Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02447/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 January 2019	**On 11 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

N L D
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Jegarajah of Counsel, instructed by Messrs Biruntha Solicitors
For the Respondent: Ms N Willocks-Briscoe, Senior Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. In a decision promulgated on 27 June 2018 I set aside a decision of a Judge in the First-tier Tribunal having found an error of law therein and issued directions. I wrote:

> "1. The appellant, a citizen of Sri Lanka born on 4 January 1973, appeals with permission against a decision of Judge of the First-tier Tribunal O'Garro who in a determination promulgated on 27 February 2018 dismissed the appeal of the appellant against a decision of the respondent dated 22 February 2016 refusing to grant him asylum.
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> 2. The appellant left Sri Lanka on 8 September 2010 with his wife and children and entered Britain as a Tier 4 Student with his wife and children as his dependants. He was granted leave until 29 February 2012, that leave later being extended until 26 April 2014.
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> 3. On 24 April 2012 the appellant had applied for leave to remain as a Tier 2 (General) Migrant and that was granted until 15 May 2019. However, his leave was curtailed with no right of appeal on 14 December 2014 when his leave was set to expire on 15 February 2015.
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> 4. In February 2015 the appellant applied for leave to remain on human rights grounds under the ten year route but that application was rejected. On 28 February 2015 he applied for asylum.
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> 5. The basis of the appellant's claim to asylum was that he had worked as a cashier at the Commercial Ceylon Bank Limited in Sri Lanka where in August 2003 he had had a training agreement for a post of junior executive assistant. At interview he had stated that his duties were:-
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> > "… I opened savings accounts, residence foreign currency accounts in between 2003–2009 … bank accounts for developments loans or repayments for development loans. DFCC is not a retail bank. They had to go via us".
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> The facts relating to his employment had been accepted by the respondent.
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> 6. At his screening interview he had stated that he feared being arrested by the police if he returned to Sri Lanka "because they think that I was helping the LTTE to open an account in the bank and exchange money. I was not helping the LTTE I was doing my job". He emphasised that neither he nor members of his family were members of the LTTE. He had no sympathy with their cause.
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> 7. The appellant stated at interview that one of his Tamil colleagues from the bank had introduced a lot of new customers to open bank accounts and that he had never felt suspicious of them as they were smartly dressed and could always explain what the bank accounts were meant for. The sums being deposited were large sums and he believed that

these people had dealt with tea exports and house developments.

8. He said that he had found out in December 2014 that the authorities were investigating bankers who had helped the LTTE during the civil war and that one of his managers was imprisoned in November 2014 and the appellant's details had been passed to the authorities in Sri Lanka.

9. In the letter of refusal the Secretary of State summed up his statement by saying:-

> "All these statements suggest that you were a genuine worker in the bank and you worked to the best of your abilities without having any intentions of helping the LTTE member nor dealing with money laundering."

The Secretary of State concluded in the letter of refusal that:-

> "Taking into consideration that you are Sinhalese and never helped LTTE it has been considered that the accusations you are involved with the LTTE and their bank accounts is inconsistent with the Sri Lankan background information and your alleged circumstances being prosecuted by the Sri Lankan authorities, especially after the new government came into force in 2015".

The respondent also relied on a Bar Human Rights Committee and the International Truth and Justice Project, Sri Lanka for background information regarding the Sri Lankan government's intelligence with regard to their tracing of LTTE activity.

10. The appellant appealed against the refusal and his appeal was first heard before Judge of the First-tier Tribunal Wyman on 17 August 2006 and dismissed. However, that determination was appealed and on 25 April 2017 Upper Tribunal Judge Allen set aside Judge Wyman's decision, it having been agreed that there were material errors of law in the determination in that Judge Wyman had not considered documents which had been submitted before him particularly those relating to the Financial Crimes Investigation Department and newspaper articles. Judge Allen remitted the appeal to be heard afresh on the asylum issue excluding the Article 8 and Article 3 issues which he stated were not challenged from the judge's decision. In effect, he said that there should be a rehearing on the basis of the asylum claim alone.

