



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13497/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6 June 2018

Decision & Reasons Promulgated  
On 6 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

MOHANAPAVAN [K]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms A Benfield of Counsel, instructed by York Solicitors

For the Respondent: Mr E Tufan of the Specialist Appeals Team

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a national of Sri Lanka, born on [ ] 1981. He has a long immigration history. He claims to have arrived on 31 October 2005. His asylum application was refused and his appeal to the First-tier Tribunal dismissed. On 30 April 2010 those appeal rights were exhausted. Further submissions were lodged and the Respondent's rejection of them led to an application for permission to bring judicial review proceedings which was refused. There were further submissions which

again led to an application for permission for judicial review. The application was compromised by a consent order of 16 February 2015 whereby the Respondent agreed to consider further evidence. This led to a rejection of the further submissions with no right of appeal and a third application for judicial review on which permission to proceed was granted on 19 February 2016 and again the matter was compromised by a consent order made on 30 September 2016 whereby the Respondent agreed to re-consider the decisions of 7 July and 7 December 2015.

2. On 18 November 2016 the Respondent again refused the Appellant's application for international surrogate protection. She referred to the First-tier Tribunal's determination promulgated on 16 March 2010 in which Judge of the First-tier Tribunal McGinty had made an extensive adverse credibility finding against the Appellant. She rejected the Appellant's claim that he had been sexually assaulted and raped while held by Sri Lankan forces while in detention because she did not accept the Appellant's explanation for the delay in making this particular claim which he attributed to shame and advice given by the Sri Lankan Member of Parliament who had secured his release from detention by way of a bribe.
3. The Respondent also found that the Appellant's scarring from shrapnel wounds did not show even to the lower standard that he had been a member of the Liberation Tigers of Tamil Eelam (LTTE) as claimed because shrapnel wounds may be caused by bombing which can be indiscriminate.
4. She also considered his claimed activities in support of Tamil autonomy or independence in London were not of a nature or degree likely to have brought the Appellant to the notice of the Sri Lankan authorities and place him at risk on return. She also found that he did not fall within any of the risk categories identified in *GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)*.
5. The Appellant had made a claim relying on Article 8 of the European Convention. The Respondent noted he had not claimed to have a partner or any dependent child in the United Kingdom and considered the evidence of the state of the Appellant's mental health was such that his return to Sri Lanka would place the United Kingdom in breach of its obligations under Articles 3 or 8 of the European Convention. The medication the Appellant was then taking was available from several sources in Sri Lanka.

### **Proceedings in the First-tier Tribunal**

6. By a decision promulgated on 20 September 2017 Judge of the First-tier Tribunal L K Gibbs made an extensive adverse credibility finding against the Appellant and dismissed his appeal on all grounds.
7. On 17 October 2017 Judge of the First-tier Tribunal J M Holmes granted permission to appeal because it was arguable the Judge had erred in law by not adequately taking into account:-

- (a) what had been said in *UB (Sri Lanka) v SSHD [2017] EWCA Civ 85* about membership of the Trans-National Government of Tamil Eelam (TGTE), an organisation proscribed by the Sri Lankan authorities;
  - (b) the evidence of a Sri Lankan lawyer and not giving express reasons for the rejection of that evidence; and
  - (c) the medical evidence and the Appellant's claimed suicide risk in the light of the evidence that he had made three previous suicide attempts.
8. By a letter of 8 November 2017 the Respondent lodged a formulaic response under Procedure Rule 24 referring to the decision in *GJ and Others* and asserting the Judge of the First-tier Tribunal gave adequate reasons for rejecting the Sri Lankan lawyer's evidence and the medical evidence.

### **The Error of Law Decision**

9. By a decision promulgated on 13 March 2018 I found that the decision of Judge Gibbs contained material errors of law and set it aside for hearing afresh in the Upper Tribunal. On 6 June 2018 I re-heard the substantive appeal.

### **The 2010 Proceedings**

10. On 19 January 2010 the Respondent refused the Appellant's claim for asylum. His account was not believed because of various apparent inconsistencies and his involvement with the Liberation Tigers of Tamil Eelam (LTTE) was not of sufficient profile to place him at risk on return. Given the Respondent did not find the Appellant credible, and having regard to the other risk factors identified in the then current country guidance determination of *LP (Sri Lanka) [2007] UKAIT 00076*, his claim was rejected.
11. By a determination promulgated on 16 March 2010 the First-tier Tribunal dismissed the Appellant's appeal. On 15 April 2010 his application for permission to appeal was refused and his appeal rights were exhausted on 30 April 2010.
12. Subsequently the Appellant instructed another firm of solicitors. On 21 October 2013 they submitted further representations in support of a fresh claim supported by a lengthy witness statement of 18 October 2013 from the Appellant and additional documentation relating to the financing of the lorry which the Appellant used in his business in Sri Lanka, a psychiatric report of 4 May 2013 from Dr C Zapata and a psychotherapist's therapeutic report of 1 October 2012 from Mary Garner and a scarring report of 27 June 2013 from Dr F Arnold, other medical evidence, a letter of 22 September 2012 from Mr [N], a member of the Sri Lankan parliament and a letter of 10 April 2013 from Mr [S], a Grama Sevaka Officer.
13. In response, the Respondent issued on 18 November 2016 a fresh decision. This decision relied on the adverse findings of the First-tier Tribunal's determination of 16 March 2010. The Respondent rejected the Appellant's sur place claim on the basis that his psychotherapist had reported that the Appellant told her he stayed in his

room and wants to hide away which the Respondent considered inconsistent with his claim to have attended demonstrations. The Respondent commented that the additional information about the financing of the Appellant's lorry could have been supplied at an earlier date and that no explanation for the delay had been given and further referred to a several apparent inconsistencies in the documentation for the lorry.

