



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/07837/2013

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated**

Reasons

On 19th July 2016

On 22nd July 2016

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

NT

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Rothwell, instructed by Jein Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Introduction

1. The appellant is a citizen of Sri Lanka born in 1981. He arrived in the UK on 8th May 2012 and claimed asylum. The application was refused on 30th July 2013. His appeal was heard by Judge of the First-tier Tribunal

Prior who dismissed his appeal on 4th October 2013, but an error of law was found in the decision and the matter remitted to the First-tier Tribunal by Deputy Upper Tribunal Judge Grimes in a decision dated 19th May 2014. The matter was heard again de novo by Judge of the First-tier Tribunal Naphthine who dismissed the appeal on all grounds in a determination promulgated on the 4th December 2014. I found that this decision was also vitiated by an error of law and set it aside in its entirety with no findings preserved. My reasoning for this decision is set out in my error of law decision of 20th January 2016 which is appended to this decision at Annex A. The remaking hearing was adjourned.

2. The matter came before me to remake the appeal.

Evidence and Submissions - Remaking

Evidence

3. The appellant attended the Tribunal and gave evidence through the Tribunal interpreter in the Tamil language. He confirmed that he understood the interpreter, and that his evidence in his statements and information given at interview and to doctors was true and correct to the best of his belief. In summary his key evidence from these statements and his oral evidence is as follows.
4. The appellant was born in Sri Lanka and lived in Sri Lanka with his parents and two brothers as a child. His youngest brother KT now lives in the UK as the dependent of his Italian wife having had subsidiary protection in Italy. His other brother, RT, disappeared in the last period of war in Sri Lanka in 2009. He has had virtually no contact with his parents as he married against their wishes in 2006. He married his wife KV (married name KN) in 2006, and he and his wife have a child NN born in 2008. His family are ethnic Tamils from the North of Sri Lanka who have suffered as a result of discrimination by the Sinhalese, and he was brought up learning about horrific stories of abuse against the Tamil people.
5. The appellant completed his A levels in 2000, and then worked with the LTTE whom he believed were the strongest force fighting for the rights of Tamils and their independence. He worked with the LTTE police at Puthukkudiyiruppu police station doing administrative work between 2001 and 2006. The appellant was, from this time, a strong supporter of the LTTE. In 2006 he was compelled by the LTTE to fight for them and become a full member. He did three months military training at Kantham Kulam camp in Kilinochchi. He was given the LTTE code name "[K]" In April 2008 he was injured at Madhu battle: his right ear drum burst and he was taken to Ponnampalam hospital for treatment. He spent time in hospital and then at the LTTE medical base. The appellant worked in Kilinochchi and Mannar directly for "[S]" who was in charge of ammunitions in his regiment doing paper work. From 2008 the Sri Lankan army made advances on the area held by the LTTE. The

appellant witnessed war crimes against civilians during this advance including deliberate killings, the use of cluster bombs, and the use of chemical weapons which the appellant concluded amounted to genocide against the Tamil people. On 20th April 2009 the appellant, other LTTE members and more than a hundred thousand civilians were captured by the Sri Lankan army in an area known as the Maththalan box.

6. On this date the appellant was taken to Omanthai and then to Arunachchalama camp by government forces. He did not surrender as an LTTE member but pretended to be a member of his paternal aunt's family, Mrs P, whom he met by chance. He started to experience bleeding from his ears in the camp and his paternal aunt, Mrs P, got him to see a doctor there, and then to be transferred to Vavuniya hospital. She communicated this to another paternal aunt, Mrs R, who managed to help the appellant escape from the hospital in Vavuniya which was over-run with many people so the authorities lost track of whom they were monitoring. The appellant hid in his aunt's (Mrs R's) house and did not go out.
7. However on 29th July 2009 the appellant's ears began to bleed again and he experienced unbearable pain, and he returned to hospital alone by bike. Before getting there he was arrested by the authorities. He was recognised by someone called Ramanan who was a former LTTE member who had been in his regiment. The appellant was blind-folded in the van, and taken on a 10 to 15 minute drive to a place where he was taken to a room, which he understood later to be an underground CID camp. Ramanan gave the authorities exaggerated information that the appellant knew where the LTTE records were and where the regiment ammunitions were. The appellant was photographed and his finger prints were taken. He was made to sign a blank piece of paper. He was questioned and beaten. Ramanan asked the questions in Tamil, and translated the answers into Sinhalese. The appellant admitted he had been in the LTTE and maintained records but said he did not know where ammunitions were hidden. He was not believed and was brutally tortured. The appellant remained in this place for three days, when he agreed due to the torture to disclose places where weapons were hidden, and was then taken to Omanthai camp.
8. The appellant remained in Omanthai camp for 1 year and 7 months, and then was moved to Kilinochchi camp for a further 7 months. He was repeatedly questioned and ill-treated during this time. He disclosed some information and assisted in identifying where weapons were on two occasions. When he was taken out of the camp in search of weapons he was blindfolded.
9. The appellant escaped from detention in October 2011. He had been taken out blindfolded in a vehicle and he assumed that he was supposed to assist in finding weapons as had happened previously, but he became afraid he was going to be shot as they drove for between

four and four and a half hours. However in fact the vehicle stopped on the Mannar Road and his blindfold was removed, and he saw his father-in-law coming out of a restaurant. He started to cry out, but his father-in-law told him to be quiet and took him in another vehicle. His father-in-law told him he had bribed the authorities through the EPDP with 8 million lakh Sri Lankan rupees to obtain his release.

