persuaded by him to adjourn the last hearing and to make appropriate directions, the Secretary of State had failed to serve the results of her enquiries into the veracity of the documents provided by the Appellant upon the Tribunal and upon the Appellant. No indication had been given as to the present stance of the Secretary of State in light of the new documentation served prior to the resumed hearing of this appeal.

61. Mr Avery informed me that the Appellant's driving licence had been referred to the National Document Fraud Unit to see if they could authenticate it but unfortunately they had been unable to do so due to insufficient specimen material to compare the driving licence and were unaware of the issue procedures in Sri Lanka for driving licence.

62. He accepted that no enquiries had been made in relation to the other documents, for example as to the veracity of the the Police Report Forms.

63. He explained that it appeared that the original birth certificate in the name of MS was produced to the Secretary of State on 16 September 2014 but appreciated that it had not been checked he explained "due to lack of time".

64. Mr Turner who now represented the Appellant, informed me that the original of the Appellant's brother-in-law's passport had that day been handed to Mr Avery.

65. Mr Avery informed me as follows:

> "The Secretary of State continues not to accept that the Appellant is MS as claimed. It remains the view that it is KM as addressed in the refusal letter of 15 April 2011.
>
> As regards the Appellant's scarring – we say the latest report takes us no further than the previous one. The medical evidence has in any event to be seen in the context of the evidence as a whole and it remains the Secretary of State's position that the Appellant could not have sustained his scarring in the circumstances he claims, because we maintain, that he arrived here in 2008 as KM and has been in the UK ever since.
>
> Much of Mr Melvin's previous skeleton argument remains relevant not least in relation to the current case law."

66. Mr Turner informed me that it remained the Appellant's case that he never came to the UK until 2011. He was as claimed MS. The Appellant did sustain the scarring in the circumstances described and the issue fell to be decided. He maintained that the Appellant's identity had been established and it was for the Respondent to show that he had been here under a different name since 2008.

67. Mr Avery responded that the Secretary of State's position remained that the Appellant's account at its highest, although dependent on my findings, would not necessarily render him to be at real risk on return to Sri Lanka.

The Evidence of the Appellant

68. The Appellant began his oral evidence by maintaining that his statement signed and dated 25 July 2014 was true and was to be adopted as part of his evidence-in-chief. In that statement, and having maintained that he was MS born on 3 July 1978 in Sri Lanka as claimed, he stated that he had left Sri Lanka on 6 March 2011, arriving at London Heathrow Airport on 7 March and claiming asylum in the UK on 31 March 2011.

69. The day following his arrival in the United Kingdom, he sought legal advice from a firm of solicitors Messrs Krish Solicitors, who contacted the Home Office and an appointment was made for 31 March 2011 for the Appellant to attend the Home Office in Croydon for a Screening Interview. On arrival at Heathrow, the agent who accompanied him, gave the Appellant a German passport and they both went through immigration control separately. The Appellant could not remember whether he was asked to fill in a landing card when he went through immigration control because he was "under immense stress". The agent met with him on the other side and took the passport from him. On leaving the airport, the Appellant was introduced to someone whose name he could not recall, who took him "to some people from my village. They were the ones that took me to Krish Solicitors to seek legal advice".

70. Having set out the correct spelling of his full name, the Appellant explained that the only time he used a different name was in 2009 when he applied for a visa with the intention of coming to the UK. At the time he used the alias KM. He used this name because that was the name that was used by the agent who obtained the passport for him. The Appellant applied for a visa because "I was having problems in Sri Lanka, because of my support for the LTTE and I wanted to go somewhere safe".

71. The Appellant claimed in his statement, that the passport and the visa were arranged by an agent who in turn had been organised by his brother-in-law.

72. The Appellant continued that the agreement between his brother-in-law and the agent was that there would be a payment for the agent's services amounting to 20 lakhs. The agent had then made arrangements for the Appellant to apply for a visa

to the UK and then told him that a visa had been granted, upon which, the Appellant was asked for 35 lakhs to help him get out of Sri Lanka. The Appellant continued:

> "At the time we did not have enough money and could not pay him what he demanded. The agent had kept the passport and the visa. However I never saw for myself whether a visa to the UK was endorsed in the passport or not."

73. The arrangement with the agent had been that he would be paid once he had helped the Appellant leave the country, which was why the agent was not paid for the work that he did in obtaining a passport and helping to obtain a visa. However when he had raised his costs, the Appellant's brother-in-law decided not to pay the agent. At the time the Appellant agreed with his brother-in-law "because I felt that I could continue living in Colombo".

74. When the Appellant left Sri Lanka to come to the UK in 2011 it was at a time when he knew he could no longer remain safely in Sri Lanka.

75. At paragraph 9 of his statement, the Appellant explained that he had applied for two passports in his own name of MS in Sri Lanka in 2001 and then in 2006. Each passport issued was valid for five years. The first passport was numbered M2017706 and was valid from 9 May 2001 until 9 May 2006. He had used this passport to travel to India. There was attached to his statement a copy of that passport and the endorsed visit to India in the bundle of documents submitted on the Appellant's behalf. The second passport was issued in 2006 and was valid until 2011. The Appellant had used this passport to travel to Mekkah for the Islamic Pilgrimage in 2006 which he visited for a period of two weeks. The Appellant stated that he was also issued with a Sri Lankan driving licence number A014114768 and an ID number 781850284V.

76. The Appellant explained that he did not provide evidence of the passport for the driver's licence issued in his name in support of his previous appeal, because he had not been advised and was not asked whether he had been issued with any such documents in his given name, either by the Home Office or by his previous solicitors. However, whilst preparing for this appeal, his new solicitors had explored the matter with him and the Appellant had as a result realised, that he might have the evidence with his family in Sri Lanka. For this reason, he contacted them and was forwarded copies of his first passport, his driver's licence and the letter from Mr Iynullah a Sri Lankan lawyer who confirmed that he had seen the originals of those documents. The Appellant's family had informed him that they could not locate his second passport.

77. The Appellant continued in his statement that as he was facing problems in Sri Lanka he was advised by the agent that he should not use his own name which was why he then applied for a passport under the name of KM.

78. When he applied for his first passport and the second passport, the Appellant had to produce his birth certificate and a character reference from the village officer, who was someone that had the knowledge of those living in the village. The Appellant also provided a completed application form that was witnessed by a lawyer/justice of the peace and the fee for the passports. The Appellant was issued with these passports on the same day as he applied. The Appellant continued at paragraph 12 of his statement:

> "As I said, I provided the agent with my photograph. I do not know how he obtained the passport or what documentation he provided to be able to obtain a passport in name of (KM). The only time I saw the passport obtained by the agent was on the day that I attended the Visa Application Centre in Colombo. I do not know whether that passport was genuine or fake."

79. The Appellant explained that when he made the application to the British High Commission in 2009, he attended the Visa Application Centre in Colombo where his fingerprints were taken and the relevant fee for the application was paid. This was the process that had to be followed. At the time of the application, the Appellant did not submit any documents other than those that were arranged by the agent. The agent gave him the file only on the day that he attended the Visa Application Centre and so he did not have time to look through the file to see what documents were submitted.

80. The Appellant explained that the agent waited outside while he went inside to lodge the application. He was not interviewed in relation to the application and he was then issued with a receipt and told to collect his documents within 21 days. The agent in fact took the receipt off of the Appellant which was why he was the one who was able to collect the passport and any visas from the Visa Application Centre, on the Appellant's behalf.

81. The Appellant stressed that the only thing that he provided to the agent, was his photograph, that the Appellant assumed, enabled him to obtain a passport and to prepare the visa application.

82. The Appellant continued that when he attended the Visa Application Centre to apply for a visa to the United Kingdom, he was accompanied by a woman who claimed to be his wife. She was there on the advice of the agent, who told him that if they applied as husband and wife for the purpose of a honeymoon, there was more chance of the Appellant being issued with a visa. The Appellant had no idea as to what happened to the woman thereafter. He claimed that the only time he had met her was on that day when they both attended the Visa Application Centre. He had not seen or heard from her since.

83. At paragraph 16 of his statement, the Appellant continued to maintain that he arrived in the UK for the first time on 6 March 2011, even though he had applied for a visa to enter the UK as a visitor in 2009.

84. The Appellant continued that his father used to own a rice mill where he was supplying rice to the LTTE. It was his understanding this had been a longstanding arrangement, although he was not aware of the exact details of the arrangement. Nonetheless the Appellant had continued that arrangement after his father had passed away and he had taken over ownership of the rice mill. He supplied rice to the LTTE once a month or every two weeks as instructed. When he first started supplying rice to the LTTE, there were no problems, but towards the end of 2008, the police came to know of this arrangement. The Pillayan Group used to be a part of the LTTE but then they separated and joined an alliance with the authorities. It was the Appellant's understanding that they provided the police with the information about his supplying of rice to the LTTE.

85. The Appellant claimed that he also made financial contributions to the LTTE on three occasions before his problems with the police began. The total contributions made between 2005 and 2008 was 3 lakhs which was equivalent to £1,500. Anyone supporting the LTTE in the village was making financial contributions to them. These matters were mentioned in the course of the Appellant's Screening Interview.

86. The Appellant continued that he became a member of the Independence Party in 2008. It was formed in 2008, three months prior to the local elections. The party leader was Jameel Hassan. He claimed the party was formed by those who supported the LTTE. It had been suggested to the Appellant that LTTE members should stand as independent candidates. Because he had their support the Appellant decided to do as the LTTE suggested and he stood as a candidate in the local elections and was appointed Assistant Secretary to a Mr Mansoor who was the deputy leader of the Independence Party.

87. The Appellant maintained that had he won the election, he would have continued to support the LTTE "and would have listened to what they wanted. However I lost the election".

88. The Appellant continued that the Independence Party was very small with only 30 members comprising mainly young Muslim men who supported the LTTE. Once the election was lost, the Appellant claimed that police began looking for the members of his party and it was as a result that they all dispersed and that was the end of the Party. It had only been active for three to four months before everyone dispersed.

