



IAC-AH-PC-V1

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

Appeal Number: AA/11419/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 6 July 2015**

**Decision & Reasons Promulgated
On 16 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**PC (SRI LANKA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzari, Counsel instructed by Uma Duraisingham
Solicitors

For the Respondent: Mr T Melvin, Specialist Appeals Team

DECISION AND REASONS

1. This is the reconsideration of the appellant's appeal against the decision of the Secretary of State to refuse to recognise him as a refugee, or as otherwise requiring international protection. The First-tier Tribunal made an anonymity direction, and I consider it is appropriate to maintain the appellant's anonymity for these proceedings in the Upper Tribunal.

The Evidence

2. The evidence before me comprises the evidence that was before the First-tier Tribunal, and the supplementary evidence which the appellant's solicitors served, albeit late, pursuant to a direction which I made on 30 April 2015 permitting the appellant to adduce new evidence that was not before the First-tier Tribunal on (a) diaspora activities in the UK and (b) risk on return to Sri Lanka. The new evidence comprises a supplementary bundle of "subjective evidence" compiled by the appellant's solicitors, and a bundle of objective material compiled by Ms Anzari. On behalf of the Secretary of State, Mr Melvin provided the latest country information and guidance on Tamil separatism in Sri Lanka published by the Home Office on 28 August 2014. Both representatives provided skeleton arguments, and both representatives made reference to **GJ (post civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)** and to **MP and Another v Secretary of State for the Home Department [2014] EWCA Civ 829**.

The Appellant's Material History

3. The appellant is a national of Sri Lanka, whose date of birth is 22 May 1983. On 25 March 2008 a valid Sri Lankan passport was issued to him in Sri Lanka. This is valid until 25 March 2018. On 2 September 2010 he applied for entry clearance as a Tier 4 Student, and he was issued with entry clearance in this capacity for the period 16th September 2010 until 23 May 2011. He left Sri Lanka on 16 October 2010 and travelled on a direct flight to the UK. He arrived on the same day.
4. The appellant applied for leave to remain as a student on 30 April 2011. This was refused on 16 June 2011. He made a second application for leave to remain as a student on 15 August 2011, but his application was considered void on 20 September 2011. He made a third application for leave to remain as a student on 10 November 2011, and this was refused on 14 December 2011. The appellant lodged a fourth application for leave to remain as a Tier 4 Student Migrant on 29 March 2012, and this was refused on 20 June 2012. His appeal rights are recorded as having been exhausted on 5 October 2012.
5. The appellant claimed asylum on 19 October 2012 at the Asylum Screening Unit in Croydon. He was given a screening interview. He said he had no medical conditions, and he was not on medication. He had been fingerprinted in Sri Lanka for his student visa only, not for any other reason. He had come to the United Kingdom to claim asylum, but changed his mind as he wanted to study. His reason for coming to the United Kingdom to claim asylum was that he had spent one year in detention and the authorities were after him to arrest him. He was asked how many times he had been arrested or detained in Sri Lanka. He said he had been arrested once but he was being searched for before 2006 and he had managed to hide by living in an LTTE controlled area. He had been arrested in 2008 and released in 2010, so he was detained for two years.

6. He was asked why he was detained in 2008. He said he went to India to attend his sister's wedding. On his way back to Mannar he was stopped by the authorities. His ID was checked and he was found to be a resident of Jaffna. He was arrested and taken to an army camp. He was accused of being a supporter of the LTTE. Initially he had denied this, but later on he admitted this because of the torture. Before 2006 he had been searched for because of his father's past involvement with the LTTE and his own role as a helper with the student organisation of the LTTE. His father's whereabouts since 1994 had not been known. His father used to help the LTTE, and he was on the political wing of the LTTE.
7. He was asked whether he was a member or supporter of the LTTE. He answered he was a supporter, and had been so since 2003. He used to supply them with food. The LTTE members kept on visiting their home asking for his father's whereabouts. He helped them to construct bunkers and he also helped members of the public living in the LTTE area. During the first year of his detention he was kept in an army camp and he was then transferred to a prison. His family could not trace him. He managed to secure his release through his uncle paying a bribe with the help of an agent to secure his release.
8. He had studied in London at the London Hotels School. He was asked why it had taken two years to come and claim asylum. He said he was studying and not thinking to come and claim asylum. He was asked to explain briefly why he could not return to his home country. He said there was an arrest warrant issued for him and he would be tortured by the army and the police. The authorities had visited his home asking for his whereabouts. The arrest warrant was issued in 2012 on account of his past history in Sri Lanka and his past involvement with the LTTE. He was asked why the arrest warrant had been issued two years after he left the country. He answered his mother was living elsewhere and recently she had returned to their native village in Jaffna. She went to register with the army, and ever since the authorities had been looking for him.
9. The appellant attended a substantive asylum interview on 23 November 2012. There was only one mistake in the screening interview record. He was stopped in Mannar, not on his way to Mannar. He was asked whether he had any medical conditions. He said for the last week he had been suffering from leg pain and had been unable to walk. The pain was in his knee as well as his leg. Initially, he took paracetamol, but later the pain increased so he could not bear it. So he had seen his GP on the 19th and he had given him some ibuprofen. He mentioned earlier that the doctor stated that this might have been due to the torture he had suffered. He was asked why the doctor thought that. He said the doctor had asked him about his past so he had told him and the doctor had asked him if anything had happened to him.
10. Initially he had said he had stopped studying in May 2011. He then said that he had followed an English language course, which he had finished in July 2011. He had not done anything since completing this course.