14. The Respondent noted it had been almost twelve months between the date of the letter from Mr [N] and the further submissions and considered that Mr [N] had speculated that the authorities were still interested in the Appellant. The letter from the Grama Sevaka was considered. The Respondent noted it was not on official headed paper. The Respondent did not accept the claims contained in the letter because "no evidence has been provided to verify that the CID either visited your home or ... your father". There was no medical evidence about the Appellant's father or explanation why the letter was some three years after the CID office was said first to have contacted the Appellant's father.
15. The Respondent accepted the Appellant had attended several protests in the United Kingdom.
16. The Respondent stated the Appellant had not previously mentioned that he had been sexually assaulted and raped by the Sri Lankan authorities while in detention. She did not accept his explanation that he was ashamed to mention this and that his release had been secured upon payment of a bribe and that the payer of the bribe, another Sri Lankan member of parliament, Mr Balachandran had told the Appellant not to mention the details of his detention, ill-treatment and manner of release.
17. The Respondent accepted the Appellant had suffered shrapnel wounds but did not accept his account how they had been caused. The Respondent stated the Appellant admitted to have "self harmed regularly (razor blades and cigarette burns) and it is considered there could be other explanations for your scarring". The Respondent rejected his claim to have been a member of the LTTE and referred to a judgment of the Court of Appeal about scarring and referred to the current country guidance determination in *GJ and Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)*. The various risk categories identified in *GJ* were reviewed by the Respondent who concluded that the Appellant did not fall into any of the "risk categories".
18. The Respondent then considered the Appellant's claim on the basis of his mental health and concluded he did not meet the high threshold of exceptional circumstances identified in *N (Uganda) v SSHD [2005] UKHL 31*. The Respondent referred to *J v SSHD [2005] EWCA Civ 629* dealing with the assessment of risk of suicide on return and referred to background evidence that treatment by psychiatrists was available in Sri Lanka on both an out-patient and an in-patient basis and identified two hospitals both in Colombo where this was available and a number of pharmacies in Colombo where various medications were available.

### **First-tier Tribunal Proceedings**

19. By a decision promulgated on 20 September 2017 Judge of the First-tier Tribunal L K Gibbs dismissed the Appellant's appeal on all grounds. She relied extensively on the previous determination of 16 March 2010. For the reasons given in my error of law decision promulgated on 13 March 2018, her decision contains errors of law and has been set aside in its entirety with no findings preserved. For the reasons given in my error of law decision the re-hearing of the substantive appeal was retained in the Upper Tribunal.

### **The Standard and Burden of Proof**

20. The standard and burden of proof in relation to claims under the Refugee Convention, for humanitarian protection under the Qualification Directive and under the European Convention are for all material purposes one and the same; that is the Appellant must show there are substantial grounds for believing that if returned to his country of origin he will be persecuted for a Refugee Convention reason or if removed from the United Kingdom will be subjected to treatment which for the purposes of humanitarian protection as defined by paragraph 339C of the Immigration Rules will amount to serious harm or will be subjected to treatment which will violate his rights under the European Convention. This is known as the lower standard of proof. The effective date for assessment of the evidence in support of each claim is the date of the hearing. In the case of a free-standing claim that Article 8 of the European Convention is engaged based on circumstances arising in the United Kingdom, the standard of proof is the civil standard; that is on the balance of probabilities. The burden of proof remains on the Appellant.

### **Documentary Evidence**

21. Following directions made in my error of law decision the Appellant has submitted a consolidated bundle with an index. This was relied upon together with a supplementary bundle filed on 25 August 2017 containing a copy of the Appellant's identity card issued by the Trans-National Government of Tamil Eelam (TGTE) organisation in London and photographs of him attending rallies and meetings of the TGTE in the United Kingdom. Ms Benfield submitted at the hearing a bundle of authorities and recent background information together with a skeleton argument. I have also considered the expert psychiatric report of Dr Kanagaratnam of 30 June 2010, the record of the interview of the Appellant on 20 November 2009 by an Immigration Officer and Dr Zapata's later report of 9 March 2017.

### **The Substantive Re-Hearing in the Upper Tribunal**

22. The Appellant attended the hearing and gave evidence through an interpreter. At the outset I reminded myself and the representatives that in the light of the psychiatric and scarring reports, the Appellant was to be considered a vulnerable witness. I checked I had before me all the documents upon which the parties were relying.