89. The Appellant claimed that within two days of the election results he was arrested by the police and taken to Kalmunai police station and detained for one day during which time he was taken to an interrogation room and questioned about his support of the LTTE and as to his supply of rice to them. He maintained that he was "continuously interrogated by three different people" and then released following the intervention of his brother-in-law.

90. Two days after returning to his home, the police came again and took him to the police station where he was detained for a further two days. Again he was taken to the same interrogation room and interrogated by three people who threatened him and told him that they had confirmation that he was supporting the LTTE and wanted to know what other plans he had with them. On the second day his brother-in-law was again able to effect his release by bribing a police officer.

91. On release from detention, he returned home and some two or three days later, the Pillayan Group came to the house. Fortunately at the time, the Appellant was not at home but they spoke with the Appellant's sister and told her that they wanted the Appellant to go and see them at their headquarters. The Appellant explained that he was "scared for my life and scared that the Pillayan Group would come back to take me". As a result he went to Colombo and stayed with a friend of his brother-in-law's for five months before moving to his brother-in-law's house in Colombo.

92. The Appellant explained that his family in Sri Lanka consisted of his elder brother, elder sister, younger brother, brother-in-law and his elder sister's two children all of whom had left Kalmunai to live in Colombo. The reason was due to the Appellant's support for the LTTE and the continued harassment by the police and the Pillayan Group in consequence. They had decided that to get on with their own lives they needed to leave Kalmunai. In fact, said the Appellant, "the police had been visiting my family every so often and they had been leaving letters asking me to attend the police station. My family have now forwarded some of these letters which are appended to my bundle".

93. The Appellant at paragraph 25 of his statement claimed that when he first arrived in the UK and claimed asylum, he had no documents with him but managed to obtain evidence through his brother-in-law who forwarded them to him by post. At the time he left Sri Lanka he was in fear of his life and did not think to collect relevant documents to bring with him.

94. The Appellant continued that he was arrested by the police on 12 February 2011 in Colombo. Before that arrest he had met with an ex-LTTE member known as Maran by chance on 11 February 2011. The Appellant continued at paragraph 26 of his statement:

> "We talked about the problems that I had because of my support for the LTTE and he told me about the problems that he had. I later learned from my brother-in-law that the police officer who helped me escape detention had told him that the information about me to the police was provided by Maran."

95. At paragraph 27 of his statement the Appellant explained as follows:

> "27. When I was arrested on 12 February 2011 I was taken to Maradana police station. I was then questioned about being in Colombo and they told me that they knew that I was supporting the LTTE and that I was supplying rice to them while I was in Kalmunai. They kept asking me to tell the truth about being in

> Colombo. I was questioned five days. On the sixth day of interrogation when I kept refuting their claims about my involvement with the LTTE and my reason for being in Colombo, the interrogating officer then hit me hard on both ears. I became dizzy and they then pulled me up and put my face down on a table where they then handcuffed my hands to the cuffs attached to the table. They again told me to tell the truth or that they would beat me. They started to beat me on my back and my legs. Then I started to scream and they put a cloth in my mouth to prevent me from screaming. I cannot remember how long I had to suffer the beating before I lost consciousness. When I came round, I was in a different room lying in the dark in the corner and I was feeling immense pain on my back and my legs because of the beatings. I was bleeding and I was wearing just my vest and underpants. I remember at the time that they beat me that I was fully clothed, but as a result of the beating my clothes were torn and discarded."

96. It was the Appellant's understanding that the Respondent had been accusing him of paying someone to inflict those injuries on him or inflict them on himself. He maintained that he had no reason to harm himself and scar himself for life. He continued:

> "I am a religious man and I respect my religion and my faith. My religion forbids me from purposely inflicting pain on myself or others. It took nearly a month for my wounds to heal and for the pain to subside. There is no way that I would inflict this pain and suffering on myself.
>
> The scars that I have suffered as a result of the torture I was subjected to is not just on my body. Every time I think about what I was subjected to I feel depressed."

97. The Appellant concluded his statement by insisting that he feared for his life and safety in Sri Lanka. He explained that in 2009 when he thought that he could continue to live in Sri Lanka, he made the decision to do so when presented with a choice. However following February 2011 and the torture to which he was subjected, he did not believe that he could continue "any form of life in Sri Lanka or be safe there. Therefore I felt that I had no choice but to leave Sri Lanka".

98. In oral evidence and in his evidence-in-chief, the Appellant was asked about his ID and as to what he said happened to him in Sri Lanka, in particular in February 2011. In that regard the Appellant continued to strenuously maintain that his true name and identity was that of MS.

99. The Appellant was shown his original passport and maintained that it belonged to him and showed his name as MS. He repeated that his brother-in-law brought it over to him from Sri Lanka on 20 October 2014.

100. The Appellant was shown the original of his birth certificate and a translated copy and confirmed this was obtained in Sri Lanka and translated into English and posted to him.

101. The Appellant was shown an original of the Deed of Gift and maintained that it was a gift from his father to him.

102. He was shown Mr Iynullah's letter of 19 July 2014 and the police report from Kalmunai police station dated 15 March 2013 that bore an illegible signature purportedly from the chief inspector of the police station and stated as follows:

> "This is to inform that (MS) of (there followed the address in Kalmunai) that he should attend to the Crime Branch of Kalmunai Police Station on 17 March 2013 at 14.30 hours.
>
> PC Arunu Sembiratne 22782."

103. The Appellant stated that he had seen this document and it was a letter received "by my people at home. It is a police letter".

104. The Appellant, consistent with his statement, explained as to how he came by all these various documents that included the Police Report Forms with their certified translations and listed over pages 48 to 59 of the Appellant's bundle as dated 12 January 2014, 15 March 2013, 20 June 2012, 20 November 2011, 27 February 2010, and 21 May 2008.

105. The Appellant was shown the original claimed birth certificate together with its translation that showed a date of registration as 13 August 1978.

106. As regards the absence of an ID card, the Appellant explained that he lost it in that before he left Sri Lanka on 6 March 2011:

> "I had my national ID at home. Later I was told they could not find it. 'They' means my sister informed me that it had been misplaced."

107. The Appellant was referred to his statement and the account of his detention and ill-treatment in February 2011 and was asked to "tell the Tribunal a bit more about your experience". The Appellant explains as follows:

> "In 2011, it was on 11 February 2011, the person by the name of Maran who had been an LTTE supporter – after a long time, he met me in Colombo.
>
> I knew him from when I was living in Kalmunai. We chatted for sometime. He asked me why I'd moved to Colombo and I told him that due to the problems I had had, I moved to Colombo and was in hiding. He also told me the problems he had in the past and then he left me.
>
> I met him not far from where I was living, near the shopping centre in Old Moor Street near Subrims Traders. He spotted and recognised me. We chatted for about twenty minutes. He told me he would get in touch with me again. Also he asked me where I was living in Colombo.

The following day the police came and arrested me. I was taken away and detained at Maradana police station. He did not say where maybe because he was also with the Pillayan Group. He said he was also hiding in Colombo like me.

Maran was shorter than me – dark complexion and he would part his hair this way (the Appellant then demonstrated to the Tribunal with his hands from right to left)."

108. The Appellant was then asked to provide details of the way in which he was ill-treated whilst in detention. He stated as follows:

"I was in detention. I was interrogated and asked why I was in Colombo. I told them I was living with my brother-in-law in Colombo. They alleged that I had been found to be supplying rice and other materials to the LTTE when I was in Kalmunai that they had found out about my activities in Kalmunai and they knew why I had made the trip to Colombo.

The questioning and interrogation lasted for about five days. On day six a senior police officer took me to a dark room and I was beaten and asked to tell the truth. I was beaten so severely that I became unconscious and they dragged me out of the room, put me on a table and I was pinned to that table. Both hands were locked to the table, it was like handcuffs. After that I could not remember how they beat me."

109. At this point I noticed that the Appellant became animated and then he continued:

"I was unconscious. When I regained consciousness I realised I had been left in the room and I was kept in that room only with my pants and a torn vest.

I remained lying in that room and two days later a police officer came and told me that arrangements had been made for me to escape and explained to me what I ought to do. That there would be a vehicle carrying big pans and pots that they used in the kitchen and I should get into one of those big pots and hide in such a way that nobody should see me.

That's what happened later. The lorry took me out.

Again I was transferred to another vehicle at a place that I could not remember and from there I was taken to a house – not my house, one that belonged to a friend of my brother-in-law. My brother-in-law came to visit me on the same day and he said they were going to take me to the hospital. The man and the woman living in the house were present.

They suggested to my brother-in-law that it would be risky to take me to the hospital. Instead they wanted to treat me with homeopathic medicine – herbal – and they brought it and applied it to my body all over. It was some sort of ointment. They massaged it all over my body and I slept that night and my brother-in-law assured me that he would find a way to send me abroad, explaining it would not be safe for me to continue to live in Sri Lanka.

Because I also feared that police would come back and arrest me and ill-treat me, I begged my brother-in-law to send me abroad as soon as possible.

I later learned from my brother-in-law that the officer who had facilitated my escape from detention urged him to send me abroad as soon as possible.

My brother-in-law later told me this was the same day while I was being massaged."

110. The Appellant was shown his passport that on page 2 showed a number LO677168 extended up to 09/05/2010. He was asked to what this related and explained that he did not know anything about that passport and what they did on it.

111. I noted that what then followed, was a series of questions and answers concerning the passport and this particular entry, which had the effect, in no sense the fault of Mr Turner who was doing his best, to create what appeared to me in the Appellant's mind, a state of confusion. By way of example the evidence in this regard as I recorded it, was overall as follows:

> "This isn't my first passport. I had another passport before this. I have had only one passport the one in my hand. Yes I had another passport at the moment this is the only passport I have.
>
> I obtained one passport before later I renewed this passport there was another passport that was issued to me after this passport and that got lost."

112. At this stage the Appellant told me he felt dizzy and I granted him a five minute break to get some fresh air. Upon resumption of the hearing the Appellant told me that he felt much better. The question concerning the number of passports the Appellant held continued.