11. In these circumstances the appeal came before Judge O'Garro on 24 January 2018.

12. Having set out the claim, Judge O'Garro detailed her findings and conclusions in paragraphs 32 onwards. In paragraph 38 she stated that she found the respondent had given cogent reasons supported by appropriate objective evidence as to why the appellant's claim was not accepted but emphasised that she would nevertheless make her own assessment of the appellant's claim. She referred briefly to the skeleton argument before her and set out in paragraph 39 evidence relating to the Financial Crimes Investigation Division.

13. In paragraph 40 she stated that the appellant was a cashier at the Commercial Bank but had provided no evidence that he had a senior role at the bank which meant that any banking transaction the appellant did in his role would have been subject to scrutiny. She concluded that "therefore it is not credible that he would be perceived by the Sri Lankan authorities as being engaged in terrorist financing which would attract the interest of the FCID". She stated that she had reached that finding because she did not find that the appellant provided any evidence to satisfy her that his role at the Commercial Bank of Sri Lanka was high profile and he was engaged in major transactions involving money laundering or terrorist financing. She placed weight on the delay in claiming asylum and concluded in paragraph 44 by stating that she did not find that the appellant's claim was credible. She then said:-

> "I now turn to the documents the appellant relies on".

14. The judge considered a letter sent by an attorney-at-law in Sri Lanka who represented the appellant's father-in-law, who said that his client had been asked to attend the police station where he was questioned about the appellant's whereabouts and the reasons for his visit to the United Kingdom. She quoted from the letter which said:-

> "Thus the FCID can summon any suspects to their office in Colombo or instruct the regional police station to carry out investigations. In this context your client has been accused of facilitating the Tigers to open accounts in fictitious names at the Commercial Bank and authorised payments from European banks accounts to the individual accounts in Sri Lanka".

15. The judge stated that she could not understand how that attorney-at-law was able to get details of the allegations the police had against the appellant as surely they would not disclose details of their investigation to anyone save for the appellant or his legal representative. She stated she did not accept that any such investigation was going on as claimed. She stated she would give no evidential weight to the letter. She also considered the affidavit of the appellant's father-in-law which she did not accept because she said that the police would not give out details of the investigation. She also did not accept the newspaper reports stating it was not credible that the police would have given out information to the media about the appellant and the details of the allegations against him. Having applied the determination in **GJ and Others (post-civil war: returnees) Sri Lanka [2013] UKUT** she stated that that determination which referred to high levels of bribery and corruption in Sri Lanka added weight to her concern that the documents were not to be relied on.

16. She therefore dismissed the appeal as she found the appellant's claim was not credible.

17. Grounds of appeal argued that the judge had not taken into account a material consideration in that the FCID would have

considered whether the transactions made by the appellant were money laundering or terrorist financing and would therefore not have only been concerned with senior positions in the bank. The grounds also question the judge's conclusion that the police would not have informed the solicitor for the appellant's father-in-law about the basis of their concerns. They also argued that the judge had not given reasons why she did not accept the newspaper reports and the associated emails.

18. In her submissions Ms Jegarajah argued that there were many matters which had been accepted by the Secretary of State initially particularly with regard to the work which the appellant had undertaken in Commercial Ceylon Bank Limited and moreover that he had been trained to recognise incidences of money laundering. The Secretary of State had also appeared to accept that the letter from the lawyer was genuine and indeed the affidavit from the appellant's father-in-law. She stated that there was nothing incredible about the way in which the attorney-at-law had been instructed or in the information given by the police to him – the lawyer had attended with the appellant's father-in-law and was therefore able to record what had actually been said to the appellant's father-in-law. She emphasised that the Protection of Terrorism Act had been in force long before the FCID had been set but in any event the preparations for setting up the FCID had begun in 2015. She referred also to the appellant's witness statement in which he had said that in December 2014 he was told that the manager had been arrested and his details had been sent to the passport authorities and it referred to his wife's cousin having an ability to ascertain what interest the authorities had in him.

19. Mrs Jegarajah referred also to the newspaper cuttings and pointed out that these had been produced after Judge Allen had made it clear that it would be appropriate for there to be further evidence submitted. Moreover, she stated that the judge had not dealt with the second letter which had been produced from the appellant's father-in-law's attorney.

20. She asserted that the judge had not properly considered the evidence and had not given reasons for rejecting the documentary evidence produced.