11. At the beginning of the interview, the appellant handed in various documents. At the time these were handed in without translations. The documents which he handed in included a summons, an arrest warrant, a letter from his mother and a release document in respect of his father.
12. In a letter dated 10 March 2012, his mother asked him how his studies were progressing. She was afraid to write letters because the army were coming here and enquiring about him. They had warned her that if she knew where he was, she had to inform them immediately. She said that he should concentrate on his studies and not think of anything else. In a letter dated 20 June 2012, she asked him again how his studies were progressing, and informed him that Brintha had got married. She asked him if he was speaking to his sister. She was afraid to write letters because the army were coming here and enquiring about him. They also monitored everybody who came to their house. Lastly, they had said that the government had ordered his arrest. One day when they came here, Jeevan was here. They asked who Jeevan was, and she told them that he was his sister's son. He was released later. If he returned to Sri Lanka, she did not know what would happen to him.
13. The arrest warrant was purportedly issued on 14 June 2012 by a magistrate in Mallakam. It was addressed to the officer in charge at the police station in Chunnakam. The person to be arrested was a person by the appellant's name living at an address in Erlalai West, Jaffna. The particulars of the alleged offence or the reasons for the issue of the warrant were "involvement with terrorism".
14. The court summons dated 28 February 2012 was purportedly issued by the same magistrates' court in Mallakam. Page 2 of the summons stated as follows:

"Whereas the above proceedings have been instituted/the above information has been received/ against you in this court, you hereby require to appear in person before this court with your witnesses, if any on year 2012 month 03 date 28 time 900 hours

To answer the complaint made against you (a copy of which is annexed hereto, together with a list of the names and addresses of the witnesses for the prosecution), and to be further dealt with according to law."

The copy of the complaint, together with a list of the names and addresses of the witnesses for the prosecution, was not annexed to the summons.

15. The release document said to relate to his father was a court order directed to the director of the custody prison in Colombo on 2 August 1994. The court order related to five suspects in a case with a reference number. These five suspects were taken into custody on 30 July 1994, and the court ordered that they be released immediately. Suspect number 3 had the same surname as the appellant's surname. The first name of the

third suspect was, according to the translator, illegible, but began: "Rasaratn..."

16. In interview, the appellant said his sister was in Canada. His uncle was in Trincomalee, his Auntie was in Jaffna in Earlalai, and his mother had moved into her house. He had been educated up to A-levels at Union College in Telipillai. He had finished his education in May 2003. He had been involved in student demonstrations in 2001. He did not know any details about his father's involvement in the political wing of the LTTE. His mother said he was in the political division, and she did not know any details about it. He was asked his father's name. The appellant began by saying that his father's first name was Rasaratnam, but then changed his first name to Rajaratnam. He was asked why he did not know his father's name, but had needed to look at documents in order to confirm it. He said he wanted to check whether it was a J or an S. His mother had told him his father was arrested at a lodge in Colombo because he was involved with the LTTE. His father never returned from Colombo. His mother had obtained the release document when she went to the police station. She was given that piece of paper, and told he was already released. His mother had been looking for him ever since. She had gone to her MP and complained, but he was still missing.
17. He was living in Earlalai, Jaffna when he started supporting the LTTE. They came and asked about his father during the peacetime, and they requested that he take training. His mother refused to send him for training because he was the only son left. When he moved to an LTTE controlled area in 2006, the LTTE asked him to join (again) but his mother repeated that his father was in the LTTE, and he was the only son left.
18. Although he refused to undertake LTTE training in 2003, they provided food for the LTTE. He also helped them to decorate at their functions such as Great Heroes Day, and asked him to clean the LTTE cemetery. This was all during the ceasefire period when the LTTE were able to travel openly.
19. He was asked to confirm that the only assistance that he provided to the LTTE was providing food, helping to decorate at functions such as Great Heroes Day, and cleaning the LTTE cemetery. At question 84 he confirmed that he did not do anything else. It was put to him that in his screening interview he said he had also constructed bunkers. The appellant said that only took place in 2006, so that is why he had not mentioned it. The help that he had previously given to the LTTE ceased in 2005 because the ceasefire agreement failed, and so the LTTE withdrew from Jaffna. In 2006 he moved to Kilinochchi. This was because the army started to look for him as he had been involved in student demonstrations, and he had helped the LTTE. So they came to look for him in October 2006. He was not at home at the time. They went inside the house and broke the furniture and arrested his cousin K. Until now they did not know what had happened to his cousin K. The army had not arrested him in 2001, as he was a student at the time. The reason they wanted to arrest him in 2006 was because he was president of the student union in 2001,