113. In this regard the Appellant stated that he had had in his life, two passports including the one that he was presently holding. The first had been issued in 2001. The Appellant then explained that he had obtained a passport in 1996 when he was about to travel to Saudi Arabia and upon that passport's expiry, the date of which he was not sure he thought 2009, but again was not sure, he applied and obtained the passport that he now held in order to travel to India. When that passport was expiring it was extended. No other passports had since been issued to him.

114. In view of this confusion he was referred to paragraph 9 of his statement in which he had explained that he had applied for two passports in his own name in Sri Lanka in 2001 and 2006 each passport being valid for five years, the first M2017706 was valid from 9 May 2001 until 9 May 2006. This was the passport he had used to travel to India. The second passport was issued in 2006 and valid until 2011. He had used this passport to travel to Mekkah for the Islamic Pilgrimage in 2006 and was there for two weeks.

115. In that he had stated that he had a passport issued in 2006, he was asked to explain the difference, in that he had just given oral evidence that he obtained a passport in

1996 and not 2001 as stated at paragraph 9 of his statement. The Appellant responded:

> "This is my passport when I did travel to Saudi Arabia and I don't know how it is different in the statement I can't explain."

116. When asked if he obtained a third passport in 2006 as mentioned in his statement the Appellant explained:

> "This passport was renewal of the passport that I obtained in 2006 and there was another passport that was lost. That third passport was issued to me and was misplaced. It is also issued to me in 2002 and that passport was lost."

117. At this point of his evi, I noted that the Appellant was visibly paling and he told me:

> "I'm not feeling well and that's why I ask for a break. I am really shaking and I am not in good health. I need some fresh air to clear my head."

118. In acknowledging that the Appellant indeed did not look well, I granted this further break. Indeed I decided that it would be an appropriate moment to rise for the luncheon adjournment and that the hearing would resume at 2.15pm.

119. Upon the resumption of the hearing, the Appellant assured me that he now felt much better and was able to proceed with his evidence.

120. He explained that he was mistaken when he talked about obtaining a passport in 1996 in that he had become confused. In referring to the passport he now held in his hand the Appellant continued:

> "This is the only passport I have now. I mentioned about a subsequent passport that I call the third passport which got lost."

121. Upon cross-examination, the Appellant was referred to the various documents now produced and was reminded that this case went back to 2011 and that he had been legally represented ever since and that there had been two previous hearings where he had given evidence. He was asked in such circumstances as to why it was, that these documents were not produced until August 2014.

122. In response, the Appellant repeated that his former lawyer had not required him to produce the documents. It was only when he obtained new legal representation that he was asked for them. He had instructed his current solicitors in the latter part of 2013.

123. The Appellant was further extensively questioned about the history of his passports. It was put to him that one of the entries on page 2 related to a previous passport and bore a different passport number. He was asked to explain. The Appellant responded as follows:

> "I am unable to explain anything about that. This is the only passport I currently have and about the previous passport – I am not in a position to answer that question – this was my first passport."

124. The Appellant was reminded that the Secretary of State held documentary evidence showing that he applied to come to the UK in 2008. In that regard the Appellant was shown a copy of the relevant 2008 application details showing the application had been made to the BHC in Chennai. The application disclosed that the "biometrics" had been received on 25 September 2008 and; checks were completed on 29 September 2008. Further, that on 5 November 2008, an English check was performed. On the same date it was recorded that a visa was issued and in the "Notes" column the following was stated:

> "05/11/2008–11-10-43 … spouse eight days honeymoon trip/HGL conf and travel itinerary seen – M and A met by self – ap's own funds – good circumstances – satisfied genuine – originals checked by Colombo 05/11/2008."

125. There further appeared an application of the Appellant's purported wife Fathimanasrin Abdul Rozack.

126. Mr Avery continued that the Appellant had to go to the Embassy with some documentation with their application. The Appellant confirmed that to be correct and stated that he recorded it was in the year 2008 but he could not remember the date or the month.

127. He was referred to what he said about this matter at paragraph 7 of his statement although stating the year was 2009. The Appellant repeated he did not remember the month or the year.

128. The Appellant insisted that the only document that he provided to the agent was the photograph that he acknowledged was that which appeared on the 2008 application form. He could not remember the exact date when the photograph was provided.

129. As far as the election was concerned he remembered the date to have been May 2008 although he was not sure about the day.

130. The Appellant was referred to a copy of the passport that was attached to the application that showed it to have been issued on 22 April 2008 and it was pointed out to him that that was before the election, to which the Appellant responded that he was no longer sure about the date of the election. All he could say was "they took my photo but I cannot comment on the issue date of the passport or when that application was submitted to the passport".

131. The Appellant nonetheless acknowledged that it was difficult to reconcile the dates with his account. This was not because he was making up his story. He insisted "I told you the truth".

132. The Appellant was taken through his account of the circumstances under which the agent having first asked for a fee of 20 lakhs then increased it to 35 lakhs that his brother-in-law refused to pay. He explained that there were two reasons "firstly we were not in a position to raise that increased amount and secondly my brother-in-law told us that the situation in Sri Lanka was getting back to normal".

133. The Appellant confirmed that his brother-in-law was a businessman who owned a rice trading company. His brother-in-law took the view that he was already hiding in Colombo and he could therefore manage to remain in Sri Lanka. When it was put to the Appellant that given that his meeting with Maran postdated his arrest in Colombo in a round-up in 2011, it was difficult to understand why he should have considered himself to be in hiding if he had already been arrested by the police and had his ID examined, why it was, if he was being truthful about his problems in Kalmunai and from the Pillayan Group looking for him, that none of these things surfaced upon his arrest in the course of the round-up. The Appellant responded that was because the Colombo police were not aware of his activities in Kalmunai. The Appellant's problems only cropped up after his meeting with Maran who had informed upon him.

134. When asked as to how it was that he had known Maran before meeting him by chance in Colombo the Appellant explained that this was because:

> "I'd been supplying rice I came to know him. Maran was responsible for placing the orders. He would speak to me on the phone and instruct me to supply to certain people like Rohan and Kala …"

135. The Appellant continued that Maran was "responsible for buying and distributing rice and other food items". He had not mentioned Maran's role in buying rice from him in Colombo because he was not asked about his role and therefore did not elaborate.

136. The Appellant stated he did not know whether Rohan and Kala were members of the LTTE but that they possibly might be.

137. When asked as to why he had not mentioned Maran in the course of his asylum interview the Appellant explained "I was a bit tensed at the Home Office interview and may have forgotten to mention about Maran. I could not recollect him at the time. I failed to mention about him. That's all I can say".

138. When it was put to the Appellant that "the whole business of your arrest in February 2011 is just a fabrication" the Appellant responded "not so – it happened – that's why I explained about it and I told the truth. There was no need for me to fabricate anything. All that I have said was true".

139. There was no re-examination.

140. The Appellant then explained to me that Maradana was the district of the police station to which he was taken in Colombo.

141. The Appellant proceeded to further explain the circumstances of his detention and ill-treatment. He told me as follows:

> "There was a room they called "Investigation Room". I could see it written on the top of the door.
>
> I was questioned and interrogated in that room and then taken to another room to be detained. The other room was not far – an adjoining room. I had to walk through the corridor to another room – not far. That was the room I was held. I was held in that room for four days and beaten. Beaten in that room. I was alone."

142. When asked to describe the room the Appellant began to do so using his hands in order to be descriptive. He continued:

> "From this desk where I am sitting to the wall behind me and it was a square room. It had two large tables – about four metres – four by four. Only one chair. I could not sleep properly. I wasn't allowed to sleep. I was always asked to sit in that corner continually. Only when questioned would they switch on the light. I've got nothing else to say about that room.
>
> There were no windows. I could see over the door. An iron gate with a grille. When they were questioning me they would switch on the light and it was visible. It was like a cell door, not a wooden door."

143. In light of this further detail, I invited the parties' representatives to ask any further questions of the Appellant if they so wished.

144. In response Mr Turner asked if there were any other objects at all in the room. At this I recorded the Appellant became animated. He continued:

> "Yes. I could see these iron rods and metal poles and chains and other things with which they beat people. They were kept in the room. Near the wall in the corner in a cabinet. The front of the cabinet and grille so that I could see the rods inside. I couldn't count there were so many. Sorry only one cabinet. I cannot remember if they used any objects from the cabinet as I was unconscious – but I imagine they had used these weapons once."

145. In response to Mr Turner's further questioning, the Appellant confirmed that he was beaten in that room. When asked how many times, he stated he could not answer that question because he could not remember how many times. He was not beaten every day "but every day they were in and out questioning me – bullying me".

146. The Appellant recalled that he was actually beaten on two days, he thought the third and fourth days.

147. On further cross-examination, the Appellant stated he was detained for five days and that the beatings to his recollection he thought, was on the last day and the day before.

148. In that regard the Appellant was referred to paragraph 27 of his statement, in which inter alia, he had stated that he was questioned for five days and that it was on the sixth day of interrogation when he kept refuting their claims about his involvement with the LTTE and his reasons for being in Colombo, that the interrogating officer "then hit me hard on both ears". The Appellant had then proceeded to describe the ill-treatment that followed (see above).

149. It was put to him that the Appellant referred to six days and that it was on the sixth day that he was beaten and that this was completely different from what he had just stated in oral evidence. The Appellant responded that when he was taken to the police station he was questioned and that he now believed it was on the last day and the day before that he was beaten. The Appellant continued:

> "All I can say is that I was interrogated and on the last day I remembered being beaten with a metal rod and I remembered being beaten the day before as well."

The Evidence of MFA

150. MFA began his evidence by adopting as true and as part of his evidence his statement that was signed and dated by him on 4 August 2014 to which was attached a copy of his passport and the entries therein.

151. In his statement he gave his address (that I noted was the address given by the Appellant in his evidence) and that he was born on 7 July 1973. He was the Appellant's brother-in-law. He had arrived in the UK on 1 August 2014 and would be returning to Colombo on 8 August. He was a businessman in Sri Lanka and a wholesale supplier of rice covering the whole of Sri Lanka.