23. The Appellant gave oral testimony. He stated the people with whom he had been living had moved from Northolt back to St Helen's. He was still taking medication for insomnia and depression. He had attended group therapy sessions but had stopped going because he felt unable to talk about his experiences in front of a group of people. He saw his GP monthly or more frequently if his depression worsened. He had last spoken with his father in Sri Lanka some four or five days before the hearing. His father was still subject to a monthly reporting condition. The Appellant stated that when his father attended to report the Sri Lankan authorities made him wait outside for a long time in the sun and then ill-treated him.
24. He attended weekly Sunday meetings of the TGTE and his most recent work for the TGTE had been putting up posters for a sports event.
25. He was asked about the TGTE identity card which had been issued in April 2017 and responded that the TGTE had only then started to issue cards. He explained he had helped marshal at TGTE protests. He supported the TGTE which was independent. He believes that the other main Tamil organisation in London, the British Tamil Foundation, cooperated with the Sri Lankan authorities. The last demonstration he had attended was at the recently held Commonwealth Conference in London to protest against the presence of the Sri Lankan president.
26. In cross-examination the Appellant was asked about the letter from Mr [Y], the Deputy Minister of Sports and Community Health at pages S56-S57 of the Appellant's bundle (AB). He was asked why he had simply identified him as in charge of Sports and Community rather than giving his full title. The Appellant explained it was a long title and he could not immediately recall it. He said Mr [Y] was not present at Field House because he was at Taylor House to give evidence in another appeal. He had not attended the hearing before Judge L K Gibbs because he had previously come twice to hearings to support the Appellant but the appeal had not been heard. The Appellant could not remember why he was not at what he described as the last hearing although it is not clear if he was referring to the hearing before Judge L K Gibbs or the error of law hearing before me.
27. He confirmed that he was a volunteer for the TGTE and described his marshalling duties at protests. He accepted he was not a leader. He did not know why the identity card issued by the TGTE did not state it was issued by the TGTE.
28. He was asked about the incident on 11 September 2007 when he said he had been stopped when driving his lorry and taken to Veppankulam army camp and ill-treated and taken the following day to the police station from which he and his lorry had been released. He had subsequently discovered his release had been secured by the shop owner to whom he was delivering goods. The shopkeeper had been in contact with the authorities but he did not know whether he had written or spoken to them. All he knew was that he had subsequently claimed the Appellant had been released through his efforts. The shop keeper was Arandah [R], known as Arandah. His shop was called [S Stores] after the name of his father and by which name Arandah was also known: see hearing replies 44-48.

29. The Appellant was next asked about the incident in November 2007 when he had been driving his lorry by a clandestine route to an LTTE controlled area and had been stopped by the army. He had been told after being stopped by his passenger that the lorry's cargo included LTTE uniforms. The passenger's name was Murali: see hearing replies 49-60. The Appellant had fled into the forest and said he had not been pursued.
30. Mr Tufan then asked the Appellant about his escape from an army detention facility in May 2009 when the LTTE were close to military defeat. I noted the Appellant stated he and his family had surrendered to the army and been taken to the Vavuniya Central School: see paragraphs 29 and 30 of his 2013 statement. He explained that his sister's children had been attending scholarship classes at a school on the site and that these classes had continued and he had been able to escape through a gap in the wiring by the school: see hearing replies 61-65. He had been assisted by Mr Balachandran who knew his older sister.
31. The Appellant was then referred to his account of events in Colombo in October 2009. He said he had been detained and held in an army camp for two weeks: see hearing replies 70-72, but at paragraph 37 of his 2013 statement he had referred to being held for six days, 8-14 October 2009. He confirmed he had been held for only six days and had been tortured during that period. Mr Tufan referred the Appellant to paragraph 32 of the decision of Judge L K Gibbs who had found that he had not previously mentioned that his ill-treatment had included rape. Paragraph 32 of her decision states:-

The Appellant's evidence is that he failed to previously disclose a detention in Sri Lanka between 8 October 2009 - 14 October 2009 (during which he was tortured, sexually abused and raped) prior to 2010 because he *'feared that I would be treated differently or discriminated if I revealed my sexual encounter at my interview'*. Previously he had said that he had escaped from an IDP camp on 20 May 2009 and thereafter remained in hiding in Colombo until an agent arranged for him to leave the country.

There was no response to this from the Appellant and Mr Tufan rapidly moved on to ask whether the Appellant's father remained in Sri Lanka. The Appellant explained that his father was in Sri Lanka and lived with the eldest of the Appellant's five sisters, all of whom were married and in Sri Lanka. The Appellant confirmed that if there were no political problems he could return to live with his elder sister and father.