10. The appellant's father-in-law took him to his friend Anthony's house in Mannar where he stayed for 2 days. On 11th October 2011 Anthony took him in a fishing boat out to sea where they met a bigger boat which took him India. He arrived in India on 12th October 2011. He remained in India in hiding until 5th May 2012 when he flew to France via Bahrain on an Air France plane. He arrived in France on 6th May 2012, and left there in a lorry on 7th May arriving in the UK on 8th May 2012. The appellant felt he was not mentally well at the time of his screening and full asylum interview due to the torture and trauma he had suffered, and found it difficult to give a full and complete account of his problems due to mental state.
11. Since coming to the UK the appellant has continued to be involved with politics. He comes from a Tamil nationalist family and despite the defeat of the LTTE in 2009 continues to believe that a separate country is the only solution to the ethnic problems in Sri Lanka. He has attended Tamil protests since November 2012 when he attended National Martyr's day at the London Excel Centre. On this day he met his uncle and youngest brother by chance, and through them came to know that his father and other brother were missing since the end of the war in 2009, and that his mother had gone to India. He has been in some limited contact with his mother as a result and obtained documents from her.
12. He next attended the Mullivaikkal Remembrance Vigil in Trafalgar Square in May 2013. There he made contact with Tamil organisations and began to attend events Tamil diaspora events regularly. He felt depressed and worried in the UK due to his past experiences of torture, and was encouraged by friends to attend demonstrations and give vent to his anger against the Sri Lankan state. He attended further events in March and July 2014. He gradually became a full time activist doing voluntary work for the British Tamil Forum, The Tamil Information Centre, National Liberal Party, Nation Without State and the Transnational Government of Tamil Eelam. There are photographs and DVD evidence showing his attendance at demonstrations and events organised by these organisations. He believes that he has attended about 200 events since his arrival in the UK.
13. The appellant knows the leaders of these diaspora organisations well including Mr Sockalingam Yogalingam who is an MP of the Transnational Government of Tamil Eelam (TGTE) who gave evidence to the Tribunal, and has lobbied British ministers and MPs. He is working with the International Centre for the Prevention and Prosecution of Genocide to

collect statements from victims of torture, having given his own statement. He has starting work with their North West Evidence Collecting Team. He fears that as he has given his statement and agreed to give evidence in legal proceedings against Sri Lanka at any future international court that because of the Sri Lankan government's sophisticated intelligence network that this will be known to them. He has met with a UN consultant and an investigator called Ms Frances Harrison and a prosecutor called Dana Urban QC as his evidence was found to be significant. His account has also been used in their report with his consent.

14. He remains committed to this work as he believes the Sri Lankan government continues to attack Tamils, occupying their homeland, destroy Hindu temples, make unlawful arrests and detain Tamils, forcibly recruit Tamils for military service and deprive Tamil victims of the right to give evidence to human rights organisations.
15. In May 2016 the appellant and others had a dispute with the British Tamil Forum for refusing to raise the national Tamil flag on the basis that it was banned in the UK as it looks similar to the LTTE flag. However the Anti-Terrorism Unit at Scotland Yard confirmed that it was not the case that the flag was banned, and when Sri Lanka de-proscribed the British Tamil Forum the appellant and others decided that the leadership of the British Tamil Forum had done a secret deal with the Sri Lankan government. The British Tamil Forum has provided details of one of the appellant's friends to the Sri Lankan authorities, a man called SK, and the British police have been involved. As a result the appellant is no longer taking part in their events, and is warning others not to do so.
16. The appellant is aware that his photograph has been used as a result of his activism describe above in a Sinhalese nationalist film produced by Bodu Bala Sena, in which he is mentioned by name and said to be a traitor working to re-group the LTTE. The film is available currently on YouTube and shows a photo of him with British MPs and Tiger flags. Another similar film including his picture has been produced by Sinhale Jeya Udesa and is also available currently on YouTube. His photograph also appeared in a newspaper called Yarl Thinkkural published on 19th May 2015 in Sri Lanka. A number of other photographs are included in the bundle which feature the appellant often with Tiger or Tamil symbols on his clothing. These photos were taken by friends and used for the Tamil TGTE newsletters without names being mentioned but stating the event, time and place.
17. The appellant remade contact with his wife through his father-in-law after arriving in India in October 2011. He has had sporadic contact with his wife and son, and her family ever since. He is aware that his brother-in-law (his wife's brother) was taken away for questioning because of him although he was not involved with the LTTE, and has since had to be released through use of bribes and flee Sri Lanka. His

father-in-law did write some letters but does not do this anymore as he fears they may be intercepted by the authorities. His wife is reluctant to talk on the telephone as she fears that the phone line could be tapped.