21. In reply Mr Tarlow, who had been prevented for operational reasons from preparing for the hearing (although I put back the hearing for some time to enable him to read the papers), stated that in essence this was a case of prosecution and not persecution and stated that in any event this was the case of a man who would not have had the authority to do anything without referring to a manager. He stated that clearly the case had moved on since it had been before the judge but when pressed was unable to assert that the judge had not erred in her consideration of the documentary evidence.

22. It was the assertion of Ms Jegarajah in reply that surely the reality was that the appellant would face persecution because it would be considered that he had facilitated the LTTE because

of his imputed political opinion. He would therefore face questioning which in itself would amount to persecution. This was therefore a Refugee Convention case.

Discussion

23. I am concerned about the approach of the judge to the documentary evidence and her reasons for stating that she did not find that it was credible and indeed the fact that she considered the documentary evidence after having made a finding that the appellant was not credible rather than holistically looking at the claim and the documentary evidence holistically – the genuineness or otherwise of documentary evidence is when established a factor of when considering whether or not a claim is credible rather than the other way round. I therefore consider that there is an error of law in the approach of the judge such that it is appropriate that I set aside her decision.

24. I note that Mr Tarlow was ambivalent about the genuineness of the documentary evidence but was clear that in any event he considered that what the appellant would suffer would be prosecution rather than persecution.

25. I consider that having set aside the decision of the judge in the First-tier Tribunal it is appropriate that given that this appeal has already been remitted to the First-tier Tribunal that the appeal should remain in the Upper Tribunal. There will therefore be a further hearing in the Upper Tribunal. It will be for the Secretary of State to consider the documentary evidence further and if it is accepted that the documentary evidence is genuine, then the appeal will proceed on the basis that the evidence is genuine. If not, submissions will be heard regarding the genuineness of the evidence particularly in the context where there is affidavit evidence, letters from the attorney, email evidence and newspaper cuttings which are relevant. If any further evidence can be obtained by those representing the appellant relating to prosecution of the manager in the bank to whom the appellant reported. Skeleton arguments should be prepared by both parties relating to firstly whether or not the fact that the appellant is questioned on return would mean that there would be a reasonable likelihood of his being ill-treated; secondly, whether or not if he were prosecuted for an offence of money laundering he would be likely to face persecution; thirdly, the likelihood of the appellant, as a Sinhalese who personally, and whose family had no background of sympathy for the LTTE, would be likely to be considered to have a political opinion in support of the LTTE.

Notice of Decision

The determination of the judge in the First-tier Tribunal is set aside.

Directions

1. The appeal is to be listed in the Upper Tribunal. Time estimate three hours. Submissions only.

2. Skeleton arguments to be produced dealing with the matters set out in paragraph 25 above.

3. A bundle of documents incorporating all documents on which the appellant wishes to rely including all relevant background documentation shall be served by the appellant fourteen days before the hearing."

2. In my decision it will be noted that I set out the appellant's immigration history, the details of his claim and the history of the appeal which had been remitted to the First-tier Tribunal by Upper Tribunal Judge Allen in April 2017. As the appeal had already been remitted once I considered it appropriate that the appeal should remain in the Upper Tribunal. In paragraph 18 of my decision I set out the matters which Ms Jegarajah argued had been accepted by the Secretary of State and in paragraphs 23 onwards I not only gave my reasons for setting aside the decision but also in paragraph 25 gave reasons for the directions that I was making and secondly required skeleton arguments from both parties dealing with issues which I considered pertinent to the appeal. The matter came back before me on 22 October 2018. Neither party had complied with the directions and the appeal had therefore to be further adjourned.

3. On 15 November 2018 the respondent filed a skeleton argument which stated that it was not the respondent's policy to verify documents such as affidavits, email evidence and newspaper articles as there was no general duty of enquiry upon the examiner to authenticate documents produced in support of the protection claim. It stated that I should consider the documents applying the principles set out in the determination in **Tanveer Ahmed** and emphasised that reliance was placed on the reasons for refusal letter of 22 February 2016. The skeleton argued that there would be no reason why the appellant would be stopped at the airport or questioned or monitored in his home area. The categories of persons at risk of persecution or serious harm were set out in the judgment in **GJ and Others (post-civil war: returnees) Sri Lanka CG (Rev 1) [2013] UKUT 319** and these showed that it was highly unlikely that the appellant would be questioned on return as there was no evidence to suggest that he was either on a stop list or a watch list. Even if he returned to his home area his activities would clearly not reveal any sympathy for the LTTE or any activities connected to them. It was further argued that even if he were questioned on return that would not indicate a reasonable likelihood of his being ill-treated and, as he did not fall within the risk categories he would not be subject to ill-treatment because he was not someone who was working for Tamil separatism or to destabilise the unity of the Sri Lankan State. His past history would only be relevant if he was perceived by the Sri Lankan authorities as indicating a present risk to the unity Sri Lankan State or the Sri Lankan Government. The skeleton went on to say that:

> "It is asserted that the appellant as a Sinhalese man, with no affiliation to the LTTE, would not be perceived as a present risk by

> the authorities because the authorities would know from their sophisticated intelligence that he came to the UK as a student for economic reasons and the UK are now seeking to return him."

4. It was also argued in the skeleton argument that if the appellant were prosecuted for an offence of money laundering that would not mean that he would face persecution rather than prosecution. That was not a terrorism related offence. It was pointed out that there was no documentary evidence in relation to the prosecution of the appellant's line manager or whether any such prosecution was successful in finding links between the bank and the LTTE that would lead to imprisonment or ill-treatment. There was no objective evidence suggesting such prosecution would mean the authorities were corrupt and therefore the appellant might be detained or ill-treated on the basis that he might be thought to have connections with the LTTE. It would be more than likely that he would be treated as a normal prosecution case where he would be able to adduce evidence to protest his innocence against any claims and if detained that would be a consequence of that prosecution as opposed to any political affiliation.

5. The skeleton argument went on to argue that the likelihood of the appellant as a Sinhalese who personally and whose family had no background sympathy for the LTTE would be considered to support the LTTE was remote. There was nothing to suggest that that was the case or any reason why such a conclusion should be drawn. If he were monitored on return no such links would be established. It was therefore argued that he did not fall into any of the risk categories. Moreover, given that his fears arose out of events in 2014 and that four years later there was insufficient evidence to suggest an ongoing interest in the appellant due to perceived LTTE links: there was no arrest warrant, court order or evidence that he was on a stop or watch list. There was nothing to show that he would be at risk. There was no stream of evidence which would lead to the conclusion that the appellant and his family who had never shown sympathy with the LTTE would all of a sudden begin to support them.

6. The appellant had not lodged any direct evidence of the charges against his line manager. Rather Ms Jegarajah produced a small bundle of documents including the appellant's contract of employment, an email to the newspaper in which the article had been published which had elicited a response from the Cheaf *(sic)* Editor stating that the newspaper was one of independent journalists who have access to different sources to receive news and that they did not reveal their sources as it would be against their Code of Conduct. The letter went on to say:-

> "I can only confirm that the news about your client has reached to our reporter who has access to the Crime Investigation Department. We also verify the veracity of the news before we

publish it. Thus according to our opinion this news bulletin was genuine. I cannot reveal any further information in this regard."

7. Ms Jegarajah produced an article headed "Tamil Tigers and Sinhala Tigers Reborn" which referred to 25 Sinhala men who had been arrested by the Terrorism Investigation Unit and detained and said that "the accusations levelled at them sounded dastardly in the extreme to most ordinary Sinhala ears". It stated that those men belonged to an organisation called the Viplevakari Vimukthi Peramuna (Revolutionary Liberation Front) which was a Sinhala counterpart of the LTTE. The men had confessed to obtaining arms training from the LTTE and planning terrorist attacks in the south and that journalists had been shown video clips of their confessions. It was stated that the main objective of the organisation was to "lure youths with behavioural and personality disorders and to organise them into a militia to attack innocent civilians in the south" and it was stated the organisation had already carried out thirteen operations including several bomb blasts in the south. It was said that "the accusations seemed too horrendous and too detailed to be lies". She also produced a "media accreditation" card for a Mr Thusitha Pathirana which described him as Chief Editor of the Independent Newspaper. Finally, there was an affidavit from a Warnakulasooriya Patapendige Sasika Madhuranga Fonseka who said that he was a cousin of Mr Arun Pathiraja of Wattegadara Road which stated that Mr Pathiraja had worked as a bank manager at the Commercial Bank in Colombo and that he could confirm that Mr Pathiraja had been arrested in November 2014 and charged with assisting the Tamil Tigers with money laundering and had been convicted by the High Court of Colombo but he had appealed and his appeal was pending at the Court of Appeal. He was still in prison in Boossa Prison in Geel District.