152. He had formerly lived in Kalmunai but had moved to Colombo with his wife and two children as well as his wife's two brothers and sister. This was because they were being harassed by the police because they wanted MS, the Appellant. The police would constantly come to the house asking for MS and as to his whereabouts. They would come at any time, day or night.

153. MFA explained that the Appellant used to supply rice to the LTTE and in 2008 he stood for local elections at the suggestion of the LTTE. He had lost the election and two days later was arrested by the police. MFA was not at home when the Appellant was arrested but was informed upon his return by his wife. The

Appellant was then released on the same day and told MFA that they had taken statements from him.

154. MFA's statement continued with his confirmation that the Appellant had never married and had no children. He had always been known by his name MTMS, the full details of which where spelt out in his brother-in-law's statement.

155. MFA continued that even though the family were living in Colombo the police continued to leave letters at the house in Kalmunai looking for the Appellant but that those letters were forwarded to him by a neighbour in Kalmunai informing him the police were still visiting the brother-in-law's address.

156. The statement continued that the Appellant was at home for the next two to three days before being arrested again by the police but that on this occasion MFA was at home. He asked the police why they were arresting the Appellant again and was told that they were taking him away as they wanted to question him some more due to his involvement with the LTTE.

157. MFA was worried for his safety and wellbeing and kept thinking what could be done to help him. He knew a police officer in Kalmunai whom he contacted to see if he could get the information and was told that the police were looking to keep the Appellant on remand. Following upon this information MFA became increasingly worried about the Appellant's safety and he went to the police station and spoke to the Chief Inspector of Police. Following that meeting the Appellant was released. MFA did not pay a bribe on this occasion because he knew the Chief Inspector. He thought that Chief Inspector decided to release the Appellant "out of respect for me".

158. MFA now understood the Appellant thought that he had paid a bribe to get him released however when he was arrested in Kalmunai MFA did intervene but paid no bribes.

159. MFA explained that after the Appellant's release, he understood from the family that the Pillayan Group visited the house looking for the Appellant. MFA was not there at the time but believed that the Appellant was also not there when they came to the house.

160. After this, the family decided for the safety of everyone, that it was best for the Appellant to go somewhere else. MFA then made arrangements for him to go to Colombo and he was able to stay with MFA's friend in Colombo for a while, before moving into the house that MFA owned in Colombo.

161. MFA's statement continued, that even before the Appellant was arrested in Colombo in 2011, he was still worried for his safety and was thinking that it was best if the Appellant were to leave Sri Lanka altogether to go somewhere safe. It

was for that reason that he spoke with an agent and made arrangements with the agent to try and get the Appellant out of Sri Lanka.

162. At paragraph 12 of the statement MFA continued:

> "I made an agreement with the agent for 2 million Rupees to get (MS) to anywhere in Europe but the agent said he would try and send him to London. At this time I did not pay the agent any money. The agreement was that after (the Appellant) reached Europe or wherever the agent was taking him then I would pay the money. The agent then told me that he needed photographs of (the Appellant) and that he would then arrange the necessary documents. As far as I understood it, the agent arranged for all the documents and he then took (the Appellant) to apply for a visa at the British High Commission in Colombo. However, the agent then told us that all the documents were ready and (the Appellant) was issued with a visa and he would take him out of Sri Lanka as long as we paid him 3,500,000 Rupees. The reason the agent gave the increase in his price was that it was not easy to arrange all this and he wanted more money. Neither (the Appellant) nor I saw any of the documents or the visa that was issued to him. (The Appellant) and I then discussed the increase in the agent's price and I told (the Appellant) that I could not afford the increase in fee that the agent was asking for and (the Appellant) agreed that he would remain in Sri Lanka, at that time. When I refused to pay the agent he kept all the documents."

163. MFA's statement continued that in 2011 the Appellant was arrested in Colombo. MFA was at work at the time when he received a call from his wife and told that the Appellant had not returned home. Due to the problems he had had before, MFA decided to go to the police station just to make general enquiries and when he got to Maradana police station and gave the Appellant's name and told them that he had not come home and was missing, "the police officer at the front desk checked their records and then told me that he has been arrested and that he was at the police station".

164. MFA's statement continued, that he came out of the police station and contacted his wife to tell her that her brother had been arrested and that he had spoken to the officers and was told that he was in trouble and it was unlikely the police would release him.

165. Thereafter MFA attended the police station daily to make enquiries, but they would not allow him to see the Appellant and he was constantly told that they were not going to release him.

166. Although he could not recall when it was, on one day, he spoke with an officer he had known before and was told "off the records that (the Appellant) had been badly beaten".

167. Through this officer, MFA managed to speak with one of the senior officers at the station to plead the Appellant's case to get him released. He met with this senior officer three or four times and when MFA realised that the only way to get the

Appellant released was to a bribe, he informed this officer that he was willing to pay him to get the Appellant released. MFA explained:

> "The reason I offered to pay a bribe is because this officer kept hinting during previous meetings that he may be willing to help release (the Appellant) if I paid him. I eventually agreed to pay him 500,000 Rupees (approximately £2,500)."

168. On returning home and obtaining the money to pay the officer, he met him again and was told that the officer would arrange for the Appellant to get out of the prison "somehow".

169. When MFA saw the Appellant after his release from prison, he was in a bad state. At paragraph 17 of his statement MFA continued:

> "He looked very disturbed and distressed and he was in a lot of pain and he had wounds on his back and legs. When I saw him I knew I could not take him to hospital as he would get in more trouble, therefore I got him some medication to help with the pain."

170. MFA continued in his statement, that following his release, the Appellant stayed with a friend of his. On the day of the Appellant's release, MFA received a call from the officer he had bribed, to confirm that the Appellant had been taken out of prison and was also told the Appellant should not stay at MFA's house and to try to get him out of Sri Lanka as soon as possible. The officer told MFA that the Appellant had been recorded as an escapee and that he would be in trouble if caught.

171. It was for that reason that MFA made arrangements with a different agent to try to get the Appellant out of Sri Lanka and to take him somewhere safe, anywhere in Europe, and it was this agent that made the necessary arrangements that brought the Appellant to the UK.

172. MFA's statement at paragraph 20 concluded as follows:

> "I further confirm that (the Appellant) recently contacted us in Colombo and asked us to locate his passport and driver's licence. Looking through his documents, I found the passport that was issued to him in 2001 and his Sri Lanka driver's licence. I then took these documents to a lawyer in Colombo who saw the original and made copies and provided a letter to confirm that he had seen the originals."

173. In oral evidence, MFA was immediately offered by Mr Turner for cross-examination.

174. When asked as to how he came to bring the documents on the previous hearing in August he responded:

> "I knew the appeal hearing was forthcoming and also because the police were looking for him in Sri Lanka, so I decided to bring these documents in support of his claim because he would be arrested if he was to return to Sri Lanka… He asked me if there

were any documents and if so I should bring them. This was a month before my last visit in July 2014."

175. When asked as to why he had not brought the Appellant's passport after that, occasion MFA explained:

> "When I was here last time, I learned that it was necessary for him to produce his passport – that is why on the second visit I decided to bring his passport."

176. MFA explained that he did not know what the Home Office's attitude was to the Appellant's claim to be MS. The Appellant's solicitors had not told him what documents to bring but he had got hold of the documents now produced. Whatever documents he could obtain he brought with him.

177. Further in cross-examination, MFA confirmed that to his knowledge the Appellant had been arrested twice in Kalmunai and that the recent arrests were at his address in Colombo.

178. MFA was aware as to the reason in terms of the authorities interest in him in Kalumnai, because the Appellant was running a rice mill that he owned and had been supplying rice to the LTTE. The police had thus assumed that he had some links with the LTTE.

179. When asked if MFA had tried to arrange for the Appellant to come to the UK before he arrived here in 2011, MFA confirmed that he had. It was however his recollection that it was in the same year in 2011 but they were unsuccessful but on the second occasion it was successful. As to the first occasion he did not remember the date or month because "It was some time ago". He did however recall the second time was in March 2011.

180. When asked why the arrangements had not worked the first time, the MFA repeated what he has said in his statement and indeed consistent with what had been described by the Appellant in his evidence and written statement though of course, there was a difference in the recollection of the year.

181. MFA confirmed that the agent had taken a photo of the Appellant and he also recalled the agent taking the Appellant to the Embassy on the first occasion. The agent had done everything MFA had asked in making an application for a visa. He did not however know what type of visa he had obtained. MFA's concern was only that the Appellant should get out of Sri Lanka.

182. MFA repeated that to the best of his knowledge and recollection the first attempt was in early 2011.

183. But when it was put to him that the Appellant had stated that the first attempt was in 2008 MFA responded:

> "He has had problems in 2008 – that is true. After that in 2011 he left the country."

184. MFA insisted that it was not until 2011 that the Appellant came to the United Kingdom. He stated "It's a fact".

185. When asked if he was in any way involved in an attempt by the Appellant to gain entry clearance to the UK in 2008 MFA responded:

> "I tried many times to send him abroad for his safety and I have been trying since 2008."

MFA could not remember if he had sought out an agent for help in 2008.

The Parties' Submissions

186. Despite the lateness of the hour, I informed the parties that I was content to hear their respective submissions in order to bring the hearing to its conclusion.

187. In the event and in the course of Mr Avery's closing submissions, Mr Turner intervened, to say that given the time and the tenor of Mr Avery's submissions, he asked on reflection, if he could instead provide his submissions in response, in writing in relation to which he undertook to have them delivered to me immediately following the weekend. Mr Avery stated that he was content with this and I agreed that he should nonetheless continue to conclude his submissions to me.

188. At the close of Mr Avery's submissions, I informed the parties, that upon my receipt and consideration of Mr Turner's written submissions, I would proceed to prepare and determine this appeal.

189. Mr Avery relied on the Secretary of State's Letter of Refusal and Mr Melvin's written submissions which predated the new evidence. He continued to maintain that the Appellant and his witness were "completely incredible" and that their accounts were "completely fictitious". Their evidence was contradictory.

190. Mr Avery continued that by way of example, the Appellant's evidence over his passport was "a complete shambles". His oral evidence was not consistent with what he had said in his statement as to his passport.

191. This appeal had been in litigation since 2011 and there had been substantive hearings twice before August of this year when extra evidence was produced.

192. Mr Avery submitted the Appellant had a fundamental problem in that he applied in 2008 for entry clearance. The ECO had checked all his documents. He had gone to the British High Commission himself. He had done the biometrics and all the documentation presented was found to be in order. It was noted that the Appellant's case was that all the documentation was false.

193. On the contrary submitted Mr Avery, it was the subject of a thorough investigation of the facts that led to the grant of entry clearance to the Appellant in what the Secretary of State maintained was his true identity as KM.

194. The problem was that one set of documents the Appellant had produced, must be false and thus the Appellant had a credibility problem.

195. Whilst he anticipated that Mr Turner would submit that there was no evidence that the Appellant entered the UK in 2008 as KM, Mr Avery maintained that the reality was, that there was evidence that he obtained an entry clearance as a visitor. It was unlikely that the Secretary of State would have kept a record.

196. Indeed Mr Avery told me that he had taken the trouble to investigate the matter and there was no such record. He maintained however that "If you obtain entry clearance as a visitor, the fact is, that unless there is something that raises a suspicion on behalf of the Immigration Officer, it is unlikely he would bother to keep a record."

197. Mr Avery continued that the dates for the visa application in 2008 and the passport used for that, were issued prior to the election taking place that the Appellant claimed was the trigger for his initial problems with the authorities in Sri Lanka. According to the documentation the passport was issued on 22 April 2008. The elections took place on 10 May. It was highly significant, in that whatever was going on had nothing to do with elections and that this completely undermined the Appellant's account of the problems he claimed to have had that forced him to move to Colombo.

198. Mr Avery submitted that on the Appellant's own evidence, when he was first arrested in Colombo, the authorities completely failed to link him with any problems in his home area even though his ID card would have shown from where he hailed.

199. The Appellant had described in some detail in his evidence when initially interviewed, his involvement in supplying rice to the LTTE. He had mentioned two people, apparently in the LTTE with whom he had contact in connection with this supplied rice, but despite saying in his oral evidence that this was how he knew the man Maran, whom he claimed had informed on him, the Appellant had completely failed to mention this in his account of his dealings with the LTTE. This, submitted Mr Avery, was hard to explain as to why the Appellant would not mention the person who was responsible for his arrest and would fail to mention any previous dealings with him, when he had given his account of those dealings.

200. Mr Avery continued that there was then the issue as to why the Appellant would tell Maran he was in hiding when clearly he was not, because he had earlier been arrested and released.

201. Mr Avery continued that there was then "the thorny issue of the Appellant's ill-treatment". He maintained that the Appellant's oral evidence was inconsistent with itself. At one stage the Appellant had stated he was beaten on the third and fourth days of detention, then the fourth and fifth, then the last day before released and in his statement, the sixth day and this statement did not mention any other beatings.

202. Mr Avery submitted that setting aside the issue of the entry clearance, the evidence of the Appellant's claimed difficulties in Sri Lanka were not credible.

203. Mr Avery continued that there was a clear problem with the evidence of the Appellant's brother-in-law in that he was clear that in 2011 he had made two attempts to get the Appellant to the UK. The first of those mentioned in the description and the problems that the Appellant described had taken place in April. The only answer the brother-in-law had given on that point was clearly not credible. Whilst one could expect some variation of the date "we are talking about the year here".

204. Mr Avery submitted that apart from the general issue regarding documentation, there were also other notes said to be of the police notes produced which despite the fact that the Appellant was arrested twice in Colombo and on his evidence the second time he was detained for a significant period of time and only released on a bribe, the police were apparently still looking for him in Kalmunai. This submitted Mr Avery simply made no sense.

205. Mr Avery submitted that the fact was, that the Appellant's evidence was "completely at odds with the documentary evidence". The Appellant was not a credible witness and this must impact on the weight to be attached to the documents that he had produced. In that regard Mr Avery referred me to the guidance in Tanveer Ahmed.

206. Mr Avery continued the Appellant had two sets of documents one of which clearly followed. The Secretary of State continued to maintain that he was not MS but KM and that it would follow that his account of events in 2011 could not be true, because the Secretary of State maintained that in that period, the Appellant was in the UK having arrived here some time in 2008.

207. Mr Avery concluded that even if I accepted that the Appellant was MS as claimed, his account still did not stand up to scrutiny. The Appellant was still an incredible witness and indeed the medical evidence had to be regarded in that light. The Secretary of State continued to maintain that the scars that the Appellant bore were self-inflicted.

208. When I enquired of Mr Avery whether he had put that fact to the Appellant in the course of his lengthy cross-examination, Mr Avery responded "I put it to him that his account was not true".

209. True to his word, Mr Turner's "supplementary submissions" were received immediately following the weekend and I have taken the opportunity to carefully consider them. As they were described as supplementary, I would point out that I have also thus taken account of the prior skeleton argument authored by his colleague Ms Physsas dated 6 August 2014.

210. In summary, her contention was that the Appellant's account was consistent with the background material and the country guidance. Further that the medical reports by Mr Martin and Professor Lingam corroborated the Appellant's account of torture. There was no evidence that the scars were caused by a third party with consent.

211. Ms Physsas had referred to the relevant risk categories as identified in GJ (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC) and clarified in MP and NT (Sri Lanka) [2014] EWCA Civ 829.

212. In Mr Turner's supplementary submissions he pointed out this was a case that turned on credibility. It was the Appellant's case, not least for the reasons set out in Ms Physsas' skeleton argument that, if found credible, as Mr Turner submitted the Appellant should, that he would be at risk if returned to Sri Lanka and nothing in the Reasons for Refusal Letter nor Mr Melvin's skeleton argument and Mr Avery's submissions, undermined that submission.

213. Whilst there were some discrepancies in the Appellant's evidence and indeed that of his brother-in-law, these were not of a magnitude that ought to lead to an adverse credibility finding.

214. Whilst it was the Secretary of State's case, indeed a key plank in her case, that the Appellant's account was untrue and that the scars must have been self-inflicted with his consent, there were two medical reports that pointed to the scars being inflicted and being consistent with the Appellant's account.

215. The Secretary of State had never questioned the Appellant on this issue and certainly did not put to him that he had commissioned the scars, but simply that the Appellant's account was a fabrication.

216. As to the Appellant's true identity, the Secretary of State was unable to state whether the documentary evidence provided both in respect of his identity and from the police was false. The Appellant had provided sufficient evidence to show to the relevant standard of proof that he was who he claimed to be. There was no real challenge to the veracity of those documents.

217. It was clear that it was more likely than not that the Appellant entered the United Kingdom in 2011 rather than 2008.

218. In conclusion, this was a case in which there was in addition to the oral evidence, a wealth of documentary evidence, to establish not least to the relevant standard, that the Appellant was whom he claimed to be and that he arrived in 2011 and that his account of ill-treatment by the Sri Lankan authorities was credible. I was invited to attach significant weight to the two medical reports. It was submitted notwithstanding the difficulties with aspects of the Appellant's evidence, that he should be found credible and that his appeal ought to succeed.

The Legal Framework

219. The burden of proof is upon the Appellant to a standard defined as a reasonable degree of likelihood. The question is answered by looking at the evidence in the round and assessing it at the time of the hearing of the appeal. It follows that in considering the Appellant's particular circumstances, I have to consider to the requisite standard of proof, whether on return to Sri Lanka, the Appellant has established a well-founded fear of persecution under the Refugee Convention and whether on return there are substantial grounds for believing that he would face a real risk of suffering serious harm within the meaning of 399C of the Immigration Rules and/or whether there are substantial grounds for believing that on return the Appellant would face a real risk to his life (Article 2 of the ECHR) or being exposed to treatment contrary to Article 3 of ECHR. The standard of proof in determining the likelihood of risk of the Appellant's protected rights under Articles 2 and 3 is the same low standard as it is for persecution for a Refugee Convention reason.

220. In reaching my conclusion, I have borne in mind the provisions of paragraph 339K of the Immigration Rules that deals with the approach to past persecution and paragraph 339O relating to internal relocation.

221. In terms of my credibility assessment, I have reminded myself the fact that an Appellant's account might appear inherently unlikely does not mean that it is untrue. In real life the improbable, even the incredible, sometimes does happen (see Gheisari [2004] EWCA Civ 1854).

222. Upon my consideration of the documents the Appellant has submitted in support of his account, I have been mindful of the guidance within the starred decision of the Tribunal in Tanveer Ahmed [2002] UKIAT 439 as to the approach that a decision-maker should take as to the reliability of documents. It would be an error of law for that decision not to be followed and considered in all those very many cases, indeed the very considerable majority, where the issue is not whether the document in question is forged or authentic but whether it is reliable or not. This direction is vital. The document produced might be on the right paper, even with the right stamp or a signature but might be unreliable because of the way in which it was, for example, procured.

223. I have reminded myself that in general, the weight, if any, to be given to expert evidence is a matter for the Judge and such evidence must be approached with appropriate care.

224. I have also been mindful of the guidance of the Tribunal in KV (Scarring – medical evidence) Sri Lanka [2014] UKUT 00230 (IAC) who inter alia observed that as was clear from a number of authorities, whilst it was not the role of a medical expert to assess the credibility of a patient's asylum claim, it was part of their role to assess clinical plausibility. In the context of a medical report, a doctor's task was to assist the asylum decision-maker by bringing to bear his or her medical expertise. He or she was not conducting a free-ranging assessment as to the credibility of the claimant's story. This point is equally reinforced by established case law.

225. The Tribunal pointed out, that the production of a favourable medical report did not create a shift in the evidential burden of proof, but was capable of being probative of an asylum claim.

226. Courts and Tribunals greatly valued medical reports in asylum cases. They could not be accorded some hallowed status and the weight they possessed was very much a function of the extent to which the clinical evidence enabled them to make positive findings about causation of injuries as well as the individual quality they possessed.