18. The appellant's wife has had a number of visits by the authorities to her home from people who claim to be from military intelligence. In December 2015 there were threats by such persons saying that the appellant was trying to re-group the LTTE and working with banned diaspora organisations in the UK. She was shown a newspaper with his photograph at a demonstration. She was threatened if he did not stop these activities so she reported the matter to the Human Rights Commission on 23rd December 2015. She also sought assistance from her local MP, Provincial Council and others.
19. Most recently, on 12th June 2016, some army and military intelligence officers went to his wife's home, and searched for weapons they believed were hidden in the backyard. When they found nothing they arrested SG (his mother's cousin's son) and GS (his wife's elder sister's son), GS being a neighbour and SG being someone who was visiting at the time. The appellant's eight year old son, naturally unaware of the risks involved, took some photographs with a mobile phone camera. His wife told him off for doing something so dangerous, but sent the photographs to the appellant via an app called Viber. One of these photographs has since been put on a website called Senpakam (the appellant does not know how), which can be viewed in Sri Lanka and the UK, along with a caption about how his wife is the wife of an ex-fighter and that CID came to her house looking for weapons. His wife has informed him via Viber that the relatives (SG and GS) have not been released, and that the family have reported them missing to a human rights organisation.
20. The appellant still continues to suffer due to the torture he experienced at the hands of the Sri Lankan authorities. He has physical pain, nightmares, flash-backs and problems with concentration. The appellant lives with brother in Coventry who provides him with support, and he also relies on medication and counselling. He finds that being involved with the Tamil diaspora gives meaning to his life as he feels he can contribute to justice by speaking out about what has happened and fighting for a better future. He is certain that return to Sri Lanka would mean return to detention and torture that he would not be able to face. The Sri Lankan authorities have his details as he was previously detained. They still suspect he knows about LTTE weapons, and believe that he is working in the UK to re-group the LTTE.
21. Mr Sockalingam Yogalingam attended the Tribunal and gave evidence. He confirmed his letter of 17th January 2016 was true and correct. In summary his oral and written evidence is as follows.
22. He is an estate agent, and a MP with the Transnational Government of Tamil Eelam (TGTE), assistant director of Act Now and a committee

member of Nation without States. The TGTE is an organisation committed to bring about self-determination for the Tamil people, and justice for those who have suffered at the hands of the Sri Lankan authorities. It is a proscribed organisation in Sri Lanka.

23. Mr Yogalingam confirms that the appellant is a volunteer who has suffered and witnessed crimes against humanity by the Sri Lankan authorities. The appellant started work for his organisation in September 2013, attending meetings, putting up posters, distributing leaflets, and organising events and public demonstrations. The appellant is a former LTTE police member, and is committed to the mission of the TGTE. He now is given responsible roles in the organisation of key events such as lobbying MPs and ministers and works in their office doing administration about once a fortnight. He is co-ordinating events in Coventry with the guidance of the TGTE MP, Mr Ambalawanar Ahilawanar. His photo has appeared in the media often, both in media such as the BBC and on websites such as Tamil Net and Tamil Win. The TGTE also has a minister for media, and so they are also involved with publicising their cause by sending pictures to the press.
24. The appellant is likely to be of interest to the Sri Lanka authorities in Mr Yogalingam's opinion. Mr Yogalingam believes that the organisation Bola Bala Sana is an extremist Buddhist organisation who have influence with the Sri Lankan government against Tamils such as the appellant, and that the Youtube video could cause him problems with the authorities if he were returned to Sri Lanka.
25. Mr Yogalinam does not often attend Tribunal hearings although he is often asked to go: he has attended only about 12 in total. He has attended for the appellant as he believes he is truly committed to their joint work.
26. Other evidence can be summarised as follows:
 - Birth certificate and marriage certificate of the appellant and birth certificate of the appellant's son and wife
 - The appellant's educational certificates - O level and A level and pupil record sheet

Material Related to the UK diaspora activities by the appellant

- Letter from Jim Cunningham (British) MP confirming that he works with the appellant as a leading Tamil activist
- Letter confirming the appellant is a member of the British Tamils Forum dated 10th October 2014
- Letters complaining about the British Tamil Forum and a petition about the issue of a failure to hoist the Tamil flag signed by the

appellant and others, and correspondence with Jim Cunnigham MP about this issue.

- Letter from International Centre for Prevention and Prosecution of Genocide dated October 2014 confirming the appellant had given written evidence to submit to the UNHCR's OISL commission together with statement from Miss Ambihai Seevaratnam of this organisation about her role, the commission and the evidence given by the appellant and details of the appellant's UK activism.
- Letter from World Tamils Historical Society confirming the appellant's involvement with them since 2015 dated 15th July 2016 plus event photos identifying the appellant for this organisation
- Letter from the Transitional Government of Tamil Eelam dated 17th January 2016 about their group and the appellant's work with them.
- Documents from the Senpakam website showing the appellant at events in the UK
- YouTube screen shot showing the appellant with a tiger flag and supporting the UK labour party and another with him on a demonstration from a Bodu Bala Sena film clip together with information about Bodu Bala Sena and a translation of the commentary
- News reports about Tamil rallies and photos of the appellant at demonstrations

Documents relating to the Appellant and his family in Sri Lanka

- Photos of a person said to be the appellant with military equipment, wedding photos of appellant and NK, and photos of persons said to NK and NN in Sri Lanka.
- Ration cards and documents re NK being allowed to resettle from Vavuniya in November 2009 and child health record for NN.
- Evidence from the appellant's mother that she lives in India and that the appellant and her husband disappeared in 2009 at the end of the war (letter from her with envelope, medical test results for her with address of clinic).
- Letters from the appellant's wife (NK) dated 15th August 2012, 25th December 2012 and 15th January 2013 with envelopes saying that she was approached by CID officers at her home in Iranaipalai and felt she had to leave for Mullaitivu, and then returned back due to their son's education and is still being approached by CID with questions about the appellant.