32. Ms Benfield had no questions in re-examination. I asked some questions to clarify the Appellant's evidence. In response he explained he had been seriously ill-treated in his final detention but other than a beating in an earlier detention he had not otherwise been seriously ill-treated. He had no further news about his two brothers whom he believed had been killed by the Sri Lankan Army. The army had explained to the Appellant's family that his brothers had failed to keep an appointment in the IDP camp and had never been captured: see hearing reply 82. I asked other questions about the Appellant's evidence that in March 2009 he had

transported weapons for the LTTE. He explained that before March 2009 he had used his lorry to carry mainly food and other groceries or people but that towards the end of the military campaign against the LTTE he had taken weapons to a point where the LTTE would collect them: see paragraphs 23 and 27 of his 2013 statement. I explained to the parties that I had asked these questions to satisfy myself whether it was necessary to consider exclusion under Article 1F of the Refugee Convention. Mr Tufan indicated the Respondent noted the Appellant had helped bury weapons towards the end of the military conflict between the LTTE and the Sri Lankan Government and that such assistance may well have been under duress. I said that on the basis of the Appellant's evidence I was satisfied the issue of exclusion did not arise. Ms Benfield then commented that the issue of exclusion had not previously been raised and I reminded her that the Tribunal was under a duty to raise it on its own motion if there was a reason so to do.

### **Submissions for the Respondent**

33. Mr Tufan submitted that the Respondent accepted that if the Appellant were to be found credible then the appeal should succeed. However, the submission was that the Appellant's account was not credible and that in that light following the jurisprudence in *Tanveer Ahmed\** [2002] UKIAT 00439, little weight should be attached to the letters from Sri Lanka.
34. He relied on the Reasons for Refusal Letter of 18 November 2016 and submitted the principles enunciated in *Devaseelan\** [2002] UKIAT 00702 should apply in relation to the findings in the First-tier Tribunal's determination of 16 March 2010.
35. The Appellant's account was not credible. He referred to the Appellant's detention on 11 September 2007. His evidence at the hearing was that his release was procured by Arandah [R] but in his statement he had referred to [S] who had been able to obtain his release by writing a letter yet the Appellant said that he had been detained for only one day.
36. Referring to the incident on 20 November 2007 when the Appellant travelling with Murali was stopped by the army. Mr Tufan submitted the Appellant's account that Murali was being questioned at the rear of the lorry while he remained sitting in the passenger seat and Murali was able to move from the rear of the lorry to the front to advise the Appellant to escape because the cargo included LTTE uniforms, was simply not plausible or credible. Additionally, it was similarly not plausible nor credible the LTTE would have uniforms made in an area controlled by the Sri Lankan authorities and then transport them to an area controlled by the LTTE.
37. Turning to the Appellant's escape from detention in mid-May 2009, Mr Tufan submitted the Appellant's account that he was able to escape through a gap in the fencing by classrooms used for scholarship classes in a detention camp was neither plausible nor credible.
38. The Appellant had failed completely without explanation to mention the ill-treatment and rape and sexual abuse he claimed he suffered in detention in 2009,



although he had given initially a detailed account of detention and torture in 2007. Additionally, in oral testimony he had said that he had been detained for fourteen days and then revised his evidence to say that he had been detained for only six days in October 2009.

39. The Appellant's account of the involvement of Mr Balachandran, a Sri Lankan Member of Parliament, was vague and there had been no explanation of the connection between his sister and Mr Balachandran to support the claim that it was his sister who had contacted Mr Balachandran for help to obtain his release in October 2009. The whole account of this detention was not credible.
40. The Appellant's activities with the Trans-National Government of Tamil Eelam (TGTE) were of a very limited nature and he had a very low profile. On his own evidence he was merely a volunteer and had acted as a marshal at one or more protests. In evidence he was unable to give the proper title of the minister who had written a letter of support for him at AB page S56. The TGTE had previously been on the List of Proscribed Organisations. Mere attendance at demonstrations or protests was insufficient to bring the Appellant within a risk category identified by *GJ and Others*. The Appellant could have had no significant role in the TGTE if only because of his claimed mental health issues.
41. Mr Tufan went on to submit that nevertheless the Appellant's medical problems were not sufficiently serious to enable him to cross the high threshold to show that on return he would be subjected to ill-treatment sufficiently serious to engage Article 3 of the Refugee Convention. The Appellant may suffer from post-traumatic stress disorder (PTSD) but this did not engage Article 3.
42. The medical evidence that the Appellant had some continuing suicidal ideas but no plans did not show that he was likely to make a suicide attempt prior to arrival in Sri Lanka at which point he submitted the United Kingdom's obligations came to an end. The Appellant's case did not fall within the scope of being very exceptional as referred to at paragraphs 29-35 of *KH (Afghanistan) v SSHD [2009] EWCA Civ 1354*.
43. He relied on paragraphs 37-40 of *AM (Zimbabwe) v SSHD [2018] EWCA Civ 64*. The widening of the scope of Article 3 of the European Convention provided for in *Paposhvili v Belgium (C-41738/10)* required there to be the prospect of a serious and rapid decline in health resulting in intense suffering to the Article 3 standard where death is not expected. This widening of the parameters had no material application to the circumstances of the Appellant.
44. On return to Sri Lanka, the Appellant could relocate to live with his father and sister. The appeal should be dismissed on all grounds.

### **Submissions for the Appellant**

45. Ms Benfield relied on her lengthy skeleton argument. She went on to submit that even applying the principles enunciated in *Devaseelan*, the Tribunal was not bound

by the First-tier Tribunal's 2010 decision. That decision was made without the benefit of the subsequently obtained medical evidence and also at the time the Appellant had no sur place claim.