8. In her submissions Ms Jegarajah emphasised that the appellant's contract of employment showed that he was a junior executive officer and not a cashier. Ms Jegarajah started by referring to the documentary evidence which indicated that the Sinhala Tigers existed and said that Sinhalese who supported the Tamil Tigers were not a group to which reference was made in **GJ.** The reality was that their involvement in Tamil separatism was real and a matter of concern to the authorities. Therefore the fact that the appellant was Sinhalese should not be taken as meaning that he would not be considered to be likely to be involved with Tamil separatism or to threaten the unity of the Sri Lankan State.

9. She referred to the newspaper report which was translated at pages 14 to 17 of the bundle and which referred to the resuscitation of the Tiger movement and then referred to financial crimes investigators who believed that ND was behind a recent transfer of 85,000,000 funds to Sri Lanka "for reviving bankrupt Tiger politics" and that despite raids the police had failed to trace him and believed that he had fled the country with his family. A Defence Ministry spokesman had stated at a press briefing that police had already taken action to "bring down Sri Lanka

not only him but also all Sri Lankan nationals abroad who had abetted Colonel Nagulan Irivalan". The article in the Independent stated the Financial Crimes Investigation Division had commenced detailed investigations in respect of ND of whom it was reported that he had close links with the Tiger movement and had offered assistance to Tiger members in the opening of bank accounts with false information "permitting the cumulation of substantial funds in those accounts and effecting transfers from them into other accounts". It was stated that the Financial Crimes Investigation Division had raided the house of ND to arrest and interrogate him and that he had some time in the past left the country with his wife and two children. Ms Jegarajah emphasised that clearly there was a joint investigation between the Terrorism Investigation department ID and the Financial Crimes Authority in relation to LTTE members seeking to resurrect the LTTE. She then referred to the lawyer's letter from Mr Rajagulendra who said that the appellant was wanted by the Sri Lankan authorities for his alleged links with the LTTE and that he had been asked to attend the Kandana Police in June 2015. He referred to his client as Mr Jayakody Archchige Don Bernard Basil Silva (the appellant's father-in-law) who had been to the police station and had been questioned about the appellant's whereabouts and the reasons for his visit to the United Kingdom and said that it had been indicated to him that the appellant had committed a financial crime by helping the Tigers but that detailed investigations had not been conducted. He said that he had contacted the officer in charge of the Kandana Police but they had refused to detail their investigations.

10. Ms Jegarajah pointed out that Mr Rajagulendra, the appellant's father-in-law's lawyer, went on to say that he had again attended the police station with Mr Silva in December 2015 and set out the distinction between the Financial Crimes Investigation Division who investigated money laundering, terrorist financing and financial directions and the Presidential Commission of Enquiry to investigate and enquire into serious acts of frauds, corruption, abuse of power, State resources and privileges which carried out investigations into politicians. He had indicated that the police had claimed that the appellant had committed financial crimes against national security. He said also that Mr Silva had been asked to provide an affidavit pledging that he would produce the appellant to the nearest police station upon his return to Sri Lanka and that he had been further informed that the police would inform the Commissioner for Immigration and Detention to take steps to arrest the appellant on his arrival at Colombo International Airport. Therefore it was clear, he stated, that the appellant was wanted for links with the LTTE.

11. Ms Jegarajah also referred to an affidavit by Mr Silva who stated that he confirmed that according to his knowledge the appellant never had direct or indirect links with the LTTE and that he was shocked to hear of the allegations made by the police officers that he had been involved "with the overseas network of the LTTE and confirmed that they had

never supported the ideology of the LTTE. He categorically denied all the allegations traced by the police and had confirmed that his son-in-law would never have assisted the Tigers for pecuniary gain. He also said that to his knowledge the appellant had no direct and indirect links with the Tamil diaspora and that he would make the necessary arrangements for the appellant to surrender to a police station as soon he arrived in Sri Lanka. He stated he was aware that the appellant could be arrested at the airport as he was seriously wanted by the police. Ms Jegarajah argued that the respondent had verified the lawyer's letter and that the lawyer was not the appellant's lawyer but his father-in-law's lawyer. The allegation had been shown by the lawyer to be setting up false bank accounts from Europe to Sri Lanka to resurrect the LTTE.