- Letters from Mr AV Justice of the Peace, father-in-law of the appellant about enquiries made by CID about the appellant, and detention of his own son and ill-health of his wife one undated and one dated 3rd April 2013
- Letter by the appellant's wife, NK, to the Human Rights Commission of Sri Lanka dated 23th December 2015 regarding problems she has experienced from the authorities and the fears of a threat to her life and the safety of her child.
- Letter from St Fatima's Church, Irranaipalai, dated 20th December 2015 regarding the appellant's history and problems for his wife NK since he left.
- Letter from Northern Provincial Council dated 2nd January 2016 regarding the appellant's history and current problems for his wife NK.
- Photographs of the appellant's wife and soldiers and evidence of these being sent to the appellant
- Documents from the Senpakam website showing photos of the appellant's wife with military and referring to the appellant, and Mr S and Mr G dated 16th July 2016

Material about the appellant's mental and physical health

- Letter from the appellant's GP together with test results and referral to a psychological wellbeing practitioner
- Medical report of Mr A Izquierdo-Martin Consultant in Emergency Medicine regarding the appellant dated 13th September 2013 regarding scars found to be consistent with being caused between 2009 and 2011 by torture.
- Letter from Coventry Refugee and Migrant Centre Therapy Services dated 23rd June 2016
- Report of Dr Saleh Dhumad Consultant Psychiatrist dated 15th January 2016 concluding the appellant suffers from PTSD and moderate depression, with a moderate risk of suicide.

Expert reports on the plausibility of the appellant's history and assessment of his risk on return

- Expert report of Ms Frances Harrison (former journalist and current researcher into Sri Lanka) project managers of the International Truth and Justice Project Sri Lanka dated 14th January 2015 regarding the plausibility of the appellant's account and issues going to risk on return, together with report of the International Truth and Justice

Project Sir Lanka report Silenced: survivors of torture and sexual violence in 2015 published in January 2016.

- Expert report of Dr Chris Smith, freelance researcher and associate fellow of Chatham House, regarding the plausibility of the appellant's account and risk on return.

Background Country of Origin Evidence

- Home Office COIS Reports on Sri Lanka including one dated July 2016 entitled Sri Lanka: Tamil Separatism

Submissions

27. Mr Walker relied upon the reasons for refusal letter dated 30th July 2013. In this letter the respondent accepts that the appellant is a Sri Lankan citizen [para 10] and related to his brother KT as a brother [para 11]. It is accepted that the appellant was detained and tortured by the Sri Lanka by CID officers in 2009 on account of his past LTTE involvement. The respondent however contests that the appellant would be at risk on return to Sri Lanka as it is asserted that Gj and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 shows that the Sri Lankan government would not be interested in the appellant due to his past LTTE activities. This is because the appellant has had, they contend, no involvement with Tamil politics since May 2009, and would not be regarded as having any significant current role in relation to Tamil separatism with the diaspora or a renewal of hostilities in Sri Lanka. No weight is given to the letters from the family as with the exception of the one from the father-in-law they were not translated, and this letter is not objective or impartial, and the problems for the appellant's brother-in-law may not be linked to him. The appellant is not therefore found to be a refugee or at real risk of serious harm if returned to Sri Lanka.
28. On consideration of Article 8 ECHR matters the appellant is found not to qualify under the Immigration Rules. Outside of the Immigration Rules medical matters are considered and it is found that there are medical facilities in Sri Lanka to treat the appellant's mental health problems, and that there is no obligation for the UK to provide this treatment in accordance with Article 3 ECHR as the very high threshold has not been reached.
29. The respondent also relies upon a letter from the British High Commission in Colombo dated 30th November 2015 which confirmed that the Sri Lanka government had de-proscribed the British Tamil Forum.
30. Mr Walker accepted however that there was a large amount of evidence before the Upper Tribunal about the appellant's sur place activities for an organisation proscribed in Sri Lanka, the TGTE. There was also

evidence that the appellant's picture had appeared in a Tamil newspaper and on the Sanpakam website as a person connected with the LTTE and opposing the Sri Lankan government, both of which would be available in Sri Lanka. In addition there was evidence that the appellant's wife and relatives had been interrogated by the military, although it was unclear how the picture of this had reached the Sanpakam website. He did not have instructions to concede the appeal however but this evidence would have to be considered by the Tribunal.