and he was leading the demonstrations. He was asked how the army knew he had been helping the LTTE between 2003 and 2005. He said he did not know it at the time, but the army's intelligence in civilian clothing had been monitoring them. The army had come looking for him at the family home in Jaffna on 25 October 2006. He was not in the house, because he was at his auntie's house at the time. He had moved to Kilinochchi in November 2006 with the assistance of an agent. This involved a five hour journey by sea. He started helping the LTTE again in January 2007, having not helped them since the end of 2005 when the LTTE withdrew from Jaffna. The help which he had provided the LTTE in 2007 was to dig bunkers and clean the LTTE cemetery. He dug bunkers to protect from shell attacks and bombing from planes. He did this many times until April 2008. He also supplied food to the LTTE members at the sentry point. On 3 May 2008 he went to India for his sister's wedding. He got a tourist visa with the assistance of an agent. This was arranged by his sister's in-laws. They needed an agent as they were in an LTTE controlled area. He was asked how he managed to obtain a passport. He said the army were looking for him in Jaffna, but maybe they had not sent his details to other areas at the time. He returned from India on 19 June 2008, and was arrested in Mannar on the same day. He was arrested because they checked his ID, and they saw he had the Jaffna address on it. He was arrested on suspicion of being an LTTE member, and he was taken in a truck to Thallady Camp. He spent one year in camp, and one year in jail. As soon as he was taken to the camp, he was beaten up. They accused him of being a Tamil Tiger. He did not suffer any injuries, but he had pain all over his body. Also he had a pain in his leg. Sometimes he got a pain in his chest even now. He took paracetamol for that. He also suffered from back pain. He was transferred to jail in April 2009. He did not know why he was transferred to jail. He was not taken to court.

20. On the second day in the camp, he had told them the truth. He told them that he was not an LTTE member, but just a helper. He had told them exactly what help he had provided. He had been transferred to Welikade Jail. As soon as he was taken there, they took a photograph of him. He came out of Welikade Prison in July 2010. He was released because his uncle helped him. He paid a bribe about 25 lacs to an agent. His uncle was a businessman. He was asked what business he had. After a period of reflection, the appellant said he had an import and export business. He was asked to give the name of his uncle's business. He is recorded as thinking for a very long time, and then saying he did not know the name. This was because he had not had contact with his uncle for a long time. He was asked therefore how he had been able to contact his uncle. He said he had his uncle's address in his mind, and sent him a letter. He had not seen his uncle since 2002. He was released by the army and the police. Officers from the army and police officers were there when he was released. He was not given any release papers. The agent who helped secure his release, advised his uncle it was not safe for him to remain in Jaffna, and he arranged a student visa for him. To get this visa, he had to supply his O-level and A-level certificates.

21. He was asked about the summons and arrest warrant. He said the police had given them to his mother, and they had come by post. He was asked why they were still looking for him. He answered he was not released officially, he came out illegally.
22. It was put to him that according to his visa application, he had completed a six unit higher national diploma course at the British College of Applied Studies in Colombo in 2005. He said he did not know anything about this course. The application also showed that he had completed an advanced diploma in computer hardware and networking departments, and had taken exams in 2008 and 2009. He confirmed that his case was that he had submitted fake certificates to gain entry to the United Kingdom. It was put to him that earlier he had been asked what documents he had submitted for his visa, and he had said he had submitted his O and A-level certificates from 1999 and 2003 respectively. But the application form did not make any reference to such certificates. The appellant insisted that he had given these documents to the agent.
23. He was asked when was the last time the army came looking for him. He said he did not know exactly when, as he did not have any contact with his mother now.