227. In terms of scarring, when preparing medico-legal reports, a doctor should not feel obliged; to reach conclusions about causation of scarring that went beyond their own clinical expertise. It was necessary to consider all possible causes of scarring.

228. Whilst if best practice was followed, medico-legal reports would make a critical evaluation of the claimant's account of scarring said to have been caused by torture, such reports could not be equated with an assessment to be undertaken by decision-makers in a legal context, in which the burden rested on the claimant and when one of the purposes of questioning was to test a claimant's evidence so as to decide whether (to the lower standard) it was credible.

229. The Tribunal further observed that the Istanbul Protocol as revised in 2004, had come to occupy a central role in cases in which medical evidence was sought to support claims made by asylum applicants, that they had been ill-treated by the authorities in their country of origin.

230. In paragraph 17 of KV and in relation to assessment of physical scars or lesions, it was stated at paragraph 187 of the Protocol, that there were five degrees of consistency in an ascending scale:

> "For each lesion and for the overall pattern of lesions, the position should indicate the degree of consistency between it and the attribution:
>
> (a) not consistent, the lesion could not have been caused by the trauma described;

(b) consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes;

(c) highly consistent: the lesion could have been caused by the trauma described and there are few other possible causes;

(d) typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes;

(e) diagnostic of: this appearance could not have been caused in any way other than that described."

Assessment

The Medical Evidence

231. I begin with the report of Professor S Lingam dated 18 June 2011.

232. Professor Lingam describes himself as having worked over the seven years up to the date of his report as a First Contact Physician in Harley Street and that he is the Executive Medical Director of Medical Express Clinic. For this reason he did two masters (MSc) modules in Neurology and in Musculo-skeletal Medicine that included trauma medicine.

233. Over the years he has specifically trained himself in medico-legal report writing. He belonged to the Medico-legal Society and attended meetings at the Royal Society of Medicine. He stated that he was also "trained by the Judiciary on industrial injuries and on recognition of dating scars and injuries" and that he had been sitting as a panel member on industrial injury cases and had acquired in-service training and experience. He examined patients (Appellants) to assess industrial injuries at the Appeals Tribunal. Two years prior to his report, he was appointed as a Regional Medical Appraiser and stated that he did appraisals of other doctors working for the Tribunals Service.

234. I note from Professor Lingam's thorough and detailed report, that it includes colour close-up pictures of the Appellant's scarring to illustrate the clinical presentation and features of the scars.

235. Under the sub-heading "Causation and Consistency" Professor Lingam in summary considered inter alia that:

> "The appearance of these eight scars which are all hyperpigmented indicate that the injury was caused by beating and lacerations as a result of such beatings. … The scars on this patient are typical of scars from severe beating and laceration. … The bruises here … indicate that the primary event is beating causing superficial lacerations. This finding is clinically typical with the history provided. The appearances of course are

typical for scarring as a result of beating leading to superficial lacerations (it is for this reason I have come to the conclusion that the primary event is beating). …

The typical scar appearance of beating is clearly evidence in each of these scars so on clinical grounds, I have to conclude that beating or skin laceration is the primary mechanism of these scars. This is based on the finding of hyperpigmentation ………………… without hyperpigmentation in all the scars which is so typical of healing in wounds caused by beating and/or superficial laceration, and cannot be anything else. This I base on my own clinical experience and on reading the literature. As the scarring is within the last six months, i.e. the patient having stated they were caused some four months ago, after a careful and both clinical examination of the scarring, I am of the clinical view, after assessing the pigmentation and healing process of the scars, that the patient's account of the scars being caused some four months ago is typical with the age of the scarring.

I am confident on a clinical basis to reach the conclusion that the primary event causing the scars are the beating and superficial laceration as described. This is based on the typical appearance of the scars."

236. I pause there, because although mindful that this report predates the guidance in KV (above), it would appear to have been prepared in accord with the five degrees of consistency in an ascending scale as stated at paragraph 187 of the Istanbul Protocol.

237. In summary, it would appear that Professor Lingam concluded that his examination of the Appellant's scar was in accord with (c) namely that the lesion could have been caused by the trauma described and there were few other possible causes.

238. My view in this regard is reinforced by the fact that Professor Lingam continued by considering whether there might be alternative causes for these scars. In that regard he explained why he "ruled out the possibility of self-inflicted injuries because some of the scars the areas are located in areas which are not reachable by him particularly the scars on the back".

239. Secondly, the Professor considered whether the scars were caused deliberately to mislead. Again he stated "I have ruled that there is no way that I can scientifically differentiate between wounds inflicted deliberately from the wounds inflicted from the said trauma." Thirdly, the Professor then considered if these were caused by a medical condition or a surgical procedure. In that regard he stated "I have clinically ruled that no medical condition could have caused the scarring described in this report."

240. Professor Lingam continued that he had also explored the Appellant's personal history and whether he could have sustained such scarring during his ownership and involvement with the family's rice mill. He had not been provided with any such history of accidents or injuries during the Appellant's involvement nor had he been provided with any history of accidents at home or while studying.

241. For the avoidance of doubt, Professor Lingam then referred to the terminology used in his reports as per the Istanbul Protocol as I have identified above. Notably Professor Lingam continued:

> "In conclusion therefore the findings are clinically highly consistent with injuries due to superficial lacerations from beatings and healing by natural means. I have considered the scars from other causes as discussed but in balance I consider that these scars are from the trauma as explained by the patient."

242. Such a conclusion accorded with (c) of the Protocol. Professor Lingam further pointed out that his interview and examination of the Appellant lasted nearly three hours. He continued:

> "I noted that the patient was very slow to respond and very vague at answering questions. This is not due to a cultural or language issue but I came to the opinion this may be due to poor memory and concentration featuring as part of his stress."

243. The Professor reaffirmed in his conclusion that "The scars from his beating are typical with the history provided by the patient. I could not explain these other than by the traumas as described in this report."

The Report of Mr Andres I Martin Consultant in Emergency Medicine Dated 10 July 2014

244. This report followed Mr Martin's examination of the Appellant on 26 June 2014.

245. Mr Martin is a fellow of the Royal College of Surgeons of Edinburgh and a fellow of the College of Emergency Medicine both obtained in 1996. He has considerable surgical experience not least in plastic surgery and in the burns unit at Queen Mary's Hospital, Roehampton and describes the fact that he has intensive care experience and holds postgraduate qualifications in surgery and emergency medicine. He enrolled with the Joint Committee of Higher Medical Training in February 1998 and achieved full accreditation in emergency medicine in January 2002. He is currently on the GMC specialist register.

246. He describes in his CV that he has broad general training in surgery with particular experience in fractures and plastic surgery including wounds, burns, soft tissue injuries, fractures and head injuries. Mr Martin is currently the Clinical Director of the Emergency Medicine Services at the Royal Free Hospital. He states in the medico-legal field his principal areas of interest are head injuries, soft tissue injuries and sprains including whiplash injuries, wounds, burns and fractures. Further he has acquired a substantive experience in preparing medico-legal reports on cases of allegations of torture. He has seen hundreds of cases and is able to compare patterns and different mechanisms of injury able to give an expert opinion on their causation. He has also periodically researched the literature in this field to keep up-to-date on latest developments.

247. Mr Martin began his report by dealing with the examination of the seven scars to the Appellant's back and to what he described as "faint oblique elongated scars" to the Appellant's lower limbs.

248. Mr Martin considered that the appearance of the scars was

> " .. typical of injuries caused by being intentionally beaten with relatively long narrow blunt implements as described by the claimant… these scars cannot be explained by skin infections or other inflammatory skin condition considering the possibility that the injuries were caused by stain or skin diseases I have ruled this out. It is extremely unlikely that they were related to accidental injuries from any known professional or training (e.g. military) activities in view of being sited on the back – a usually clothed area, similar appearance to these scars which suggests similar implement, with multiple significant number of scars on different directions; all these features strongly suggest a non-accidental cause. In my opinion the most likely cause is an intentional one; hence the scars are typical of the description of events by the claimant and this could have been caused in two ways:
>
> - Self-inflicted injuries – in my opinion less likely in view of the position of some of the scars, in areas difficult to self-reach.
>
> - Caused by a third party – this is the most likely cause however from inspection of the scars it is scientifically impossible to differentiate self-infliction of injuries by proxy (SIBP) from injuries caused by torture. Although SIBP as a possible cause cannot be discarded has been considered, there is not presenting a fact making it more than a possibility. Also these are not scars that are typical of any religious or cultural rituals and they were not caused by any surgical procedure…
>
> Determining the age of the scars by just visual inspection is not scientifically possible with exact precision and often there is just possible to say that the injuries are mature or immature, enough to give a very approximate range of time when the injuries could have been caused. The scars appear with a degree of maturity consistent with injuries that were caused more than one year ago."

249. In his conclusion Mr Martin stated as follows:

> "The scars on the back and limbs are typical of the events described by the claimant of being intentionally beaten. Following the recommendations in Chapter V, Section D, Paragraph 188 of the Istanbul Protocol where it states that 'ultimately it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story', overall my expert opinion is that the injuries were typical of intentionally caused. This is highly consistent with the injuries that were caused by being tortured as described by the claimant'.

250. It would appear therefore that in common with the earlier report of Professor Lingam, (that was of course following the examination closer to the events the Appellant had described) that Mr Martin had also found in terms of paragraph 187 of the Protocol, that in an ascending scale, the examination of the Appellant's scars

fell within (c) namely highly consistent in that the lesion could have been caused by the trauma described but there were few other possible causes.

251. I have found the professional credentials of both Professor Lingam and Mr Martin to be impressive. Indeed, Mr Avery, other than briefly inviting me to find that the Appellant's scars were self-inflicted, said nothing to the contrary in his closing submissions.