31. Ms Rothwell relied upon her skeleton argument and oral submissions. In summary she says as follows.
32. She submitted that the observations of Mr Walker on the evidence should be noted. She further noted that the reasons for refusal letter would appear to have applied the incorrect standard of proof as it assessed the evidence "on balance" at paragraph 15, rather than to the lower civil standard of proof applicable in asylum cases.
33. The appellant's history of involvement with the LTTE including fighting as a full member and involvement with the administration relating to ammunitions, and subsequent detention between May 2009 and October 2011 when he was horrifically tortured, followed by his escape with payment of a bribe was accepted by the respondent. There is extensive information about the appellant's on-going medical problems following torture in GP reports, hospital records, counselling records, a report of Dr Dhumad and a letter from Coventry Refugee and Migrant Centre Therapy Services.
34. Ms Rothwell noted that with respect to continuing problems for the appellant's family that the appellant's wife had first written to him on 15th August 2012 prior to his being refused asylum, and she had sent other letters the same year. There was also evidence of his brother-in-law's difficulties in his father-in-law's letters. There was now further evidence of problems for relatives in the material relating to June 2016. It is possible that the photographs had reached the Sanpakam website because the families of the detained relatives had sent them or the human rights organisation to whom the detentions were reported provided them. It is notable that Sanpakam got the evidence on 16th July 2016 so a month after the incident, and the appellant getting the photographs. Ms Rothwell submitted that there was highly persuasive evidence that the authorities were still interested in the appellant as they maintained pressure on his family. This was consistent with what is said at paragraph 6.6.3 of the latest COIS report on Sri Lanka dated July 2016.
35. Ms Rothwell noted that there was a wealth of information showing the appellant had extensive involvement with the diaspora Tamil separatist movement, of most significance being that he was involved with the TGTE. The number of photographs of different events showed he was

prolific activist. It was clear from GJ that the Sri Lankan government would be likely to know that he had this involvement because of infiltration of the diaspora movement, but also because of pictures and reference to the appellant in media in Sri Lanka. He had raised specific fears of the Sri Lankan government having become involved with the BTF, and thus of being aware of true activist involved with this organisation.

36. It was clear that it would also be normal practice for returnees to be asked about their diaspora activities on return, see letter of British High Commission of 25th July 2014 at page B214 of the bundle. By giving his name his previous escape from detention and the questioning of his relatives would become apparent. The latest COIS report on Sri Lanka dated July 2016 makes plain that a serious possibility of a person such as the appellant being detained and tortured remained, see paragraphs 6.5.2, 6.5.5 and 6.6.1, taking material from a number of reputable reports. Whilst the reasons for refusal letter had suggested that the new government and new president might lead to change this clearly had not taken place in any positive way. Two experts, Dr Smith and Ms Harrison, had also written reports supporting the appellant's contention that he would be at risk on return.
37. The appeal should be allowed as the appellant had shown that there was a serious possibility that he had a well-founded fear of persecution for reason of his political opinions in favour of a separate Tamil state. This is because the appellant's history is credible and in keeping with the evidence given in GJ, and because he is at risk in accordance with the risk factors set out in that case namely that it is likely he is on a stop list or at least a watch list because he is seen as a threat to the unity of the Sri Lankan state as a result of his past and current diaspora activities, and this interest is reflected in the on-going interest in his family and would as a result be detained and at real risk of torture.

Conclusions - Remaking

38. The factual matrix is agreed in this case up to the point when the applicant escaped from Sri Lanka. In short summary it is therefore accepted by the respondent that the appellant was a police officer and a fighter with the LTTE, working for a leader who was in charge of ammunition. It is accepted that from July 2009 to October 2011 the appellant was detained and tortured by the Sri Lankan authorities, and that in October 2011 he escaped from Sri Lanka by boat and made his way to the UK where he claimed asylum in May 2012. The respondent does not accept that the appellant has significant diaspora activities or that his family have suffered enquiries and worse from the Sri Lankan authorities as they are still looking for the appellant. It is not accepted that he faces a real risk of serious harm as a result of his actual or imputed political opinions if returned to Sri Lanka.

39. I find the appellant to be a credible witness. He gave his evidence in a calm and careful way, addressing all questions put to him in full. His oral evidence was consistent with his written evidence, and no issues of inconsistency were raised by the respondent. His evidence is also consistent with his witness Mr Yogalingam and with the wider country of origin materials. Likewise I find Mr Yogalingam to be a credible witness. I have no reason to doubt the information he has provided about the appellant's activism or the organisation he works for the TGTE. He is a businessman who had clearly made a careful decision to come to the Tribunal to support a fellow political activist he genuinely believed to be at risk on return to Sri Lanka. He was not prepared to do this for all who asked him to do this.
40. The appellant has provided evidence in the form of letters (a number with envelopes and all with certified translations) from a wide number of sources - his wife, his father-in-law, a parish priest, a member of the Northern Provincial Council covering the period August 2012 to January 2016 about harassment of his wife by the authorities seeking him because of his history and diaspora activities. It is perhaps of some additional weight that the three letters from the appellant's wife and at least one of the letters from his father-in-law were sent prior to the appellant's asylum claim being refused. It is also notable that the letters have the ring of truth about them, making plain for instance the appellant's wife's dilemma at having to choose between staying a safer place or in a place where their son could receive his education, and attaching little drawings by the appellant's son. In addition there are papers concerning a complaint made by the appellant's wife made to the Human Rights Commission in December 2015. There are also materials regarding an incident in June 2016 when military came to the appellant's wife's home and questioned her once again about the appellant, looked for weapons and detained two relatives. These materials consist of photographs; evidence of the communication of these photographs to the appellant in the UK; and evidence some of these photographs were then reproduced on a Tamil news website, www.senpakam.org in July 2016 with a commentary about the incident.
41. The only challenge offered by the respondent to this evidence is that some of it was originally untranslated; and that potentially one of the relatives said to have been detained (the appellant's wife's brother) might have been detained for other reasons. In response to this last issue the appellant's evidence, which corroborates having had all of the above communicated to him, says that this was not the case, and that this individual has since had to be bribed out of detention and had to find safety in India as he is at risk of serious harm by association with him. The COIS Report July 2016 at paragraph 6.6.3 cites evidence from the International Truth and Justice Project in their January 2016 of families of those with LTTE links being targeted, so this pattern of behaviour is consistent with some background evidence. Having considered all of the evidence I am satisfied that the appellant is of on-going interest to the Sri Lankan authorities in the sense that there is

evidence of the military questioning, harassing and detaining relatives of his in Sri Lanka since his departure.