12. Moreover, she referred to the affidavits from the appellant's friends and referred to a newspaper cutting of 9 June 2015, a further report from the Independent of 10 June 2016 – the day after the earlier report – which stated the Terrorist Investigation Department were making arrests because of a police discovery of an alleged LTTE suicide jacket and explosives near Jaffna. She also then referred to the emails from the appellant's friends NC, I and IM who stated that they had read news about the appellant which was scary, one of which, from NC, who having heard that the appellant had denied any involvement said "if you did not do anything you do not want to be worried take care". Another from SS referred to an article in the Independent which had referred to the LTTE connected person called ND and has the enquiry "N is that you? I tried to find out really on it, it's about you or someone else? As a friend just let you know that it's a big problem for in future". A GP had also made enquiries saying that the article was about ND "who worked at bank".

13. Ms Jegarajah went on to say that the lawyer's letter showed that there was clearly an investigation and that there was a national security issues involved which alleged that false bank accounts had been set up from Europe to send money to Sri Lanka. She said that it was only when the appellant found out from his friends about what they had seen that he had decided to claim asylum. She said there was no evidence about the trial of the appellant's line manager as this was a high security matter.

14. In her submissions Ms Willocks-Briscoe first referred to paragraph 47 of the letter of refusal which read:

> "47. During the asylum interview you stated that your father-in-law, whom you lived with in Sri Lanka, had his house raided by three police officers on 23 June 2015 and was questioned about you and your alleged links with the LTTE:
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> '… they have searched the house, especially my room and my computer' (AIR Q58). Even though he denied all the accusations in December 2015 he was questioned by the

> police about your whereabouts and it had been decided that if you come back to Sri Lanka, you will be arrested at the airport (AIR Q71), but when asked whether your name appears on a computerised "stop" list accessible at the airport you stated "I do not know" (AIR Q72). Your solicitor provided us with a copy of an email which was sent to G R Law Chambers@gmail.com – alleged Attorney at Law in Sri Lanka – Mr Jayakody Archchige Don Bernard Basil Silva who represented your father-in-law. The UK solicitor explained the Silva's interrogations and got a reply the next day (28/01/16), stating:
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> "… your client had been wanted by the Sri Lankan authorities for his alleged links with the Liberation Tigers of Tamil Eelam. My client has been asked to attend Kandana Police in June 2015. A policeman from the Kandana Police Station has visited Mr Silva's residence and divulged this message. He did not know the reason for the investigation. He had been to the police station on his own. He had been questioned about his son-in-law ND's whereabout and the reason for his visits to the United Kingdom. The police have indicated that your client has committed financial crimes by helping the Tigers. They did not conduct detailed investigations … Before I provide the details of the investigations I would like to bring to your attention that after the transformation of powers …"

There was a reference then to an article headed "Sri Lanka – over 900 complaints on corruption to PRECIFAC dated 12/09/15 which then referred to the Presidential Commission Enquiries to investigate and enquire into serious acts of frauds.

15. The letter of refusal then referred to Secretary of the Commission who had said that 50 complaints out of 250 which had been referred to the Commission Investigation were being investigated. The letter of refusal pointed out that the article confirmed that only investigations which occurred between 2010 and 2015 were investigated. The letter stated that this:

> "… means that as you resigned from your role in August 2010, you would not have been taken into consideration of committed fraud or money laundering, nor being involved with the LTTE as you are of a Sinhalese ethnicity worked genuinely in the bank was not a ring leader for LTTE nor involved at all with the group. Furthermore you stated that you were never arrested nor detained in Sri Lanka by the authorities. Only your father-in-law's flat was raided in December 2015 and after being questioned no arrest warrant was issued for you. Although you provided us with the affidavit which was produced for your father-in-law on 04/12/15 the document states all the true information about your innocence, as you have

claimed to be and clearly stated you never had direct links with the LTTE groups. All the copies of the documents you have provided were considered in line with the case law of **Tanveer Ahmed** IAT 2002 UKAIT 004309 This means that they have not been viewed in isolation as a solicitor did not provide us with the originals the affidavit was unheaded, the issue date was inserted at the end of the document in a bracket and the document had been written in English where English is not an official language in Sri Lanka. The email between your solicitor and the Attorney at Law are not evidence that the communications are genuine or sent on the acclaimed dates or that the sender and recipient are who you said they are. The documents although only copies have been verified by the Home Office Intelligence Unit in Colombo and although in previous instances the documents issued by the police were verified to be false the Attorney at Law confirmed the issuance of the letter. In your circumstances since the original letters were not received it is not accepted that provided copies are genuine. However even if the submitted copies were genuine on return to Sri Lanka you will be able to explain your situation as implication will not be made nor prosecution would apply to you, due to the power of the new government."