The Reasons for Refusal

24. On 30 November 2012 the Secretary of State gave her reasons for refusing to recognise the appellant as a refugee. There were inconsistencies and discrepancies in his account of claimed events in Sri Lanka, and it was therefore not accepted that the Sri Lankan authorities had an adverse interest in him or that they had arrested and detained him as he claimed. But even if it was true that he had helped the LTTE in the manner which he described, the war in Sri Lanka had come to an end and his claimed profile in the LTTE was not of a significant nature to warrant the continuing adverse interest on the part of the Sri Lankan authorities. Applying **TK**, the principal focus of the authorities continued to be not Tamils from the north or east as such, but persons considered to be either LTTE members, fighters or operatives or persons who played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms. He did not fall into any of these categories.
25. He claimed that the court summons had been posted to him in Sri Lanka (AIR 217). But this was inconsistent with the objective information, which was that summonses were always served in person by an officer.

The Appellant's Appeal to the First-tier Tribunal

26. The appellant signed a witness statement on 17 January 2013 in support of his appeal against the refusal decision. In the statement, he made reference to an earlier witness statement of April 2012. I enquired about

this statement at the hearing before me, but the appellant's solicitor, who was present in court, was unable to produce it.

27. In the 2013 statement, the appellant said he had sat for an English language exam in 2005 and 2006, and on both occasions had obtained an ordinary pass. He had also completed computer courses in Jaffna between 2004 and 2006. But in the time he was in school between 1987 and 2003, there was a civil war in Sri Lanka. He assisted the LTTE when they came to their school, and requested their help during Heroes Day or for a funeral of one of their members. He was elected as a student union leader in 2001. This was for a period of two years. In that period, he had cooperated and coordinated with other school leaders to organise demonstrations and processions. When the peace accord was signed in February 2002, they had a peaceful life. The army had noted his activities and wanted to arrest him, but the arrest was prevented by the peace accord.
28. Following the army's visit to the family home on 25 October 2006, he had moved to Vanni which was controlled by the LTTE. When he was in the camp and then in prison, the army had taken his fingerprints and photograph. They also had recorded all his family details.
29. After arriving in the UK, he had made an application for further leave to remain just before the expiry of his student visa. At the time of his application, UKBA had introduced a policy that an English certificate should be obtained before making any further applications. As he had not obtained this certificate, his application was refused. After his attempts to obtain leave to remain proved unsuccessful, he had decided to return to Sri Lanka as there was no more war between the government and the LTTE. But his mother begged him not to return as she had received the summons and arrest warrant. So he had no other alternative than to claim asylum.
30. Responding to various points in the refusal letter, he had confirmed he had studied the HND course in Jaffna and sat for the examination there. It was true that educational certificates were obtained on 11 August 2008 and 8 July 2009 as indicated in the entry clearance application. But the certificates related to O-levels which he had sat in 1999 and 2000, and A-levels which he had sat in 2003 and 2004. These certificates were obtained in 2008 and 2009 in order to release him from detention, using these certificates. They were also used to obtain his student visa at a later stage. The agent has used further forged documents in order to obtain the student visa. But the certificates of 2008 and 2009 were not forged.
31. He had tried to contact his family in Sri Lanka by letter and telephone. He could not get any replies from his family. He now heard from the news that letters were opened and checked for what had been written. Also he had heard that telephone calls were being hacked. He now believed that

might be the reason he had not received any replies to his letters or telephone calls.

The Hearing Before, and the Decision of, the First-tier Tribunal

32. The appellant's appeal came before Judge M R Oliver sitting at Hatton Cross in the First-tier Tribunal on 19 February 2013. In his subsequent determination, Judge Oliver recorded the oral evidence which the appellant gave.
33. In cross-examination, he said he had been permitted to send a letter to his uncle from detention towards the end of 2009. It was put to him that when he was released in July 2010 this was at a time when many people were released as a result of the end of the war. The appellant said he had stayed in Colombo for about three months, and had not been arrested in that period, because his uncle had arranged for a safe place for him to stay.
34. In answer to questions from the judge, the appellant said that he had spoken to his mother before claiming asylum, but not since then. This was because the authorities checked phone calls. He was asked how his mother knew where to send the summons and arrest warrant. He explained his mother had some friends in the United Kingdom, and that he currently resided with these friends.
35. Judge Oliver went on to find that while there might be some truth in various parts of his story, the essential details in support of his claim had been fabricated, and in the light of all the evidence he did not accept the authorities in Sri Lanka had ever had any specific adverse interest in him.

The Decision of Deputy Upper Tribunal Judge Juss

36. Following an error of law hearing at Field House on 29 May 2013, at which Ms Anzani of Counsel appeared on behalf of the appellant, Judge Juss gave his reasons for finding that the decision of the First-tier Tribunal was vitiated by a material error of law, in a decision promulgated on 11 September 2013. His reasons for finding an error of law, and for going on to remake the decision in the respondent's favour, are set out in paragraphs 15 to 22 of his decision, and for convenience I have reproduced these paragraphs verbatim below:

"Error of Law and Remaking the Decision

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside that decision and remake the decision (see Section 12(2) of TCEA 2007). My reasons are as follows. This is a case where the judge, notwithstanding his comprehensive and detailed analysis of the facts, failed to cite and apply the country guidance case of **LP [2007] UKAIT 00076** and **TK (Tamils - LP updated) Sri**

Lanka CG [2009] UKAIT 00049, before determining the appeal. This is an error. I do not, however, find the judge to have erred in any other respect.