42. Jim Cunningham MP refers to the appellant as a as a leading activist in his letter of support. The appellant has provided substantial evidence of his attending events from November 2012, and of committed activism from the end of 2014 to the current time. There are many photographs in which he can be clearly identified at protest and demonstrations.
43. The appellant has had involvement with the British Tamil Forum, the Tamil Information Centre, the National Liberal Party, Nation without State, the Tamil World Historical Society and the Transitional Government of Tamil Eelam (TGTE) all of which is evidenced by letters from these organisations. He has attended and helped arrange protests and demonstrations and the celebration of important Tamil festivals/commemorations, but has also taken things further by giving evidence of crimes against humanity/genocide and being involved with the collection of this evidence from others. This is outlined in a letter from the International Centre for the Prevention and Prosecution of Genocide stating he has given evidence under oath and would potentially be a key witness in relation to genocide in Sri Lanka, with further details given in a statement by the UK Country Coordinator. He is described by the witness Mr Yogalingam as: “one of the key and trustworthy volunteers”, and that he is “in charge of coordinating the TGTE activities in Coventry under the guidance of Mr Ambalawanar Ahilawanar (Ahilan) who is another TGTE Member of Parliament. He continues to express his political aspiration publicly. As his photos often appear in the media he is very likely to be of interest to the Sri Lankan authorities.”
44. There is also evidence that this activism has clearly become available to be known in Sri Lanka. The appellant has provided evidence that photographs of him supporting Tamil separatism have appeared on YouTube film placed on the internet by Sinhalese Buddhist organisations Bodu Bala Sena and Sinhale Jaya Udesa, with commentary on the Bodu Bala Sena clip referring to the appellant, amongst others, as a national traitor. This clip was shown at the Tribunal hearing. The appellant’s picture on a Tamil demonstration with a tiger flag has also appeared in the Yarl Thinakkural newspaper date 19th May 2015 with a caption that he was attending a Mullivaikal Day demonstration organised by the British Tamil Forum. The appellant produced the original of this newspaper of that Tribunal hearing.
45. It is the evidence of the appellant’s wife that she has been presented with evidence of this diaspora activism in questioning put to her about the appellant, and it is the view of Mr Sokolingam that it would be known. I am satisfied, on consideration of all of this evidence, that the appellant has a profile as a committed activist for a separate Tamil state in the UK and that this has come to the notice of the Sri Lankan authorities.

46. The appellant's solicitors have provided an opinion from Ms Frances Harrison, who is an independent researcher and expert from the International Truth and Justice Project, Sri Lanka. I am satisfied that Ms Harrison has considerable expertise on Sri Lanka. She has experience of living in Sri Lanka and visiting the country between 2000 and 2005; she wrote a book on the Sri Lanka in 2012 regarding the end of the civil war in 2009; she has written a report on sexual violence and torture in Sri Lanka in this period; and now runs the International Truth and Justice Project - Sri Lanka which has produced a report in January 2016 about torture and sexual violence under the new government in Sri Lanka. Some material in this report was gained from an interview with the appellant, and so there is perhaps arguably some circularity in placing much weight on the report. However it is relevant that Ms Harrison's opinion is that the appellant's history of being a member of the LTTE and its administration for a decade would mean that combined with his military training, his *nom de guerre* and war injuries might well mean he was seen as more than a low level member of the LTTE. She also believes that current evidence, as set out in her report, means in any case that there is a real risk of detention and torture to persons such as the appellant however his past membership is ranked.
47. The appellant's solicitors have also provided an opinion from Dr Chris Smith who is an academic, consultant, policy adviser and researcher in the area of conflict, security and development issues in South Asia. He is an associate fellow of Chatham House, and has advised the Foreign Office, the Metropolitan Police and British High Commission in Sri Lanka. His evidence forms part of the body of evidence which informs the country guidance decision in GJ. He has visited Sri Lanka on five occasions between 2009 and 2012. He believes that it is likely the Sri Lankan authorities will have made a record of the adverse interest they have in the appellant, and that those records will be available at the airport, and that he will be detained at that point or place under surveillance. He believes that the appellant's activities are such that he would continue to be likely to be of adverse interest to the Sri Lankan state, and confirms that the authorities continue to be concerned about a LTTE resurgence. Dr Smith believes that it is likely that if the appellant does come adverse notice of the Sri Lankan authorities that he will be detained and will be at risk of torture.
48. I find both of these opinions worthy of some weight in the consideration of this case, particularly that of Dr Smith, and that the information set out above is of relevance to my ultimate decision. Both experts confirm their duty to the Court and have suitable qualifications to provide opinions, and set out the instructions and materials provided to them.
49. It is now necessary to consider whether the appellant is at risk on the basis of this history in accordance with GJ. I must determine whether he would be seen as a person to be targeted by arrest and detention because this was necessary to prevent the resurgence of the LTTE or Tamil separatism or the revival of the civil war. If this is the case he

would be someone at risk, as set out at paragraph (7)(a) of that decision, as someone who is perceived to be a threat to the integrity of the Sri Lankan state because he is perceived to have a significant role in post-conflict Tamil separatism with the Diaspora and /or a renewal of hostilities in Sri Lanka. The guidance is that the appellant's past history will only be relevant to the extent that he is perceived by the Sri Lanka state as being a present risk. In accordance with GJ if the appellant were to be detained he would be at real risk of ill-treatment or harm requiring international protection.