16. It is of note that the letter went on to say that it was considered that the "you would be of no interest to the Sri Lankan authorities for the work you did at the bank. You would only done your job in the bank and no-one would have suspected that you would help the LTTE."

17. Ms Willocks-Briscoe speculated, moreover, that with regard to the documents someone with the same name or a similar name to the appellant could have been referred to and said it was for me to decide if a document is reliable. She then referred to the newspaper article which referred to recent activity but the reality was the appellant had left his employment in 2010. The appellant's evidence began with the arrest of the bank manager and this was not reflected in the articles which refer to someone arrested and released. Moreover the indication was that information was not being released about the charges against the line manager but there was no name or author who compiled the information regarding the account which was reported. It was not mentioned in State media. It said that the department had made a press briefing but no mention of the appellant had been provided. The only thing that came out of the appellant's father's affidavit was that he had been questioned about his daughter-in-law's whereabouts. There is no suggestion of any extant court proceedings against the appellant nor an arrest warrant. There is nothing to indicate that he was a serious suspect. There was nothing in the lawyer's letter to indicate how he had obtained the information about which he wrote. She emphasised the lack of information regarding the bank manager's case nothing to indicate that the bank manager had been convicted. She asked me to find there was no interest in the appellant.

18. In reply Ms Jegarajah said that what she referred to was a high level operation concerning charges of money laundering. She stated that I should place weight on "lawyer to lawyer" correspondence and finally added that there was no reason for the appellant to decide to live in Britain when he could have a good life in Sri Lanka. The further correspondence to which Ms Jegarajah referred was that dated 9 January 2018 from the appellant's solicitors here to G R Law Chambers – the solicitors who represented the appellant's father-in-law - who had asked for a detailed letter about the matter, the detailed letter from Mr Rajagulendra of that firm which referred to the affidavit submitted by the appellant's father-in-law and stated that the appellant's father-in-law had informed them that a police team has visited his home in June 2017 and they made it clear that it was "just a formal visit to confirm whether his son-in-law, N D, had returned to the island. They had left when they had been informed that he had not returned". The Attorney went on to state that three officers from the FCID and a police officer had visited. He had been informed by the appellant's father-in-law, that his home had been visited on 6 July and he had been interrogated about the appellant. He said "This time they were harsh with my client. They had told him that your client should not hide away from them for long periods and return to Sri Lank to face investigations". Having said that the appellant's father-in-law had been terrified by the approach, the Attorney went on to say that he had contacted the officer in charge of the Kandana Police and clarified about the harassment of his client and their failure to contact him prior to the enquiries and the OIC of the Kandana Police had replied that it was a decision of the FCID and that he had to obey their instructions. The lawyer said "no further visits were made after this incident".

19. I note the appellant's witness statement which stated that he had spoken with a Mr Kumudu Ranasinga, who is the person who initially had told him that the manager, Arun Pathiraja, had been arrested and he believed the appellant's details had been passed onto the authorities. He said that Mr Arun Pathiraja remained in prison and stated that he had asked for clarification of the position of the four other employees for the bank who had the same role as he and he had been informed by Mr Ranasinga that two of the employees were also imprisoned and the other two employees had had left the bank and Mr Ranasinga did not know where they were.

20. In his affidavit the appellant also refers to his contacting his wife's cousin Rohan Jeyakody who is in the army but had been told he had been unable to help him. He also refers to his completion of his MBA here and says that when his visa expired he did not claim asylum, he had no significant fear of his return to Sri Lanka.