46. The Respondent had made limited submissions to support the claim the Appellant was not credible. There had been no challenge to the various expert reports. The aspects of the Appellant's account on which the Respondent had focused had been over-stated and the Respondent had not taken a holistic approach to the evidence.
47. Addressing the particular points made for the Respondent, Ms Benfield submitted in relation to the 11 September 2007 incident the Appellant had given an explanation of the connection between Arandah [R] and [S] who was Arandah [R]'s father and who had given his name to the business which he had founded and which his son, Arandah [R] had inherited. The claim that Arandah [R] had written and delivered a letter to procure; particularly in the light of the Appellant's explanation that he did not know precisely what had been done to secure his release only that Arandah [R] had claimed it was because of him the Appellant had been released: see hearing reply 44.
48. The Appellant's account of the incident on 20 November 2007 was plausible when put in the context of the country background information. The Appellant had said the authorities knew him. He had left his documents in the lorry. It was not implausible that the LTTE should smuggle uniforms through government-held areas.
49. The Appellant's account of his escape in May 2009 at the end of the military campaign against the LTTE was credible. At the time there was numerous Internally Displaced Persons (IDPs) in north Sri Lanka. It was not unreasonable for an IDP camp to have a school and in any event as to the manner of escape, IDP camps tended to have an element of porosity.
50. Turning to the Appellant's account of his detention in October 2009, even if it was accepted that he had not made disclosure of the ill-treatment suffered until 2013, an essential issue was whether the Appellant had good reason not to disclose this. Looking at the evidence in the round, he had made some disclosure as could be seen at AB pages 110, 111, 156 and 177. He had disclosed some information, particularly to his doctor.
51. Whether the Appellant had been detained for fourteen or six days was not a core issue. At the hearing he had said he had been held for about two weeks and subsequently agreed that it was six days. The Appellant was a vulnerable witness and this apparent inconsistency was not probative of lack of credibility.
52. It was plausible that the Appellant's release in October 2009 was obtained upon payment of a bribe. Ms Benfield referred to the evidence given by Dr Smith in *GJ and Others* set out at paragraphs 13, 34 and 50 of Appendix F to the decision.

53. In summary, the challenges made for the Respondent to the credibility of the Appellant had failed to engage with his evidence in the round. There had been no challenge to the expert reports and the Appellant should be found to be a credible and reliable witness.
54. The Respondent had had ample opportunity to make enquiries about the lawyer's letter at AB page S11 but had not. It disclosed that the Sri Lankan authorities had a continuing interest in the Appellant's father because they believed the Appellant to have been part of the LTTE. There was additional evidence by way of a letter from the Appellant's father at AB page S12.
55. The Appellant had a material sur place claim by reason of his membership of the TGTE. The Appellant's failure to give the correct title in English of the minister who had written a letter in support at AB page S57 was not material. There had been no other challenge to his involvement with the TGTE. Whether the Appellant volunteered or was paid for his services was not relevant. The Respondent accepted that at least the Appellant was a volunteer. Looking at the judgment in *UB (Sri Lanka) v SSHD [2017] EWCA Civ.85* and the Sri Lankan government's proscription of the TGTE coupled with the likelihood that the Sri Lankan authorities will have identified the Appellant from photographs taken by them of TGTE protests in London or which had appeared in media sources, the Appellant on return will be viewed as involved in post-conflict terrorism and any involvement with the TGTE, a Sri Lankan proscribed organisation, would be seen by the authorities as significant.
56. Ms Benfield drew my attention to the evidence about the Appellant's various suicide attempts and the background evidence about the lack of psychiatric facilities in Sri Lanka. She urged the appeal be allowed.

### **Consideration of the 2010 determination**

57. For reasons which will become clear, I propose to deal first with the application of the principles enunciated in *Devaseelan*. I have previously set aside in its entirety the First-tier Tribunal's decision of 20 September 2017. Consequently, there are no findings in that decision to which the principles in *Devaseelan* can attach. There remains the 2010 determination which was not appealed. None of the expert psychiatric report, the psychotherapist's therapeutic report and the scarring report were before the Tribunal in 2010.
58. The Judge rejected the Appellant's claim to have worked as a tax collector for the LTTE on the basis that there were no pay slips or other evidence to support the claim. The background evidence is clear that it would be most unlikely that any young man had not at some point or other worked voluntarily or for payment or under some degree of duress or other for the LTTE in north Sri Lanka during the civil strife. Rejecting such a claim for lack of pay slips would appear to be requiring corroborative evidence which is not necessary to substantiate an asylum claim and expecting there to have been pay slips issued between 1999 and 2002 and for the Appellant to have retained them until 2010 might be considered to involve applying

a more stringent standard of proof than the lower standard applicable to asylum claims.