50. In evaluating whether the appellant is perceived in this way it is first necessary to note that the appellant has been accepted by the respondent (and this Tribunal) as having been detained and tortured during a substantial period after the end of the civil war in May 2009. He was detained from July 2009 to October 2011, a period of 2 years and 3 months during which he was severely interrogated and tortured, and used to attempt to identify LTTE weapons - a process which was successful on two occasions. GJ is premised on the idea that since May 2009 the situation had changed in Sri Lanka and persons would only be persecuted for their political beliefs in line with the risk factors set out in that case after this time. It is therefore a compelling argument that as the appellant suffered such persecution in this post-conflict period between July 2009 and October 2011, this indicates at that time he was perceived by the Sri Lankan state as someone with a significant role in post-conflict Tamil separatism - or perhaps more accurately someone who could play such a role, and whom they wished to prevent from so doing, due to his possible knowledge of ammunition dumps and his past commitment to the LTTE cause, which clearly had been long lasting and involved active military service.
51. The question arises then whether there would be any reason why the appellant would not continue to be seen in this light by the Sri Lanka state or if there is evidence that the attitude of the state has changed. The fact that the appellant was able to escape through payment of a bribe, would not in accordance with evidence found credible in GJ be of any significance: at paragraphs 276 and 146 the fact of release via a bribe does not indicate whether the appellant is seen as a serious threat or that the records relating to that person would be amended. My findings about the on-going interest in the appellant's wife and her family also indicate that the Sri Lankan state continue to view the appellant as someone who has the potential to play a significant role in post-conflict Tamil separatism in Sri Lanka, and who is demonstrating this potential in his diaspora activism, which in turn I have found to be known in Sri Lanka through news reports and intelligence in the hands of the security forces as presented to the appellant's wife.
52. I therefore conclude that the appellant faces a serious possibility of being detained on return to Sri Lanka by the security services (either at the airport because of being on a stop list or later because he is on a watch list and placed under surveillance) as a result of his actual and

imputed political opinions as currently expressed in his diaspora activism and reflected in his past history of Tamil separatist activity. This view is reinforced by what is said at paragraph 6.5.2 and 6.5.5 of the COIS July 2016 report relying upon the Immigration and Refugee Board of Canada and International Crisis Group reports of 2015 about arrests on arrival in Sri Lanka. It is evident from GJ and the current Country of Origin Information Service Report on Sri Lanka dated July 2016, for instance at paragraph 6.6.1 and 6.6.3, that being detained by the Sri Lankan security services will mean he is at real risk of serious harm and that the Sirisena government elected in January 2015 has not changed this risk to date.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal in its entirety.
3. I re-make of the appeal by allowing the appeal on asylum grounds and in accordance with the UK's obligations under Article 3 ECHR.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: Fiona Lindsley

Date: 20th July 2016

Upper Tribunal Judge Lindsley

Annex A

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Sri Lanka born on 30th September 1981. He arrived in the UK on 8th May 2012 and claimed asylum. The application was refused on 30th July 2013. His appeal was heard by Judge of the First-tier Tribunal Prior who dismissed the appeal on 4th October 2013, but an error of law was found in the decision and the matter remitted to the First-tier Tribunal by Deputy Upper Tribunal Judge Grimes in a decision dated 19th May 2014. The matter was heard de novo by Judge of the First-tier Tribunal Naphine who dismissed the appeal on all grounds in a determination promulgated on the 4th December 2014.
2. Permission to appeal was granted by Upper Tribunal Judge Coker on 23rd April 2015 on the basis that it was arguable that the First-tier judge had erred in law in failing to evaluate any risk on the basis of the undisputed evidence before the Tribunal.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law

Submissions – Error of Law

4. Ms Rothwell relied upon the grounds of appeal in which it is contended, in summary as follows. The First-tier Tribunal had not considered the risk the appellant faced on the basis of the facts accepted as true by the respondent: namely that on 29th July 2009 (two months after the end of the conflict in Sri Lanka) the appellant was arrested in a hospital having been identified by a former LTTE colleague and thus having his career with the LTTE disclosed which included latterly being clerk to a commander who was in charge of ammunition and being injured in battle in 2008 and escaping internment. As a result the appellant was detained for 2 years and 3 months during which time he was interrogated and tortured about the location of ammunition before he escaped with a bribe brokered via the EPDP. These were all matters highly relevant to whether the appellant is at risk of serious harm if returned to Sri Lanka but the decision discounts any risk only by reference to the fact he had low level involvement and would not be of interest in the context of his escape, and given his sur place activities. It was contrary to the country of origin evidence in GJ to find that being released via a bribe meant he was of no interest. It was contrary to country of origin evidence in GJ and Others

(post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 to give no significance to a post-conflict arrest when these were found to be intelligence led and presumed to be based on the risk factors set out in that decision. There was also a failure to look at letters from family members which had been provided to the Tribunal with translations from the appellant's wife and father-in-law which dealt with on-going interest in the appellant by the Sri Lankan state since his arrival in the UK. The error in considering these aspects of the history and evidence of on-going interest was material as it is highly arguable that this history showing that the appellant falls into the risk category of being someone who is perceived to be a threat to the integrity of Sri Lanka as a single state because he is perceived to be significant in the potential renewal of hostilities within Sri Lanka.