252. Whilst I take the point made by Mr Melvin in his earlier skeleton argument, that Professor Lingam had "overstepped his scarring expertise in opining that the Appellant's vagueness in answering questions may be down to stress", I do not accept his submission that Professor Lingam's report failed to undermine the Secretary of State's view that the Appellant was without credibility in his claim and had arranged for scarring to enhance an otherwise weak asylum claim. Mr Melvin had also submitted that the fact that no attempt had been made to obtain a medical report from an expert, as he put it was "indicative of the causation claimed for the scarring being false". Such an assertion either overlooks Professor Lingam's report or would imply that I should attach little if any weight to it. If the latter then it is a contention that I most certainly do not share. However and through no fault of Mr Melvin, subsequent to the submission of his skeleton argument, there was produced at the hearing before me in August 2014, the further report of Mr Martin (above referred).

253. It is indeed apparent from both Professor Lingam and Mr Martin's reports that in their assessment, full cognisance was taken of the requirements of the Istanbul Protocol. In particular both made mention in their reports to the five degrees of consistency in an ascending scale in relation to the assessment of physical scars or lesions as set out at paragraph 187 of the Protocol to which I have above referred.

254. Upon a careful consideration of their reports as a whole, I find that I can attach significant weight to them. I find that they are indeed detailed and give a careful and balanced consideration to the scarring on the Appellant's body and its likely causes.

255. Both experts concluded that the Appellant's scarring was diagnostic, typically highly consistent and consistent with the claimed causes in accordance with the Protocol and they also each gave consideration to alterative causation. As required by the Istanbul Protocol, both experts gave an overall evaluation and concluded that there was a substantial likelihood that the Appellant was subjected to the violence claimed. I am satisfied that the approach that they adopted was in accordance with the Istanbul Protocol.

256. I am further satisfied that their respective reports provide independent evidence of the Appellant's scarring.

257. It is also apparent to me, that in accord with the guidance in KV, both experts considered all possible causes of the Appellant's scarring. I am thus wholly satisfied that the manner of their reports was entirely consistent with that set out in the guidance in KV where both experts were clear that it was, in effect, highly unlikely that any of the Appellant's scars examined could have been self-inflicted and so I find.

The Appellant's Credibility

258. Within my assessment of the credibility of the Appellant's account, I am mindful that in the case of R (On the application of AM) v SSHD [2012] EWCA Civ, at paragraph 29, where it is found that the scarring report(s) provides independent evidence of an Appellant's scarring and in particular some of the scars were consistent with deliberately inflicted injury, then a judge has to ask himself, "If they were deliberately inflicted, who had inflicted them".

259. Mindful of the significant weight that I have attached for the reasons above stated to the reports of Professor Lingam and Mr Martin, and mindful of aspects of the guidance of their Lordships in AM, see also paragraph 30 of their judgment, I have had no difficulty not least to the lower standard of proof, in concluding that I find to be credible the Appellant's account of his detention in Kalumnai and subsequent torture at Maradana Police Station, that he described. The extent to which it impacts on the Appellant's vulnerability on arrival at the airport, is a matter that I will later consider in this determination.

260. My findings as to credibility of the Appellant's account in this regard are reinforced by the following:

261. In the course of his lengthy cross-examination, the Appellant was asked to give specific details as to the circumstances of where he was detained, where he was taken to be tortured etc. This was not a question about which he had been put on notice. It was not a matter to which he had referred in his previous written statements. Nonetheless, the Appellant proceeded (as I have set out verbatim earlier in this determination) to provide a closely detailed description of such matters. He did so without hesitation and his animated recollection of those events, was such as could only have been given by a witness of truth.

262. I am reminded that in HK [2006] EWCA Civ 1037 it was held that instead of asking whether an account was inherently implausible, one should look at the evidence and ask oneself, has the Appellant's account been consistent e.g. through the interview and subsequent statements in oral evidence? Is it consistent with the background material and any expert or medical evidence in support? And is that evidence of good quality? That is the approach that I have taken in my consideration of the credibility of the Appellant's accounts and claims. I have also reminded myself that in RR (Challenging evidence) Sri Lanka [2010] UKUT 274 (IAC) it was held that in a case where there are obvious but not necessarily

determinative difficulties in an Appellant's oral evidence, the Tribunal was likely to be helped considerably by independent expert evidence that supported the Appellant's story. In that regard and for the reasons above stated I have been significantly assisted not only by the independent expert evidence of Professor Lingam and Mr Martin but also that of the Appellant's brother-in-law, in support of the Appellant's account.

263. I have also ensured, that full and careful account be taken of the guidance of the Tribunal in GJ and Others, a decision subsequently approved by the Court of Appeal in MP (Sri Lanka) and I have applied the guidance in GJ against the backdrop of the facts as I have found them.

264. I have already found that the Appellant's account of his detention and torture is not least to the lower standard of proof, entirely credible.

265. I have already referred to the fact that I have reminded myself of the guidance in Ghesari (above).

266. I appreciate not least in terms of the discrepancies in the Appellant's evidence identified by Mr Avery in his closing submissions, that in a number of ways, the Appellant was an unsatisfactory witness, but he has marks on his body and the medical evidence concludes that it is wholly consistent with his account of how they were sustained. I find that the Respondent has failed to undermine the Appellant's account as to how he sustained those injuries in the way that he described, and the basis of the Respondent's challenge is in effect, that he could not have been detained and ill-treated in 2011 in Sri Lanka, because at the relevant time he was not MS as he claims but KM who came here as a visitor sometime in 2008 and has remained in the United Kingdom ever since.

267. It has been a key plank, as rightly submitted by Mr Turner, of the Respondent's case, that the medical evidence cannot be relied upon and that the Appellant's scars were self-inflicted. The fact is however that Mr Avery a highly experienced officer and in a lengthy cross-examination of the Appellant, he never specifically questioned or challenged the Appellant on this issue and did not put to him that the Appellant had in fact commissioned the scars. With great respect to Mr Avery, it is not sufficient in such circumstances, simply to put to the Appellant in a generalised way, that his account was a fabrication. The fact is, that the failure on the part of the Presenting Officer to specifically address this issue within his cross-examination of the Appellant, denied the Appellant the opportunity to address these concerns.

268. As to the Appellant's true identity, the Appellant submitted an abundance of documents both in support of his claim for asylum and to rebut the Respondent's allegation that he was not whom he claimed to be. Indeed those documents included that of a lawyer in Sri Lanka, whose credentials were never challenged by the Respondent, who confirm their genuineness.

269. In my view there needed to be a reason of real substance in order to doubt the veracity of the documents produced.

270. Whilst it is undoubtedly the case that false documents are widely available in Sri Lanka, here apart from the documentation itself, was a letter from an attorney in Sri Lanka confirming that they were genuine and that he had seen the originals.

271. These were documents that lay very much at the centre of the Appellant's application for protection because it was maintained by the Respondent that he must have fabricated his account, because he was never in Sri Lanka in 2011 and was KM who arrived here in 2008.

272. The Respondent has not stated in terms whether the documentary evidence provided both in respect of the Appellant's identity and from the police was false.

273. As Mr Turner rightly submitted, this was of particular importance in this case, given that Mr Melvin on behalf of the Secretary of State at the hearing before me in August 2014 told me that steps would be taken to have the veracity of the documents checked and indeed this was one of the highly persuasive reasons, that led me to grant his request to adjourn the hearing. That adjournment was despite the fact that the Appellant's brother-in-law had taken the trouble and at personal risk and expense, to come to the United Kingdom in order to give evidence in support of and in corroboration of the Appellant's account of his past experience in Sri Lanka and as to his true identity. I would agree with Mr Turner in such circumstances, that the failure of the Respondent to show that the documents were not genuine in this particular case supports the Appellant's account. Indeed it would appear from what Mr Avery understood to be the position, that there had only been a failed attempt in the interim, to check upon the validity of the Appellant's driving licence. I find it concerning and unacceptable, that despite the fact that some 12 weeks having transpired between the adjourned and restored hearing ,that the explanation offered for this failure, was due to "a lack of time".

274. The documentation produced by the Appellant in August 2014, comprised his original driving licence, a certified copy of his passport, the letter from the Sri Lankan attorney, the Deed of Gift and the Police Message Reports. That evidence was supplemented by the production of the Appellant's original passport brought by his brother-in-law from Sri Lanka for the purpose of the hearing and his Birth Certificate.

275. Other than in generalised submissions, I did not detect any real challenge to the veracity of these documents.

276. Further whilst the Secretary of State maintained that the Appellant was in fact KM who entered the United Kingdom in 2008, no evidence has been provided to me such as entry records or indeed exit records to demonstrate that such a person entered the United Kingdom in 2008. Mr Avery to his great credit, had taken the

trouble prior to the hearing, to make enquiries in that regard that proved to be negative. He explained it was only if something aroused the suspicions of an Immigration Officer that a record would be kept.

277. Mindful of the observations (in emphasis) of Rix LJ (see paragraph 34 above) and in the absence of any evidence from the Respondent that KM entered the United Kingdom in 2008 including landing cards, and in light of my careful consideration of the oral and documentary evidence to the contrary (not least the documentation that the Appellant has produced as to his true identity, that I consider to be reliable and upon which significant weight can be placed) I agree with Mr Turner and indeed find, not least to the lower standard of proof, that in consequence the Appellant's true identity, is, as he has always claimed, that of MS. I find it surprising and in the context of this case regrettable, that the Secretary of State does not keep records of people who enter the United Kingdom even though they would have been expected to have completed appropriate landing cards which provide the record of their arrival. Nevertheless, Mr Avery has explained the circumstances in which such records are not kept and thus this possible means of testing the Appellant's story is in consequence not open to me.

278. I am mindful of the position that was taken by the Respondent in her Letter of Refusal as to the existence of the Independence Party, but I have not had the opportunity of hearing the appellant's answer to the points raised, save and insofar as he has related his account in this regard within his recent statement. It would appear that Mr Avery did not consider it was an important enough element of the case to raise either in his lengthy cross-examination of the Appellant or in his closing submissions, save to the extent that he informed me at the outset of his submissions, that he relied on the reasons in the refusal letter. I find it not surprising that there is little or no evidence about the Party. It is the appellant's case that the party was an ephemeral thing, designed to continue the work of the LTTE that in the event, did not find favour with the local electorate. The point made in the refusal letter is made well, but I have considered it within my assessment of the evidence in its totality and have concluded to the lower standard, that this aspect of the appellant's account, not least placed in the context of my findings in relation to the evidence as a whole, is credible.