59. The Judge rejected the Appellant's account to have worked in the haulage industry. The grounds for the rejection relate to the documentation evidencing the financing of the purchase of the Appellant's lorry.
60. The Appellant's evidence is that his father negotiated the acquisition of the lorry and that he was not involved in those negotiations. Given the state of civil strife in north Sri Lanka in 2002 I do not find it surprising that many finance companies would have been uneasy about lending money for the purchase of a commercial vehicle to be used by Tamils in north Sri Lanka, including Vanni. The various dealings with the lorry which was a leased asset are described in detail in a letter of 10 May 2013 from the dealer involved in the original sale, financing and later re-financing at AB pages 45–46. I accept this was not before the Judge in 2010. Given the detail and lack of inconsistency with the recorded evidence of the Appellant about the dealings in the asset represented by the lorry, and the passage of time between the transactions in question and the date of the letter which would indicate the information was based on inspection of old records, I give material weight to the letter.
61. I turn to the incident of 11 September 2007. A careful reading of the Appellant's evidence at interview on 20 November 2009 is that he was stopped as usual, doubtless at a checkpoint, and was subsequently taken to Veppankulam army camp where he was beaten. At interview reply 39 the Appellant referred to employees of [S Stores] seeing the incident and immediately called the owner of [S Stores]. It is evident from interview replies 39 and 50 (not 47) that the Appellant was referring to another lorry operating for the benefit of the same shop to which he was making a delivery and that in the shop lorry there was the driver, whom he knew, and two or three other lads. Consequently, there is no inconsistency in his account of a type which the Judge sought to identify at paragraph 53 of the 2010 determination.
62. The next section of the interview relates to the Appellant's release from Veppankulam army camp. The Appellant stated at replies 53ff. that he was told by the boys in [S]'s shop that Arandah [R] had spoken over the telephone to army officers and that he knows only of the contents of the letter from him from what his solicitors had told him. The letter from [S Stores] at page B151 of the Respondent's original bundle states the Appellant was arrested at a checkpoint and that he, Arandah [R] went to meet an army officer to vouch for him. At interview reply 52 the Appellant said he thought Arandah [R] knew some senior army officers. There is no immediately apparent inconsistency between the accounts of the Appellant and Arandah [R]. The inconsistency appears to be in what the lads who worked in the shop told the Appellant. Incidentally, the letter is signed by Arandah [R] which is consistent with what the Appellant said in oral testimony that the business was established by his father [S] and that he had inherited it: see hearing replies 42–48. The adverse findings in the 2010 determination about the 11 September 2007

incident are not supported on a close examination of the evidence which was before the Judge.

63. I move on to the 20 November 2007 incident, dealt with at paragraphs 57ff of the 2010 determination. There is no reference in the replies given at interview to an arrest of Mr [S]. At paragraph 22 of the Appellant's lengthy statement of 18 October 2013 at AB page 27 he stated that the day after the 20 November incident the army questioned Mr [S] (Arandah [R]) at [S Stores]. I also note that at interview reply 103 the Appellant stated it was his brother-in-law who was threatened and beaten. I cannot comment about the Appellant's driving license and vehicle registration document since neither party produced the originals or the copies for the Upper Tribunal hearing.
64. Turning to the Appellant's escape on 20 November 2007 when he was travelling with Murali and carrying LTTE uniforms. The Appellant's evidence was that the army had seen him run away into the jungle. The claim that he had not been pursued is plausible in the circumstances. The Sri Lankan army had the lorry, its cargo and his passenger. If there were only three soldiers as claimed at paragraph 17 of his 2013 statement then they would have most likely had to stay with Murali and the lorry rather than go into the jungle to look for the Appellant. The Appellant then fled down the coast and later came across LTTE members in uniform and then found his way to an LTTE base at Illuppakadavai: see paragraphs 18-21 of his 2013 statement. This is not fairly reflected in the 2010 determination.
65. The Appellant's account is clear, contrary to paragraph 60 of the 2010 determination, that he left working as a tax collector for the LTTE in 2002 when his father bought a lorry. He then worked in haulage using that lorry until the incident of 20 November 2007 when the lorry was impounded by the Sri Lankan Army. At interview reply 117 the Appellant states he was driving vehicles for the LTTE. It cannot have been his lorry because that had been impounded by the army which effectively had put an end to his independent haulage business, part of which had included contract work for the LTTE. Without his lorry and business, he worked for the LTTE driving LTTE vehicles as he stated at interview reply 117. At paragraph 21 of the 2013 statement the Appellant makes it clear that his driving work for the LTTE was not as an independent contractor: see AB page 26.
66. I refer to paragraph 61 of the 2010 determination. Judge found the Appellant's claim about the CID visiting the Appellant after he had escaped from a refugee camp to be inconsistent with what he said at interview or in his 2013 statement.
67. The Appellant states the CID visited his sister immediately following the incident of 20 November 2007. The Appellant's claim to have escaped from a IDP camp was in mid-May 2008: see interview replies 131ff. At reply 137 the Appellant expressly identifies the refugee camp as a school. Given the chaotic situation in north Sri Lanka at the time of the military defeat of the LTTE, the lack of documentary evidence that the Appellant was at a refugee camp (more properly described as an IDP camp) is both plausible and credible.