5. In addition it was argued that the First-tier Tribunal erred by not considering risk arising out of the appellant's accepted membership of the British Tamil Forum in the light of Guidance from the FCO dated 16th April 2014 and 25th July 2014 contained in the respondent's COI report dated 28th August 2014 about questioning and proscribing of this group; and also in the consideration of the evidence he had given about torture/war crimes to ICCPG which it is proposed to pass to the UN given the respondent's COI report of 28th August 2014 which notes that persons have been arrested for calling for investigation of alleged government war crimes. It was also argued that the First-tier Tribunal had wrongly characterised the appellant's Diaspora activities as inconsistent with his history when clearly this was not the case.
6. Mr Melvin argued, in summary that the First-tier Tribunal had appreciated the appellant's entire history and argued that it was immaterial that the arrest of the appellant was post-conflict, although he accepted that the letters from family had not been considered he argued that they were not ultimately material as they were from 2012 and 2013. The findings regarding bribery and of risk under GJ were open to the First-tier Tribunal. It was also open to the First-tier Tribunal to discount any risk from membership of the British Family Forum and as a result of the evidence to the ICCPG as the appellant's involvement and evidence was not significant and would not come to the attention of the Sri Lankan government. In any case any error regarding the British Tamil Form was not material as the organisation had been de-proscribed by the Sri Lankan government. (Ms Rothwell said she was unaware of any such development and I accept that this was genuinely the case.)
7. I told the parties that I found that the First-tier Tribunal had erred in law and would set out my reasons in writing, which can be found below. It was agreed that there was insufficient judicial time to re-make the decision; and in any case there was no Tamil interpreter at the Tribunal and the bundles for the hearing filed by the appellant had not reached the Tribunal file or the respondent.

Conclusions

8. The First-tier Tribunal does set out the core of the appellant's history including his detention and torture at paragraphs 20 and 21 of the decision, although there is a lack of reference to his connection with knowledge about LTTE ammunition. However when the judge makes his findings at paragraphs 26 to 55 relating to the refugee grounds of appeal he considers principally risk on the basis of Diaspora activities at paragraphs 28 to 42 and 46—50 and 54 of the decision.
9. At paragraph 45, 51 to 53 of the decision there is consideration of risk based on the appellant's history of LTTE involvement in Sri Lanka. However there is no reference either to any consideration of risk arising from the fact the appellant has been detained and torture for two years and three months from July 2009 (after the ceasefire in May 2009, when GJ holds that the concerns of the Sri Lankan government had changed and the LTTE was generally regarded as a spent force), or to the evidence in letters from the appellant's family of on-going interest in him. I find therefore that the First-tier Tribunal therefore erred in law by failing to consider whether this lengthy and brutal detention after the end of war and the evidence in the letters received after the appellant fled to the UK were indicative of the appellant being in the first risk category (7(a)) as a person perceived to be a threat as someone who was perceived through a potential knowledge of LTTE ammunition to be significant in the renewal of Tamil separatist hostilities. The approach of the Tribunal erred as it was not consistent with the relevant country guidance or consistent with paragraph 339K of the Immigration Rules which states that where it is accepted that an appellant has been subjected to persecution or serious harm that this will be regarded as a serious indicator of future risk unless there is are good reasons to consider such persecution or serious harm will not be repeated.
10. Release through bribery does not mean the appellant could not potentially be a person falling under such a category given the evidence in GJ at paragraph 146 from a witness found to be credible at paragraph 275, but this was given as an explanation for a lack of risk on the appellant's return without citing any alternative source of evidence by the First-tier Tribunal at 51 and 52. I find this also to be an error of law for want of sufficient reasoning to support a conclusion.
11. The First-tier Tribunal also erred by failing to consider risk on the basis of the appellant's simple belonging to (as opposed to activism with) a proscribed organisation, the British Tamil Forum in the light of the COIS report of 28th August 2014 and the evidence set out in the grounds from this report which indicates that this would lead to arrest if known about, and that there may be questioning about activities in the UK on or prior to return. There was also a failure to consider whether in the light of this evidence regarding questioning the fact of the appellant having given to the ICCPG evidence for potential future war crimes/torture enquiries by the UN could form the basis of risk on return. At the hearing Mr Melvin indicated that the British Tamil Forum was no long a proscribed organisation but had no evidence to support. After the hearing

he supplied me with evidence dated 30th November 2015 from the British High Commission supporting this fact which I understand is on the COIS website. If membership of the British Tamil Forum is pursued as a risk factor at the remaking hearing the appellant will have to address this evidence.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal in its entirety.
3. I adjourned the re-make of the decision.

Directions

1. The appellant's skeleton argument is to be filed 7 day prior to the hearing date with the Tribunal and served at the same time on the respondent.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 20th January 2016