Discussion

21. The appellant is Sinhalese and neither he nor his wider family had any involvement with or sympathy for Tamil separatism. There is simply

nothing to indicate that with that background he would be suspected of being a supporter of the LTTE. Ms Jegarajah drew my attention to "Sinhala Tigers" who were Sinhalese who were involved in very serious terrorist activity. Her argument was that that indicated that there were Sinhalese people who would support the Tigers. There is nothing however to indicate that this Sinhalese appellant would be likely to be considered to have done so. He clearly did not see anything which would link him to the Tigers or even to money laundering when he finished his qualifications here and considered going back to Sri Lanka in 2014. Moreover, of course he retired from the bank in 2010. There was nothing before he left to cause him concern. Moreover there is no arrest warrant issued against him and no evidence of his being on any stop list. Clearly there have been no attempts to start any form of extradition proceedings against him despite the fact that the authorities in Sri Lanka, it has claimed, know where his family live.

22. I have considered the newspaper reports in the light of the guidance in **Tanveer Ahmed**. As will be seen from my decision setting aside the determination of the Judge in the First-tier I considered it important there be further evidence, if possible obtained, regarding those newspaper reports. The reality is that I do not have before me copies of the newspapers or even the originals of the cuttings and the only further documentation that was obtained after I had adjourned the appeal was the letter from the Chief Editor which is a further document which I must consider in the light of **Tanveer Ahmed**. I can only come to the conclusion that the newspaper cuttings do not support the appellant's claim and are not genuine.

23. I am reinforced in that belief when I consider the email from the Chief Editor which I cannot accept is genuine particularly given that the Chief Editor whose card correctly spells the word Chief cannot spell correctly the word Chief under the signature of the letter. Indeed the English of the letter is poor for an editor. It is unfortunate that the appellant's representatives had not provided original documents let alone copies of the newspapers in which they claimed that the articles were written – there appears to be no search of archives if such existed in Sri Lanka but I cannot conclude applying the low standard of proof that these articles are genuine.

24. I must of course consider all documentary evidence within the context of the other parts of the evidence and the various emails that were sent out to the appellant. Copies of which were provided refer to the articles but I consider that there would have no difficulty in arranging for emails to be sent to back up false documents. I have considered the second letter from the lawyer which indicates that the appellant should have no concerns on return as well as of course the affidavits from the appellant's father-in-law and the earlier lawyer's letter, which was quoted at length in the letter of refusal, and not that there is nothing to indicate the veracity of the assertions therein. It is, of course, of note that the appellant's father-in-law's affidavit is in English and therefore

presumably drafted for these proceedings. The first letter from his lawyer in father-in-law's lawyer in Sri Lanka refer to what he had been told by the appellant's father-in-law and although he later had asserted that he had visited the police station with his client that at best indicated that the appellant might be asked to give information about the activities about his line manager.

25. I consider that no weight should be placed on those documents as showing that the appellant is himself wanted in any criminal proceedings. I have set out the pertinent parts of the document above but I do not believe that they can be accepted as evidence that this appellant would be charged with criminal activity in supporting a terrorist organisation.

26. It may be that there are proceedings against the appellant's some time line manager but even that I consider has not been proved. The assertion that the charges are so serious that no evidence of them or of the trial apart from the brief letter from a man who says that he is a cousin of the bank manager lacks credibility. Even if, however, there were charges against the appellant's line manager there is nothing to indicate that the appellant has been charged or would be charged as an accomplice. If there are proceedings against the line manager it is possible that the appellant might be asked to make a statement or be a witness at trial, but given the long delay between his leaving his job at the bank and coming to Britain and then this matter having flared up (albeit that Ms Jegarajah urged me to accept that there had been a resurgence and interest in corruption cases and financial misdemeanours after the change of government) that is unlikely and, of course, it is not persecution . In any event, I cannot consider that given that there is not even an indication of an arrest warrant against the appellant that he would be likely to face charges of any sort on return. I notice of course that he does not assert that he has been placed on any stop list.

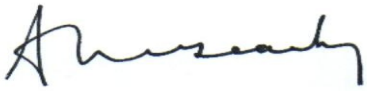
27. For these reasons I find that not only does the appellant not have a well-founded fear of persecution for a Convention reason but also there is nothing to indicate that he would face Article 3 ill-treatment on return. I would add that I have read the papers considering the appellant's mental health and indeed about his daughter's education but the reality is that there is nothing that would indicate that his removal would be a breach of his rights under Article 8 of the ECHR.

DECISION

28. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

Signed:  Date: 25 February 2019

Deputy Upper Tribunal Judge McGeachy