68. Referring to the Judge's treatment of the timing of the Appellant's claim by reference to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 at paragraph 62 of the 2010 determination, I note the Appellant's claim is that he arrived on 31 October 2009, a Saturday and claimed asylum on 4 November 2009. The use of a false passport to obtain entry to the United Kingdom to claim asylum is a defence to a charge of using a false document. The Appellant arrived clandestinely on a false passport with an agent who arranged for him to go to Liverpool. Having arrived at Liverpool, the Appellant ascertained that he had to go to the Home Office Croydon to claim asylum: see paragraphs 38 of his 2013 statement. In these circumstances, I find the Appellant has given a reasonable explanation for the brief delay between his arrival and his claim for asylum. I take account of the provisions of Section 8 of the 2004 Act and find that in the Appellant's particular circumstances the short delay in claiming asylum does not by itself materially damage his credibility.
69. I conclude that the 2010 determination's treatment of a number of essential matters upon which the Judge based his adverse credibility finding to be questionable and in the circumstances conclude that I can give limited weight to it as a starting point for my consideration of the Appellant's evidence.

### Findings

70. I shall first address the submissions made for the Respondent. I have explained above why I do not accept the submission that *Devaseelan* principles should apply to the 2010 determination. I have explained above why I do not find the apparent confusion between the names of [S] and his son, Arandah [R], to be an inconsistency of any materiality and similarly that there is no confusion in the Appellant's evidence whether his release procured by Arandah [R] was by means of a letter, telephone call or face to face conversation.
71. Given the Appellant's claim that only three soldiers were around the lorry when he was stopped on 20 November 2007, I have already explained why I find his escape into the jungle without being followed to be plausible, as indeed is his account that soon thereafter the Sri Lankan army interviewed Arandah [R]/[S]. I am not persuaded that it is a reason for finding the Appellant's account not credible that the LTTE would not manufacture uniforms in one area and then transport them through a government-controlled area. The issue of who controlled any particular area between Elephant Pass and south of the Jaffna peninsula and the whole of Vanni during the civil strife in Sri Lanka was fluid and on such information as is available, I find it both credible and plausible that the LTTE might have uniform manufacturing arrangements in one area of Sri Lanka and have to transport uniforms to another area, perhaps closer to where military training or fighting was taking place and that this might involve passing through a government controlled area.
72. The Appellant had made it clear at interview replies 143-145 and at paragraph 28 of his 2013 statement that in May 2009 following surrender to the army he was taken

to Vavuniya Central School: see AB page 29. In this context his account of his escape from a school being used as an IDP camp at a time of considerable civil disruption following the military defeat of the LTTE is both plausible and credible.

73. The Respondent submitted the Appellant had failed without explanation to mention the ill-treatment, rape and sexual abuse he claimed to have suffered when detained in 2009. It appears from the 2010 determination promulgated on 16 March 2010 that there was no medical evidence at all before the Judge.

74. The Tribunal file shows that within less than two months the Appellant had instructed another firm of solicitors and they had instructed Dr G Kanagaratnam a psychiatrist to prepare an expert report. This was completed on 30 June 2010. It was included in an earlier bundle of documents submitted for the Appellant but is not in the consolidated bundle. He writes:-

(at page 10): he found it difficult to provide an account of his trauma -related experiences as he found it difficult to recall these due to its disturbing nature....

(at page 11): he stated that his self-esteem is greatly damaged. He has a sense of foreshortened future....

(At page 14): Avoidance and emotional numbing are characterised by his reluctance to engage in any conversations or activities that rekindle memories of his traumatic experiences. During the assessment he presented with deep emotional constriction and marked personal detachment.

... (He) has undergone an irreversible change in his personality. His traumatic experiences have affected his personality in an enduring manner and contribute significantly to his feelings of helplessness, pointlessness and worthlessness...

... His clinical features are further compounded by his feelings of intense guilt and shame along with extreme arousal as a result of being a victim of torture, during which he had been humiliated.

75. On 28 June 2012 the medical record prepared by Dr Krishnathan records the Appellant has having stated that he was tortured including having a hot metal rod inserted into his anus. Having regard to the rest of the evidence, I am not certain that this represents a correct representation of what happened to the Appellant but I am satisfied that by that point he had made clear reference to sexual abuse in the nature of rape. The medical report at AB page 105 refers to the Appellant complaining of pain or bleeding on 22 May 2012 and AB page 156 on 28 June. to Dr Krishnathan. Additionally there is a reference at AB page 102 to the Appellant seeing a doctor on 22 July 2010 who recorded that the Appellant "was not keen to divulge details but from what he expressed he is worrying about his home and relatives...".

76. On 8 April 2013 Dr Zapata recorded at AB page 53 that the Appellant expressly stated he had been:-

anally raped at least three times by his male captors and sustained rectal bleeding; he has allegedly told his GP about this but did not tell you KBA officers because he was too ashamed to recount this at the time.