16. This is because what was absolutely forefront in the mind of the judge was the finding that he made that the Appellant arrived as a student on his own passport. He applied for no less than four extensions of stay. All of these were rejected. Then two weeks after his appeal rights were exhausted in relation to those student applications, he applied for asylum. The details that the Appellant then gave with respect to his claim were not credible. The judge set these out at paragraph 22. The judge did not believe that the Appellant was released on the payment of a bribe, and he did not believe that the Appellant was released on the payment of a bribe, and he did not believe that the Appellant intended to apply for asylum all along when he left Sri Lanka because of a genuine fear of persecution.
17. In fact, the judge referred to the Appellant's 'unlikely circumstances in his narrative' and found his claim to have been entirely 'fabricated' (paragraph 22). Therefore, the failure to specifically deal with the Appellant being a low level past activist with the LTTE, or a failure to deal with the Appellant's father's alleged disappearance, are immaterial. They are not material to his decision, which is to disbelieve the Appellant comprehensively.
18. It is in this context that I must remake the decision. I do so on the basis of the findings of the original judge, the evidence before the original judge, and the country guidance case that applies as of today. The country guidance case of **LP [2007]** established that Tamils are not per se at risk of serious harm from the Sri Lankan authorities in Colombo. This is manifestly the case with respect to the Appellant, on the basis of the findings by the judge, who has travelled on his own passport, being earlier able to leave Sri Lanka to go to India for his sister's wedding, and who has now failed to demonstrate any basis for ill-treatment, as the judge found.
19. There are a number of non-exhaustive factors which may increase the risk and twelve risk factors were identified in that case. Considering these both individually and cumulatively (see paragraph 238 of that case) I find that the Appellant is not at risk. The test is reasonable degree of likelihood of ill-treatment or persecution, as the judge found (see his paragraph 17), and I find that this test has not been met in this appeal. I have also considered the later case of **TK [2009] UKAIT 00049**, which confirmed the risk factors taken from **LP**. Taking into account the Appellant's Tamil ethnicity, his previous record as alleged, his previous criminal record as alleged, any prospect of his having

jumped bail or escaping custody, his having signed a confession or similar document or otherwise, his having been asked by security forces to become an informer if that was the case, any presence of scarring which is absent in this case, his return from London or other centre of LTTE fund raising, and his illegal departure from Sri Lanka which is not the case on the facts of this case, I find that the Appellant is not at risk.

20. On any view this is a last ditch attempt by the Appellant to seek to remain in the UK when all else had failed. No doubt he would much have preferred to have succeeded in his desire to remain in the UK as a student. He certainly made every effort to secure residence on this basis. It is only when that has failed that he has put in an asylum claim as a last resort.
21. The case of **EG v The United Kingdom 41178/08 [2011] ECHR**, decided on 31st May 2011, by the European Court of Human Rights also holds that ‘given the end of hostilities, the likelihood of a Tamil returning to Colombo being the subject of adverse interest on the part of the Sri Lankan authorities has, if anything, declined’ (paragraph 69). If there was any case to which this was more relevant, it is to the present case.
22. The findings of fact made by the original judge, before whom the Appellant’s claim has been found ‘to have been fabricated’, and where the judge found that, ‘his failure to claim asylum on arrival and until his four applications for an extension of his student visa had been refused fundamentally undermine his credibility’, make this only too clear.”

The Order of the Court of Appeal

37. On 18 December 2014 Beatson LJ made the following order by consent:

- “1. The appeal against the determination of the Upper Tribunal (Immigration and Appeal Chamber) dated 11 September 2013, be allowed to the extent noted in paragraph 2, below
2. The appellant’s statutory appeal be remitted to the Upper Tribunal (Immigration and Asylum Chamber) for reconsideration.”

The Agreed Scope of the Reconsideration

38. This case was initially listed before me on 30 April 2015. On that occasion, Mr Spurling of Counsel appeared on behalf of the appellant. It was agreed by the parties that the error of law decision by Judge Juss should stand. It was also agreed that my task was to reconsider the appeal on its merits, having regard to the new evidence as to the appellant’s claimed sur place activities in the UK and applying the latest country guidance.

The Resumed Hearing on 6 July 2015

39. The appellant gave evidence through a Tamil interpreter whom he clearly understood. He adopted a supplementary witness statement dated 6 July 2015. Since his last statement made on 17 January 2013, he had joined the British Tamil Forum, the Transitional Government of Tamil Eelam and the National Liberal Party. He had signed several petitions in relation to missing persons in Sri Lanka. He had also provided written evidence under oath to submit to the UN and other commissions and prosecutions. The International Centre for the Prevention and Prosecution of Genocide believed that he could one of the potential witnesses to be asked in person to give evidence. He had attended meetings held by the National Liberal Party, issuing leaflets and taking part in demonstrations. He had taken part in a protest when the new Sri Lankan President came to the UK on 9 March 2015. As the Sri Lankan Government had banned the BTF, the TGTE and other groups, he feared that if he returned to Sri Lanka, he would be killed.
40. The supplementary bundle prepared for the resumed hearing contained correspondence from the ICPPG, the NLP, the TGTE and the BTF. It also contained various photographs which the appellant said had been taken of him at various demonstrations, and a photograph (photograph 16) which the appellant said had been taken of him giving an interview to a Tamil TV channel recently.
41. Ms Anzani took the appellant through the photographs in order to get him to identify precisely when and in what circumstances each of them had been taken. The appellant was extensively cross-examined by Mr Melvin about his claimed involvement with the ICPPG, NLP, TGTE and BTF. The appellant also answered questions for clarification purposes from me.

Discussion and Findings

42. I set out the country guidance given in **GJ and Others** at paragraph 356 of the determination in full:

“356. Having considered and reviewed all the evidence, including the latest UNHCR guidance, we consider that the change in the GOSL’s approach is so significant that it is preferable to reframe the risk analysis for the present political situation in Sri Lanka. We give the following country guidance:

- (1) This determination replaces all existing country guidance on Sri Lanka.
- (2) The focus of the Sri Lankan government’s concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.

- (3) The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
- (4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.
- (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.
- (6) There are no detention facilities at the airport. Only those whose names appear on a 'stop' list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.
- (7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
 - (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.
 - (b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.
 - (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving

such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.

- (d) A person whose name appears on a computerised 'stop' list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a 'stop' list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.
- (8) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.
- (9) The authorities maintain a computerised intelligence-led 'watch' list. A person whose name appears on a 'watch' list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.
- (10) Consideration must always be given to whether, in the light of an individual's activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the 'Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka', published by UNHCR on 21 December 2012."

43. On the question of diaspora activities, the Tribunal reached the following conclusion at paragraph 351:

“Our overall conclusion regarding diaspora activities is that the GOSL has sophisticated intelligence enabling it to distinguish those who are actively involved in seeking to revive and re-fund the separatist movement within the diaspora, with a view to destabilising the unitary Sri Lankan state. Attendance at one, or even several demonstrations in the diaspora is not of itself evidence that a person is a committed Tamil activist seeking to promote Tamil separatism within Sri Lanka. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.”

44. On his own case, the appellant began his anti-governmental activities as a student leader in 2001 while the civil war was still ongoing. So if he had attracted the adverse interest of the army at that stage, there would have been no barrier to him being arrested and detained in consequence. It is not a satisfactory explanation for the army’s inaction that they were prevented from acting against him by the peace accord, as the peace accord was not signed until 2002.
45. Following the renewal of the civil war in 2006, it is not credible that the appellant just happened to be at his aunt’s house in the same area (the appellant said that the distance between his aunt’s house and that of his mother was 30 minutes by bicycle) when the army allegedly came to arrest him.
46. The civil war was at its height when the appellant returned from India on 19 June 2008. To that extent the appellant’s account of being arrested in Mannar on suspicion of being an LTTE member or supporter because he did not originate from Mannar, but from Jaffna, does not run counter to the background evidence. However, his eventual release without charge, and without there being any conditions being put on his release, is much more consistent with the authorities having decided that he was a person of no interest to them, than it is with the authorities continuing to have an adverse interest in him.
47. The alleged adverse interest of the army in 2006 is also undermined by the fact that the appellant was able to obtain a passport in 2008. Given the sophisticated record keeping of the Sri Lankan authorities, it is not credible that the appellant could have obtained a passport in 2008, at the height of the civil war, if the army was looking for the appellant as a suspected LTTE operative.
48. The appellant’s evidence of prolonged detention between 2008 and 2010 is severely undermined by his admission as to the authenticity of the 2008 and 2009 educational certificates. Even though he says they relate back to qualifications which he obtained between 1999 and 2003, the very fact that the certificates were obtained in 2008 and 2009 is totally incompatible with the notion that the appellant was in that period being detained by the authorities. Moreover, the appellant claims that neither his uncle nor his mother knew his whereabouts until, in his mother’s case

towards the end of 2009, and until, in his uncle's case, even later. It is entirely credible that the certificates were obtained in 2008 and 2009 in order to support an application for entry clearance as a student by the appellant in 2010. It is entirely incredible that the certificates were also obtained in this period for the parallel purpose of securing the appellant's release from detention. There is nothing in the objective evidence which supports the proposition that production of educational certificates would have assisted in the release of a suspected LTTE member or supporter; and, in any event, at the time that the certificates were obtained, the appellant's whereabouts were allegedly not known to his family.

49. The appellant's general credibility is also undermined by the inconsistent evidence which he has given about being fingerprinted and about his medical condition. In his screening interview he said he had not been fingerprinted other than in connection with his student visa and that he had no medical conditions. Subsequently he has claimed to have been fingerprinted following his detention in 2008 and in his asylum interview he claimed he had been suffering from a pain in his leg which he attributed to the ill-treatment which he had received in detention in 2008. Although he claims that his GP supported him in this hypothesis, he has not produced any medical evidence or records to support this assertion. If he had suffered chronic pains as a result of ill-treatment in detention, he would have consulted a GP much earlier than the late autumn of 2012. It is wholly incredible that the appellant only began to suffer pains in his body of such severity as to require the intervention of a GP in the late autumn of 2012, if their origin lay in ill-treatment which he had received some years earlier.
50. I accept that the appellant's ability to exit Sri Lanka on his own passport in 2010 does not mean that he was not in fact of adverse interest to the authorities. But it is nonetheless more consistent with the appellant not being of adverse interest to the authorities than the contrary.
51. Following **Tanveer Ahmed**, the burden rests with the appellant to show that the documents emanating from Sri Lanka are documents which can be relied upon.
52. The release document is of little probative value. It does not show that the appellant's father disappeared in 1994, still less that he disappeared because he was of adverse interest to the authorities on account of his known involvement with the political wing of the LTTE. On the contrary, its implication is that the persons referred to in the document were officially detained, and then officially released. Moreover, it is not shown even to the lower standard of proof that the appellant's father was one of the detainees. The surname of suspect 3 is not legible, and after a lengthy period of deliberation the appellant gave a different first name for his father than that which is attributed to suspect 3.
53. The appellant claims that he was in contact with his mother up until the time that he claimed asylum. The appellant has never satisfactorily

explained why he delayed claiming asylum between the date when the court summons allegedly reached his mother, either by being served in person on her or by being sent through the post to his mother. The Secretary of State interpreted the appellant as stating in interview that the summons had arrived at his mother's house by post. The appellant did not challenge this interpretation of his evidence in his subsequent witness statement, and he has also not challenged the objective evidence relied on by the respondent to the effect that court summonses are never sent by post. But however the document was received, his mother would have been in a position to alert the appellant to its contents in early March 2012. But she makes no reference to the court summons in the letter which she purportedly sent in March 2012, or in the later letter of June 2012. She also does not in terms refer to the receipt of an arrest warrant in her June 2012 letter.

54. The court summons also lacks internal credibility for two reasons. The first is that it is incomplete. The second reason is its timing. As a result of their sophisticated intelligence, the authorities would have known at the beginning of 2012 that the appellant was not involved in terrorism, and (if credence is given to the appellant's "confession" in detention in 2008) that all the he had done for the LTTE in 2007 and 2008 was to dig bunkers and help in an LTTE cemetery. So he was not a former LTTE combatant or cadre. He had not been employed by the LTTE in functions within the administration, intelligence, computer branch or media. He had not been involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for the LTTE. Although he claimed to have a family link to the LTTE through his father, on his own case his father had not been involved in the LTTE since his alleged disappearance in 1994. So he was not somebody who had more elaborate links to the LTTE, such as to bring himself in the scope of the UNHCR guidelines discussed in **GJ and Others**.
55. Moreover, the appellant has given inconsistent explanations as to why the authorities decided to prosecute him in February 2012, nearly two years after his release, and as to why there was a delay on his part in reacting to the court summons and subsequent arrest warrant.
56. As to the latter, his initial explanation was that his mother had been living elsewhere, and only recently returned to the family home in Jaffna. But before me, he confirmed that his mother had been living in the family home for many years before the summons and arrest warrant were allegedly received at the family home. So there should not have been any delay, if either of these documents had been genuinely served.
57. As to the former, the appellant did not initially suggest that the reason for the renewed interest in him in February 2012 was because of his diaspora activities in the UK. He only advanced this explanation for the first time before me. The difficulty with this explanation is that all the appellant's alleged diaspora activities in the UK postdate the refusal of his asylum claim on 3 November 2012.

58. Mr Melvin put to the appellant that the only reason for him engaging in sur place activities at all was to enhance his asylum claim, and not because he was a genuine activist. The appellant said in response that it had taken him time to become aware of the organisations in the UK which he has now joined. But, on his own case, he was not doing anything after he completed his studies in 2011, and his complete inaction as an activist between 2011 and when he says he started becoming active in 2013 is wholly inconsistent with him being a genuine and committed activist either here or in Sri Lanka between 2001 and 2008.
59. On the evidence of the photographs and the supporting letters, I accept that the appellant has had some recent involvement with the NLP, the TGTE and the BTF. But the appellant has not discharged the burden of proving that his involvement with these organisations is at a level which places him at risk.
60. I attach no credence whatsoever to the letter of 22 June 2015 from the ICPPG stating that he has provided written evidence under oath to be submitted to the UN and other commissions and prosecutions; and that he may be one of the potential witnesses who may be asked in person to give evidence. In answer to questions for clarification purpose from me, he appeared not to understand what giving written evidence “under oath” involved. He said he had just been given a form. If he had given written evidence under oath, there would be an affidavit which he would be able to produce for inspection by the court. But he has not produced any such affidavit. He also said that he had not given any documents to the ICPPG in support of his evidence, save for his Home Office ID card. I am wholly unpersuaded, even to the lower standard of proof, that the appellant has given evidence to the ICPPG in a form which could credibly be submitted to the UN.
61. The appellant has also not shown even to the lower standard of proof that he has acquired any kind of public profile as an activist, either on the internet or on television or in any other media. The high watermark of the appellant’s case in this regard is simply a photograph which could be the appellant giving an interview. But there is no surrounding or supporting evidence, beyond the appellant’s mere assertion in oral evidence, as to the context in which the photograph was taken, and there is no proof that footage of the appellant giving the interview has in fact been published to the world at large. There is also, as Mr Melvin points out, no transcript of the interview which the appellant allegedly gave, and there is no evidence of publication.
62. In his letter of 12 May 2014, Mr Yogalingam, Member of Parliament for the TGTE and an executive committee member of the National Liberal Party, said that the appellant is one of the victims of the Sri Lankan authorities who has worked with the TGTE both as a volunteer and also in organising several public events in the UK. Not only did he attend almost all the meetings, but also took an active role in organising events and public

demonstrations. In particular, he took an active role in the International Conference on Tamil Genocide in Sri Lanka on 28 and 29 September 2013.

63. But, as became apparent from Mr Melvin's cross-examination, the appellant does not have any organisational role. His activities for the TGTE, and for other organisations, have extended no further than distributing leaflets, and similar low level and low profile activities of that nature.
64. Accordingly, I am satisfied to a very high degree of probability that the appellant's asylum claim is a fabricated one. It may be the case, as Judge Oliver found, that there are individual elements in the appellant's account that have a grain of truth, but he has not discharged the burden of proving, even to the lower standard, that the core of his claim of past persecution is true. In particular, there are not substantial grounds for believing that he was detained for two years as a suspected LTTE member or supporter, or that he eventually escaped from detention by payment of a bribe, with the consequence that he remained of adverse ongoing interest to the authorities with the consequence that he had to be smuggled out of the country with the assistance of an agent in 2010. There are also not substantial grounds for believing that a court summons and an arrest warrant were genuinely issued against him in 2012.
65. On the issue of risk on return, there are not substantial grounds for believing that the appellant has acquired an adverse profile with the Sri Lankan authorities as a result of his limited and low level diaspora activities in the UK, nor that he would be subjected to ill-treatment on return as a result of admitting under questioning that he had become a member of two proscribed organisations, namely the TGTE and BTF. Annex D to the OGN is a report from the British High Commission in Colombo dated 25 July 2014 reporting on the local response to the proscription of sixteen Tamil diaspora organisations. The High Commission says there had been no reports in the local press of anyone being arrested because of their membership of, or association with, one of the proscribed Tamil diaspora organisations. Members of civil society have not raised this as an issue with the High Commission. A spokesperson from the MEA stated that no returnees from any country had been arrested yet because of their association with one of the proscribed groups and a spokesperson from the DIE also confirmed that no returnees had been arrested on arrival for this reason. A spokesperson from the SIS and from an international NGO also gave the same confirmation, as did the Australian High Commission, the Canadian High Commission, the Swiss Embassy and the Dutch Embassy.
66. In conclusion, the appellant has not discharged the burden of proving that he qualifies for recognition as a refugee. By the same token, there are not substantial grounds for believing that on return to Sri Lanka he would face a real risk of serious harm of such severity as to cross the threshold of Article 3 ECHR.

Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted: the appellant's appeal against removal on asylum and human rights grounds is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Monson