279. There was indeed confusion in terms of the Appellant's evidence concerning his passport but nonetheless he had taken the trouble of producing the original. He finally explained to my satisfaction, the situation with regard to that passport and a subsequent one that he lost.

280. Whilst I appreciate Mr Avery's submission that the date on the passport predated the election the Appellant claimed to have undergone on behalf of the Independence Party, the evidence of the Appellant was that it was the agent that obtained the passport and there was no evidence as to how or in what circumstances it was obtained.

281. I would agree with Mr Turner upon my careful consideration not only of the Appellant's oral evidence but also the documentary evidence before me and mindful of the evidence of the Appellant's brother-in-law that I will shortly address, that any confusion in his evidence in this regard was innocent rather than dishonest. I am also mindful that in the course of that passage of the evidence both before and after the luncheon adjournment, the Appellant had expressed himself to be unwell and dizzy in relation to which I had given him various breaks to get some fresh air. As I have recorded earlier in this determination, from my own observations, it did appear to me (although I do not claim to have any medical expertise) that he was indeed unwell and this may well have contributed to his confusion.

282. Mr Turner rightly makes the point that if the Appellant had entered in 2008 this would beg the question as to why he would not have made a claim then rather than wait for three years. The background material shows that the situation in Sri Lanka was certainly more volatile in the run-up to the defeat of the LTTE in 2008 than in 2011.

283. My conclusions as to the credibility of the Appellant's account and as to his identity is not only reinforced by the matters that I have identified above that includes the wealth of documentary evidence placed before me as well as the medical evidence, but to the fact, that on no less than two occasions, the Appellant's brother-in-law had gone to considerable expense and inconvenience to take the trouble of travelling from Sri Lanka to this country in order to give his account in support of the Appellant's account and bring with him documentary evidence by way of further corroboration both of the events that the Appellant has described, and as to his true identity.

284. I have concluded that the Appellant is not someone caught out for telling a lie, but somebody incapable of telling his story consistently. If the Appellant is a liar, then he is a very bad one. Whilst there are aspects of his evidence that can be considered to be unreliable they are not matters that I find are the consequence of dishonesty and I have decided the case more in the light of the objective and background evidence.

285. In that regard I appreciate that the Appellant described in his evidence his failed attempt to leave Sri Lanka in 2008. He described the basis upon which he went to the British High Commission having supplied a photograph to his agent and acted on his instructions. He described how there was a woman there whom he was told was to pose as his wife and then he explained in great detail indeed consistent with his written statement, as to how there was a fallout between the agent and the Appellant's brother-in-law who had engaged the agent's services over the question of the agent's fees. The agent had initially stated that the fee would amount to 20 lakhs but subsequently claimed that it should be increased to 35 lakhs. There was a consistency between the evidence of the Appellant and that of his brother-in-law before me as to those events. The clear difference between them was that it was the

Appellant's evidence that this took place in 2008, whilst it was the Appellant's brother-in-law's recollection that it took place in early 2011.

286. A particular difficulty in the Appellant's account, is that the Secretary of State insists that he applied for entry clearance to come to the United Kingdom as a visitor with his "wife" in 2008. The Appellant does not have a wife and indeed this is confirmed in the evidence of his brother-in-law. There is no record of his having arrived in the United Kingdom in 2008. The Appellant does admit that following on the instructions of the agent who made all the necessary arrangements in 2008, that he applied under a false name for entry clearance, although the details of his identity, passport etc. were not matters in the Appellant's direct knowledge. He simply had provided a photograph of himself on the agent's instructions. In the event he says he did not enter the United Kingdom in 2008 and did not receive a passport marked with entry clearance, because his brother-in-law who was financing the arrangement, would not meet the substantially increased fee charged by the agent once the passport with entry clearance was obtained.

287. As I have set out in some detail above, the Appellant's brother-in-law MFA, has provided a written statement in which he describes an attempt to obtain a passport with entry clearance with the help of a dishonest agent. The brother-in-law's account and the Appellant's account are clearly talking about the same incident from their different perspectives. There is as I have earlier identified, one significant inconsistency in their respective recollections. The Appellant says this happened in 2008 whilst his brother-in-law's recollection is that this took place in early 2011. Clearly, if the brother-in-law is right then the Appellant has offered no explanation at all of the Secretary of State having a record or certainly an application having been made bearing his photograph in 2008.

288. I find that there clearly was an application made in 2008 and that the Appellant's brother-in-law whose evidence in all other respects has been entirely consistent with that of the Appellant, is simply wrong on this particular matter. I find that he has made an honest mistake. In turn, the Appellant does not appear to have remembered the date until prompted upon being presented with the Home Office records of the application form. The brother-in-law has given no satisfactory explanation for remembering the date as early 2011. Clearly if they were intending to deceive they would have been expected to check their stories.

289. This is an unsatisfactory element in the evidence, but I bear in mind that the brother-in-law has gone to considerable expense and inconvenience to make himself available to give oral evidence and face cross-examination and I have recorded the evidence that he gave before me. I did not find him to be an untruthful witness. Indeed the manner in which he gave his evidence I found to be most impressive. It is when I look at the evidence in the round and form a view only after considering the evidence as a whole that I conclude that this incongruous feature of the evidence is more likely to be the result of an honest mistake than of a witness and/or the Appellant being caught out in an act of dishonesty.

290. It follows from the above reasoning, that I find the documents produced by the Appellant in support of his true identity and of his account of past events in Sri Lanka to be reliable such as to enable me to attach significant weight to them.

Risk on Return

291. In this regard I have carefully taken into account the guidance in GJ. At paragraph 356 the Tribunal set out general guidance on the current categories of persons at real risk of persecution or serious harm on return to Sri Lanka.

292. In GJ the Tribunal recorded inter alia the evidence from Dr Smith who was also an expert witness in prior country guidance cases in TK and in LP. They had this to say:

> "125. Every detention resulted in the record being raised. There was a centralised database lodged with the Ministry of Rehabilitation, the SIS military intelligence, with details of all LTTE suspects. The CID do not have unlimited access to this database. They can access it only on a case by case basis. What is available at the airport is the 'watch' and 'stop' electronic databases. Staff at the SLHC passed all details of applications for travel documents to Colombo and incoming flights were required to fax their passenger manifest in advance".

293. It follows that on my findings, I am satisfied that the Sri Lankan authorities on the Appellant's return to Sri Lanka would be aware of his LTTE involvement. The evidence that I accept, is that it was subsequently confirmed by the police officer who facilitated the appellant's escape from Maradana Police Station, that the Appellant was recorded as an escapee. The Appellant's evidence was of being fingerprinted both in Kalmunai and in Colombo. I am reinforced in this conclusion by the documentary evidence relating to the Police Message Forms that show that the authorities have indeed been searching for the Appellant.

294. It follows that there is a real risk that on return there would be a record of the Appellant's detentions and in the circumstances of them that the Appellant would be of current interest to the authorities, who have continued to search for the Appellant.

295. Thus on return to Sri Lanka the authorities would look at the Appellant's history that in their eyes would demonstrate that he met the profile of an individual who was detained and escaped and with that background they are reasonably likely to view the Appellant as an individual who is a threat to the integrity of Sri Lanka, that is an individual with an LTTE background, more importantly with a record of arrests and detentions. They will look at that record within current day Sri Lanka in the North and with that history, the authorities would view the Appellant indeed as such a threat to the integrity of Sri Lanka as a single state.

296. It is reasonably likely therefore, that on return it would be ascertained that the Appellant was on a stop list. Those on a stop list are those in respect of whom arrest warrants had been issued and/or court orders. I am persuaded in light of the Appellant's history and his escape that it is likely that an arrest warrant would have been issued and records would reveal that he was wanted. There is therefore a risk of detention and ill-treatment at the point of return. If, as I have accepted, the Appellant escaped as claimed, then I am satisfied that the evidence points to his detention having been recorded not least because he was fingerprinted. This would all point to this being in a formal and recorded detention.

297. The Tribunal in GJ at paragraphs 342 to 348 considered the circumstances at Sri Lanka Airport and thereafter. At the airport, questions would be asked as to whether the Appellant was involved with the LTTE or his family's past LTTE connections.

298. At paragraph 346 of GJ, it was found that the authorities in Colombo had the opportunity to establish whether such a person was of interest and knew everything they needed to know about that individual even before their removal from the United Kingdom.

299. At paragraph 347, it was confirmed that there were no detention facilities at the airport but that on return there would be a requirement to provide an address etc. and that checks would be made within a week by the Sri Lankan authorities at the stated address. If the authorities were interested in a person they would be picked up at home unless they were on a "stop" list held at the airport. If on a "stop list" they would be interviewed by the CID and that was likely to involve physical abuse engaging international protection.

300. At paragraph 348 of GJ it was found that internal relocation to Colombo or elsewhere would not in most cases avail an Appellant in whom there was adverse interest.

301. Quite apart from the risk to the Appellant in terms of being on a "stop list", I am satisfied that in his particular circumstances and if not apprehended at the airport, it is reasonably likely he would be on a "watch" list and indeed in GJ the Tribunal were clear that following return to the airport and questioning at the airport, the individual's details would be passed to the authorities in the returnee's home area and that the individual would be monitored and if of interest picked up there.

302. In GJ it was found that those at risk were those perceived or who were a threat to the security/integrity of Sri Lanka and that the focus today by the Sri Lankan authorities is to ensure that the LTTE or something similar is not resurrected.

Conclusions

303. For the above reasons, the Appellant's appeal is therefore allowed on asylum grounds and under Article 3 of the ECHR. No separate Article 8 ECHR argument was advanced. He is not entitled to the grant of humanitarian protection.

304. I remake the decision in the appeal by allowing it on asylum and human rights (Article 3 ECHR) grounds.

305. No application having been made to vary or discharge the anonymity order made by the First-tier Tribunal it continues in force.

Signed Date 31 October 2014

Upper Tribunal Judge Goldstein