77. Judge Gibbs in her 2017 decision at paragraph refers to the failure of the Appellant to mention that he had been raped. She did not address the reasons given for why the Appellant had not made early disclosure of this. Although she addressed the expert report of Dr is a pattern and in particular what he found about the risk of suicide by the Appellant but she did not address the section in the report identified in the preceding paragraph.
78. I am satisfied on the evidence that the Appellant was detained, tortured and raped in Colombo in October 2009 as claimed and there is a reasonable explanation for the delay in making this allegation. I have in mind, in particular but not exclusively, that there may be issues about the support given to the Appellant prior to his instructing Theva & Co as indicated in his statement at AB pages 248-250 and supported by the statement by his then caseworker at AB pages 245-247. I also bear in mind the Appellant's statement at AB pages S1-S 10 which I was told have been prepared by Theva & Co in January 2017 but was only signed by the Appellant at the hearing. The unsigned version would have been before Judge Gibbs.
79. I accept the Appellant's account of the involvement of Mr Balachandran at his sister's request is lacking in specific detail but I have to take into account that the Appellant did not come across him until after his sister had persuaded him to assist. The Appellant was not directly asked to explain the connection between his sister and Mr Balachandran. I accept that the Appellant's activities with the TGTE are minor and are not such as to consider him to have a high profile. The Appellant effectively accepted this in his oral evidence before me.
80. Dr Zapata dealt with the Appellant's suicide risk at paragraph 78-96 of his most recent report following an interview of the Appellant on 6 January 2017 to be found at AB pages S34-S39. In these paragraphs he addresses the criticism made at paragraphs 54-55 of the decision of Judge Gibbs by giving a more detailed explanation of the meaning of the various terms used. Nevertheless, I note that there is no evidence of any suicide attempt subsequent to February 2013. Similarly, I note that it was shortly thereafter on 8 April 2013 the Appellant is recorded as having unequivocally disclosed his rape.
81. It will be evident from the foregoing paragraphs that I find the Appellant's account both plausible and credible in its material aspects. Similarly, I accept the Appellant's account of the continuing interest of the authorities in his father. Dr Zapata opined at paragraph 87 of his 2017 report that if the Appellant was to be "faced with imminent removal to Sri Lanka his suicide risk would suddenly increase even further". There was no challenge to any of the medical evidence for the Appellant and I see no reason not to attach



considerable weight to it. I would add that both Dr Arnold and Dr Zapata are well known and respected expert witnesses in this jurisdiction.

82. I am satisfied that the Appellant is known to the Sri Lankan authorities who continue to express some interest as evidenced by their imposition of a requirement on the Appellant's father that he regularly report. I find that there is likely to be a record of the Appellant with the authorities in Colombo following his October 2009 detention. I do not find it likely that the Appellant would be at risk on return by reason of his detention in September 2007 but I find there is a real possibility that given the Appellant's detention in October 2009 the authorities may be able to trace him back to the escape in November 2007 when his lorry was seized and the authorities questioned Arandha [R] and beat his brother-in-law: see interview reply 103. I accept that he has been involved at a very low level in TGTE activities in London. At the hearing he explained that he considered the British Tamil Forum was insufficiently opposed to the government and he thought that on occasion they colluded with the Sri Lankan government. I do not think his TGTE activities in London will place him at any materially increased risk over and above being a young male Tamil with political opinions returning from London which is seen by the Sri Lankan authorities as a major hub of separatist Tamil diaspora activity.
83. The Appellant has been tortured and raped by the authorities because of either or both his ethnicity as a Tamil and imputed political opinion. His mental health and resilience have been very much weakened as a result of his experiences in Sri Lanka. I am satisfied in the light of Dr Zapata's report that the Appellant will be unable to cope with even a mild form of questioning on arrival at the airport. This will give rise to suspicions about his political and other views which the authorities will perceive as antithetical to the national unity of Sri Lanka. Indeed, by reason of the 2009 detention he may well be on the computer records maintained by the authorities and accessible at the airport. The consequence is that there is a real risk he will be detained and taken to a prison or detention centre and will be likely to be seriously ill-treated. Further, for a person with the Appellant's history and weakened mental state the fact of detention would amount to inhuman or serious ill-treatment.
84. Even if he was able to navigate on arrival through the authorities and return to his sister's home where his father also lives, I find that his arrival would be noted by the Sri Lankan authorities who have ensured continued contact with his father and that he would be at risk of further detention and ill-treatment. Consequently, the Appellant is at risk on return because he will fall within the scope of paragraph 356(4) of the determination in *GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)*. I find that although the Appellant may not fall squarely within the risk categories specifically identified at paragraph 356(7) of *GJ*, he will be at risk because of actual or perceived political opinion. In any event, the risk categories identified in *GJ*

are not exhaustive as found in *PP (Sri Lanka) [2014] EWCA Civ.1828* in relation to women and victims of sexual abuse.

85. For these reasons the appeal succeeds on refugee and human rights grounds.

**NOTICE OF DECISION**

**The appeal is allowed on asylum grounds  
The appeal is allowed on human rights grounds (Article 3)  
No anonymity direction is made.**

Signed/Official Crest

Date 04. vii. 2018

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal

**TO THE RESPONDENT: FEE AWARD**

The appeal has been allowed and so I have considered whether to make a fee. I've decided that no field should be made in view of the late (after the 2010 determination) production of evidence to support the claim.

Signed/Official Crest

Date 04. vii. 2018

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal