



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/02039/2019

THE IMMIGRATION ACTS

Field House
On 17th December 2019

Determination Promulgated
On 13th January 2020

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

UV
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nathan, of Counsel, instructed by Birnberg Peirce and & Partners Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Interpretation:

Mr K Kangalingam, in the Tamil language.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Sri Lanka born in 1972. She came to the UK with a visit visa to attend her mother's funeral in February 2013, and returned to Sri Lanka in March 2013. She re-entered the UK on 31st July 2013. On 10th December 2013 the applicant claimed asylum based on a fear of political persecution. Her application was refused in January 2015, and her appeal was dismissed by the First-tier Tribunal in May 2016, however this decision was set aside by the Upper Tribunal and it was remitted to the First-tier Tribunal to be reheard. The appeal was reheard and dismissed by First-tier Tribunal Judge Traynor in a decision dated 20th July 2017, which was upheld on appeal.
2. The appellant made further submissions on 10th January 2019, which were accepted as a fresh claim but refused by the respondent in a decision dated 4th February 2019. Her appeal against this decision was dismissed by First-tier Tribunal Judge Davidson in a determination promulgated on the 29th May 2019.
3. Permission to appeal was granted, and I found that the First-tier Tribunal had erred in law for the reasons set out in my decision of 15th October 2019 which is appended to this decision at Annex A.
4. The matter came before me to remake the appeal. I was aware that the appellant was a vulnerable witness, and checks were made that she understood and felt, in so far as that was possible, comfortable with the proceedings. Mr Nathan said that two witnesses were unable to attend: the appellant's father, Mr PM, who had problems with a painful hip, for whom there was a medical report, and Mr SRU, founder of the London Tamil Literacy Association, who had flown to America to go on a cruise, the evidence of which was in the bundle. It was also clear that the appellant's sister was not present, and that the appellant said that this was due to reasons of ill health, although there was no medical evidence to support this. Mr Nathan said that he was not instructed to apply for an adjournment despite the absence of these witnesses. He asked however that it be noted that Mr PM and Mr SRU had both attended before the First-tier Tribunal, and whilst the findings of that Tribunal had been set aside he argued that what they said and the fact of their previous attendance was relevant to this decision.

Evidence & Submissions – Remaking

5. The appellant's evidence as set out in her statement, her account to Mr Martin, who provides the medical scars report, and in oral evidence given through the Tribunal interpreter is, in summary, as follows.
6. She says that she worked as a maths and science teacher in her home town of Vavuniya from 1996 when she qualified as a teacher until 2013, when she was promoted to deputy director of education for Vavuniya North. She has provided a copy of her appointment letter dated 18th April 2013 for this post. In 2003 she got married, and has had four children with her husband.

7. She says that she comes from a patriotic Tamil family who believe in the independence struggle, and many relatives joined and fought for the LTTE. She says that she underwent two and a half months training with the LTTE in 1991, and then 4 months media training with them. She says that she worked as a reporter with their media section under 2000. At that point she was arrested by the Sri Lankan authorities and held on house arrest for a month, after this time she reduced her writing somewhat. She says that she has been writing poems about the Tamil nationalist struggle under 4 different pseudonyms. Amongst other things she wrote a poem about the deceased leader of the LTTE which appears at page 261- 265 of the bundle, entitled Voice of Hero's Stone.
8. She says she travelled to the UK in February 2013 to attend her mother's funeral, and went back to Sri Lanka on 18th March 2013. She has provided a copy of her passport which shows that she left Sri Lanka on 19th February 2013 and returned on 18th March 2013. Her passport also shows stamps for her leaving Sri Lanka on 30th July 2013 and re-entering the UK on 31st July 2013. She has also provided a coroner's interim certificate of the fact of death dated 29th January 2013 for her mother.
9. She says that after re-entering Sri Lanka, on 21st March 2013, she was detained by the authorities and taken to a CID camp where she was kept in a small room and given only a little food and water. There she was interrogated and tortured by being kicked, beaten with a stick and electric wire, punched, slapped and raped. She says she was released on 26th March 2013 on payment of a bribe with a condition that she report twice a week. She has provided a report from Abisha Hospital regarding her being seen by them on 26th March 2013 for the sequelae of her ill treatment. The report is dated 26th June 2013, and appears in the bundle. She says that she reported to the police until the 25th July 2013 following her release from detention. On this date an officer tried to abuse her, and so she attacked him with a bottle and ran away. She then went into hiding and left Sri Lanka, arriving in the UK on 31st July 2013. She lodged a complaint with the Human Rights Commission of Sri Lanka in Vavuniya regarding her abuse by the authorities on reporting on 26th July 2013, and has provided the receipt for that complaint.
10. The appellant says that her husband was detained by CID and taken to Vavuniya police station on 18th December 2017 after the launch of one of her books in December 2017. He was released after the intervention of Mr Anton Punethanayagam, an attorney, (who has provided a letter regarding this). She has contact with her husband in Sri Lanka as he makes secret calls to her between once a week and once a month. She is therefore aware that the CID continue to make enquiries with her husband about her being involved with the TGTE; the CID say that he should not support her and she should surrender to the authorities. She says the visits to the house by the CID have caused her children to panic. She denied that she had ever said her family were in hiding: she says she has always said simply that they were afraid of the authorities.
11. She believes that her publisher has distributed her books widely in Sri Lanka, and she hopes that they are still being sold, and believes that it is possible to buy them in

Sri Lanka as a friend had told her she was able to buy one. She knows that the publisher has faced threats and enquiries from the CID.

12. She says that she has attended anti Sri Lankan government demonstrations in the UK, and that this will additionally place her at risk. She has been heavily involved with the TGTE since January 2017, and has provided a TGTE membership card. She says that she joined the organisation at this point as she had previously lived far away, and it was only at this point she had the practical opportunity to join it actively. She was in contact with some TGTE people before this, but has no documentary evidence to support this.
13. With respect to her TGTE activities she has organised protests: for instance one against the northern province governor outside the Oxford Union in October 2018, and two outside the Sri Lankan High Commission in February 2018. She was also involved in a protest outside the Sri Lankan High Commission which was filmed by an official in February 2019.
14. She was involved in a protest outside Westminster Magistrates Court of a trial of Sri Lankan Brigadier Prianka Fernando, which was also filmed by the same person from the High Commission in February 2019. She prepared and wrote placards and arranged the transport for them to be delivered to the venue and then returned at the end of the protest; she informed people of the importance of attending via text message – they have a “group” but others (about 24/25) are informed by text message; she guided those at the protest to ensure that the traffic and general public were not obstructed; once at the protest she shouted and yelled slogans. She said that between 50 and 100 people attended the protest.
15. The appellant was also involved with helping to organise the protest against the Sri Lankan disappeared on 30th August 2019 which took place in Downing Street, which was a large demonstration jointly organised with other groups. She was involved with similar organisational matters as with the Brigadier Prianka Fernando trial protest: sending text messages, arranging placards and transport.
16. Aside from attending protests she has written about the Tamil struggle, published poems, collected signatures on petitions, organised a blood donation campaign, taken part in human rights day, sports day and heroes day celebrations and remembrance days, been involved with TGTE election campaigns, done lobbying at the Labour Party conference, and protested about disappearances, and helped organising a conference on Tamil genocide. She has submitted a large number of photographs as supporting evidence of this sur place activity.
17. The appellant continues to take 3 anti-depressant medications for her mental health problems: propranolol, mirtazapine and citalopram, and produced the boxes of her current medication to the Upper Tribunal.
18. Mr KP, brother of the appellant attended the Upper Tribunal and gave evidence through the interpreter in support of the appellant. His written and oral evidence was, in summary as follows; He came to the UK in November 2007 with Tier 1 work

permission with his wife. He is now a naturalised British citizen. The appellant is one of his older sisters. She has written poems since she was young. She was involved with the LTTE when he was at primary school and used to write for their publications. He knows the pseudonyms she has used. He was aware of her arrest and detention in 2000, and that this led to her reducing her writing which was supportive of the LTTE. He believes the appellant was happy with her life as a married woman with four children and a job first as a teacher and then assistant director of education in Vavuniya until her arrest in 2013.

19. He was aware that she was arrested by the authorities in 2013 after she returned to Sri Lanka having attended her mother's funeral in the UK. Her husband had called his father about her arrest by the CID, and after she was released the appellant had called one of his other older sisters.
20. He met the appellant at Manchester airport when she managed to come back to the UK in July 2013 and that at that time she was crying and saying her life was ruined, and that she would have died if she had stayed in Sri Lanka. She stayed with him and his family in Liverpool. They were going to take the appellant to claim asylum on 28th October 2013 when they were involved in a bad traffic accident, and the appellant was injured and had to go to hospital. (There is a document from East Midlands Ambulance Services dated 28th October 2013 which corroborates the appellant being injured, and a picture of a badly damaged car in the bundle) As a result of the car crash he says the appellant delayed claiming asylum until 10th December 2013.
21. He fell out with the appellant as his wife did not like the fact that the appellant was claiming asylum and living with them. As a result the appellant moved into NASS accommodation. He has now reconciled with the appellant, and feels sorry for her and so is providing a statement.
22. He says that he speaks to the appellant's children on the phone once or twice a month when their father calls him on his mobile phone. The children are very concerned about their mother. He was unsure about whether they went to school regularly. He assumes that their father is in employment in Sri Lanka. He did not know whether the appellant's husband continued to have problems with the authorities as he rarely speaks to him. He is aware that the appellant is involved with the TGTE in the UK, but knows only that she helps organise events and is an active volunteer with them. The last time he went to Sri Lanka was in approximately 2015 to attend another sister's daughter's puberty ceremony.
23. Mr Sockalingam Yogalingam attended the Upper Tribunal and gave evidence in English. His evidence in his letter of 22nd October 2018 and oral evidence is in summary as follows. He is a TGTE MP. The TGTE fights for the right to form a free Tamil Eelam, a separate Tamil state in the north and east provinces of Sri Lanka. The TGTE has no employees and relies entirely on volunteers, he himself is a volunteer. All volunteers are therefore members. There is no subscription but there is a charge of £15 for an identity card which is valid for five years. There are 20 MPs in the UK,

but at the last weekly meeting only 10 attended as not all MPs can make all meetings. There are 94 MPs around the world, and they meet via a Skype like video conferencing technology called Zoom once a month. He said that the website, which is updated by an MP in Switzerland who is their UN representative, has not been updated since the elections in April 2019 and so is not currently accurate. The TGTE do not openly support charities in Sri Lanka as they are a proscribed organisation in Sri Lanka, and this would lead to trouble for those charities, but they do send money to some charities privately.

24. The appellant has been a volunteer with the TGTE since January 2017, and despite her own traumatic history has a responsible role in organising events and public demonstrations for them, for instance the TGTE National Sports Day (an event with a TGTE political message as well as sporting competitions) and Heroes Day in 2018. The appellant has continued her activism with them in 2019 and was involved with the international human rights' day event in December 2019 at SOAS; and in the protests relating to the trial of Brigadier Prianka Fernando outside Westminster Magistrates Court in February 2018 and December 2019. Mr Yogalingam said that he gave evidence in that trial. He explained that the appellant was involved with creating placards and banners and returning them at the end of the protest; making sure that the protest went well, with no problems with the public; and shouting slogans at the protests. He explained that the TGTE volunteers, of which there are about 2000 in the UK, are alerted to protests via a Whatsapp Group, the website and text messages. They also use TV and newspapers to communicate, and he noted the appellant had herself been on television (a Tamil channel called IBC) promoting the TGTE sports day in 2017. He did not know if the appellant had ever appeared on the TGTE website, but said it was possible.
25. Mr Yogalingam is aware that the appellant is also a poet who writes about the Tamil liberation struggle, and released a book of poetry on 27th May 2017 about the war in Sri Lanka and the suffering as a result of that war. He spoke at the book launch for this book. He thought that the Sri Lankan authorities would ban the appellant's book if they knew about it, but that it would be possible to find it in Sri Lanka nonetheless.
26. Mr Yogalingam believes that the appellant is likely to be of interest to the Sri Lankan authorities, given her public political campaigning for an independent investigation into the government's war crimes and her ardent support for independence for Tamils in Sri Lanka. He also believed that her activism would also have put her family in Sri Lanka at risk.
27. The written evidence of the appellant's father, Mr PM, who provided evidence of ill-health and it was submitted was thus was unable to attend the Upper Tribunal is, in summary, as follows. He and his wife supported the LTTE from the 1980s, and after the armed struggle ended in 2009 he supported the Tamil diaspora groups such as the TGTE. He is aware of the appellant's activism for the Tamil cause and her writing and pseudonyms. He came to the UK in 2007. When his wife died the appellant came to the UK to attend her mother's funeral, and left again. The appellant told him that she had been questioned at Colombo airport on her return. He heard that she had

been arrested after entry from her husband; the appellant spoke to her sister in the UK when she was released and told her she had to continue to report to the authorities. In July 2013 she came back to the UK. Once she was in the UK the appellant told him that she had been ill-treated and would not be able to return to Sri Lanka. The appellant had a time when she had fallen out with her brother and sister in the UK. He provides her with emotional support and encourages her to write poems. In 2017 he went to Sri Lanka. Whilst he was there the appellant's husband was arrested by CID because of the appellant's book launch. He looked after their children whilst the appellant's husband was detained.

28. The written evidence of Ms VK, who the appellant gave evidence was unwell and could not attend the Upper Tribunal is, in summary, as follows. She came to the UK in October 2001 as a spouse. She is married with two children. The appellant is her younger sister. Her sister has written poems since the 1980s. She was involved with the LTTE and writing for their publications. She knows the pseudonyms she has used. She was aware of her arrest and detention in 2000. She believes the appellant was happy with her life until 2013. She was aware that she was arrested by the authorities in 2013 after she returned to Sri Lanka having attended her mother's funeral in the UK. There were problems between the appellant and her and her husband after the appellant decided that she had to claim asylum in the UK. She believes the appellant would be arrested and tortured if returned to Sri Lanka, and therefore has decided to give a statement.
29. Mr SRU, a Sri Lankan writer, accountant, and founder and head of the London Tamil Literacy Association (LTLA), also provided a written statement but did not attend to give evidence as he was on holiday on a cruise. In short summary his evidence is as follows. He came to the UK in 1987, and has been writing since 1979. He has known the appellant since 2000, as she knew his mother. He knew she was a writer and poet before he met her, and knows of two of her pseudonyms. She is highly regarded in Tamil literary circles. After he came to the UK he had contact through phone and email, and met her on visits to Sri Lanka. He met her at her mother's funeral, and then in August 2013 they spoke on the phone and met after she had had to flee Sri Lanka because of being detained and tortured. He encouraged her to continue to write to help deal with her emotional difficulties. The LTLA released her poems in a book, with a book release at Ealing Amman Temple on 27th May 2017. Afterwards this book was also released through the linked Sri Lanka Tamil Literacy Association (SLTLA) in Sri Lanka, with a launch on 17th December 2017 in Vavuniya. Following the event he was stopped in Sri Lanka by CID in a white van, and questioned in the van about the book launch and the appellant. The CID said that the poems were against Sri Lanka and the government. He was not detained as the other SLTLA members were there and demanded that they should go with him if he was arrested, but he was warned not to work with the appellant. After this he changed hotel in Vavuniya, then went back to Colombo and returned to the UK.
30. There is also a statement from the appellant's husband, Mr PV. He confirms that he was arrested the day after attending the appellant's book launch arranged by the SLTLA on 18th December 2017. He was interrogated by the CID who thought he had

a part in arranging the launch, which was not the case, and they threaten to beat him and kill him saying that the appellant was working against the Sri Lankan government from the UK and working with the LTTE to restart the war. They showed him pictures of his wife engaging in political activity in London. They said that they did not believe that he did not know about the appellant's activities in London. He was seen by Mr Punethanayagam's junior lawyer on 19th December 2017, and released in the afternoon of that day. Since that time CID officers regularly come to his house to question him with pictures of his wife taking part in political activities, asking for information and demanding that he get her to stop, and upsetting their children.

31. The medical evidence in this case consists of two reports of Mr AI Martin, consultant in emergency medicine who provides reports on scarring. He confirms his duty to the Court, and I find has appropriate expertise to provide these reports. He examined the appellant in March 2015 and recorded that she suffered from psychological problems and had a number of scars on her back and lower limbs. He was also provided with photos of her scarring taken in August 2013 which showed the same scars but at any earlier point of healing. Mr Martin found that the scars on the back were most likely to have been caused by a third party as a result of the appellant being beaten with sticks or wires in 2013. Consideration was given to the appearance of the scars and the process of healing, to the possibility that they were self-inflicted or had been caused in another way, but this was found to be very unlikely. Self-infliction by proxy was also considered but there was no presenting fact making it more than a remote possibility. Mr Martin found that the scars on the lower limbs were likewise consistent with being caused by being beaten as described by the appellant. Mr Martin's opinion is that the scars are "typical", following the Istanbul Protocol, and overall he has "no doubt that the injuries were caused by being intentionally injured and that they are likely to have been caused by a third party in detention as described by the claimant."
32. There is also a letter from Mr AI Martin dated 12th November 2019, and this concerns the appellant's left wrist fracture. He has considered the Abisha Hospital Letter dated 26th June 2013 regarding the appellant which states that she had a left radius fracture, and on examination finds that she has physical manifestations which are consistent with a previous fracture. He maintains his previous opinion with respect to torture.
33. The psychiatric evidence in this case consists of two reports from Dr S Dhumad, consultant psychiatrist. The first is dated 10th April 2015 where it was found she suffered from moderate depressive episode, PTSD and an adjustment disorder. At that time she was on two antidepressant medications. The second is dated 1st November 2018, which maintained the same diagnosis as the first report but adds that she was also at moderate risk of suicide. A number of prescriptions for antidepressants are included in the bundle. There is also a GP letter from Dr P Kumar of Townsend Medical Centre dated 21st August 2014 regarding the appellant's depressive symptoms and reports of flash backs to episodes of torture.

34. The lawyer's evidence consists of two letters from Mr P Anton Punethanayagam, attorney at law in Vavuniya. The first is dated 9th June 2015 and confirms that he represented the appellant after her arrest at the request of her husband who came to his office on 22nd March 2013, the appellant having been arrested by CID on 21st March 2013. His junior was told by the police that she had been detained by CID as it was alleged she was involved with the LTTE, and that as the investigation was being handled by CID they could not do anything at that point. Later the appellant's husband told him he had obtained the release of the appellant through informal means and that she was on reporting conditions. Later her husband came to him again and explain that the appellant had been harassed sexually on reporting and had hit the officer and escaped, and as a result had gone into hiding. He was being harassed by the authorities as a result, and came to report this to the lawyer on a number of occasions as he was afraid for the appellant's safety. The second letter from Mr Punethanayagam is dated 9th January 2019 and is regarding the fact he sent a junior to the CID unit of the Vavuniya police station on 19th December 2017 to get the release of the appellant's husband at the behest of his younger brother. It was clear from the discussion with CID that there was concern that he sent the appellant information, and her husband was warned that if he had contact with the appellant he would be arrested immediately. Mr Punethanayagam was unable to confirm whether he had assisted the release of the appellant's husband in an informal way for safety reasons, although he noted that this is common.
35. Mr Melvin submitted that the appeal should be dismissed and placed reliance on his oral submissions; the reasons for refusal letter dated 4th February 2019; the decision of Judge of the First-tier Tribunal Traynor promulgated on 3rd August 2017; and his skeleton argument. Mr Nathan argued that the appeal should be allowed and relied upon his oral submissions; the skeleton argument of Ms U Miszkiel and her schedule of evidence from March 2019. I do not set their arguments out in this decision but deal with what was said in my conclusions. I have considered the consolidated bundle of evidence from the appellant, the respondent's bundle and the Home Office Country Policy and Information Note: Sri Lanka: Tamil separatism.

Conclusions – Error of Law

36. In my decision-making I must start from the decision of First-tier Tribunal Judge Traynor. Judge Traynor considered the case based on the appellant's profile as a writer and LTTE supporter in Sri Lanka and her contended arrest, detention and torture in March 2013.
37. Judge Traynor concluded, in summary as follows in his decision:
- That she was not a credible witness and that this was “at the fore” in his determination of the appeal [58] and [91].
 - He noted that there was no passport evidence that the appellant had returned to Sri Lanka from the UK in March 2013 and then come back to the UK in July 2013 [60] and [65].

- He noted that Mr Martin (in the scarring report) found she had injuries which were not self-inflicted and which were typical of beatings and accepts that she has those injuries [77] and [85], and that they would have left her traumatised as set out by Dr Dhumad, but as Mr Martin not dealt with the left wrist fracture mentioned in the Abisha hospital report, and the Abisha hospital report was very brief and obtained 3 months after the alleged event with no adequate explanation as to why this was not done earlier, he concludes that therefore the medical evidence was not reliable and the injuries had not been sustained at the hands of the Sri Lankan authorities.
- He held against the appellant that there were visa applications made by the appellant's husband and children in April and June 2013 and her delay in claiming asylum until December 2013 [63-64].
- He held against the appellant the lack of any supporting evidence from her sister and other family members, this was seen as particularly important [65], [67], [87] and [90] in finding against the credibility of her claim, although the letters from her husband were deemed to be self-serving.
- It was found that there was a lack of evidence of the impact of the contended detention on her ability to work and live [66]; that her past activism history was found inconsistent with her holding a senior position in the education ministry in Vavuniya [66] and it is found that she had "failed to notify the authorities in that country of the events which she has described and where she was best placed to do so" and that she had failed to provide evidence "that the Sri Lankan authorities, had they been informed of these alleged events, would not have acted to protect her." [93].
- It was found that the lawyer's letter from Mr Punethanayagam dated 9th June 2015 was to be given no weight, even though there was evidence from the respondent that the lawyer had told the British High Commission he had truly written the letter, as the appellant had inconsistently said she was released from detention through intervention of the lawyer instructed by her husband whereas the lawyer says although he sent an assistant to try to investigate what had happened to her but he was not involved in obtaining her release [70].
- He finds that the appellant has written the "emotional literature" placed before the Tribunal but that "none of it could remotely be considered to imply that it is critical of the government of Sri Lanka in its current or any previous activities involving the LTTE or anyone of Tamil ethnicity." [79] and that as she had been interviewed about it on Tamil TV this was clearly evidence that it would not put her at risk, and there was no evidence her literature had been published in Sri Lanka [81].
- He also notes that there was a letter form the TGTE before the First-tier Tribunal dated 7th June 2017 saying she supports the organisation, but finds that this document was vague and self-serving, and there was no evidence she was active with this organisation [83].

- The letter to the Sri Lankan Human Rights Commission was not to be given weight as it was a self-serving unreliable document as the appellant had not followed up the complaint [86].
 - He finds that it against the credibility of the history that she was able to exit the airport from Sri Lanka [91].
38. It is clear that a number of the factual issues identified by Judge Traynor as against the appellant in establishing a credible claim have now moved on, and that there is evidence which Judge Traynor identified as missing. There is now evidence, in the form of her passport, that the appellant did indeed return to Sri Lanka in March 2013 and come back to the UK in July 2013. Mr Martin has also provided an additional report which confirms that there is physical evidence that the appellant had broken her wrist in 2013, and thus that his opinion is entirely consistent with that of the contemporaneous Abisha Hospital report. There is clear and accepted evidence that the appellant's literature has been published in Sri Lanka, and I find that her literary work is clearly reflective of her views being critical of the Sri Lankan government and sympathetic to the Tamil nationalist cause (see for example translation of the poem at page 264 of the appellant's bundle entitled voice of Hero's Stone which references a separate state and Tamils uniting to fight and save Tamils; and the English translation of her volume of poems Bleeding Blossoms on Bodhi Trees (Witnesses of the Voiceless of the Eezham War) which gives not only her pseudonym but her full real name and clearly relates the poems to the civil war in Sri Lanka and says that they are "stirring up the political consciousness of her fellow fighters"). There are also now statements by key members of her family in the UK both supporting the appellant's history and explaining that they had fallen out with the appellant and that was why they did not previously come forward.
39. It is also clearly the case that Judge Traynor erred in law when finding that leaving Sri Lanka through the airport with her passport was a factor against her credibility, see the evidence to the contrary found be reliable in GJ and Others (Post Civil War; Returnees) Sri Lanka [2013] UKUT 319, of Mr Punethanayagam at paragraph 148 and that set out at paragraph 12.1.2 of the CPIN Report of June 2017. Further there is nothing in GJ which would support the idea that if a person were tortured by the CID for political reasons that they could seek protection from the Sri Lankan authorities, contrary to the findings of Judge Traynor.
40. I find that the above material evidence filling in gaps found by Judge Traynor and his misunderstandings of the relevant country guidance also combines with other new and significant evidence: primarily the further letter from the lawyer Mr Punethanayagam; the more detailed written and oral evidence of Mr Yogalingam; the oral evidence of the appellant's brother; and the written evidence of Mr SRU, a Sri Lankan writer, accountant, and founder and head of the London Tamil Literacy Association (LTLA). I find that this new evidence means that it is appropriate to completely reconsider the credibility of the appellant's history, and not to start from a position that her evidence, or other evidence that was before the First-tier Tribunal

are not to be given weight, although the concerns of Judge Traynor will be borne in mind on undertaking this reconsideration.

41. I find that the appellant, her brother Mr KP and Mr Yogalingam were all credible witnesses before the Upper Tribunal. This is because their evidence was entirely consistent with each other; with their written statements and with the other documentary evidence before me. There was nothing implausible in any of the evidence that I heard, and the appellant was able to provide detailed evidence, for instance with respect to her work with organising demonstrations for the TGTE. Mr Melvin suggested that the appellant had acted disingenuously in becoming an activist with the TGTE only after her claim was dismissed in 2017, and so was not a reliable witness, however it is clear from a reading of the decision of Judge Traynor that she had been involved with them at least from before her asylum appeal. I find in any case that her involvement with this organisation is entirely consistent with her own history and that of her family of being committed to a separate Tamil state through support for the LTTE, and with the content of her literature, and that it was significant that Mr Yogalingam, a TGTE MP, had no doubt about her being truly committed as she was described by him as a particularly dedicated and committed person who had been consistent in her work for this cause, and it was also clear from the evidence that she works with him closely and on a regular basis. Mr Melvin suggested that the appellant was not a credible witness because she had said previously that her husband and children were in hiding, and it was clear from her evidence today that they were not in hiding. I cannot see any evidence that this was the case: the evidence at paragraph 42 of the decision of Judge Traynor was that the appellant's husband talks to her secretly on the telephone. The evidence before me was entirely consistent with this. Mr Melvin also suggested that Mr KP was unreliable in his evidence because he did not know much about some aspects of the appellant's life or that of her husband: I find that this does not make his evidence unreliable but simply limited in scope. Mr Melvin also suggested it was not plausible that the TGTE would use text messages to alert members to demonstrations when they had a website and WhatsApp group, as was the evidence of the appellant, but Mr Yogalingam was consistent in his evidence that they did this because some members like this way better, and I find that there is no reason why this should not be believed to be the case.
42. I accept that the appellant delayed in making her asylum claim by several months, and even if there were good reasons why it was not made in October 2013 due to the car crash, there was still some three months delay after her entry to the UK in July 2013, but whilst this must be weighed against her credibility I find that when all the evidence is balanced in the round there are overwhelming reasons for finding that she has shown that she has put forward a credible claim, and is entitled to refugee status, as I am more than satisfied to the lower civil standard of proof that the appellant was detained and tortured by the Sri Lankan authorities in March 2013. My reasons for coming to this conclusion are as follows.
43. Like Judge Traynor I am satisfied that the scarring medical reports of Mr Martin are very strong evidence that the appellant had been tortured in the way she claims,

particularly as he finds that the scars are “typical” following the Istanbul Protocol and overall he has “no doubt that the injuries were caused by being intentionally injured and that they are likely to have been caused by a third party as described by the claimant.” Mr Martin was able to compare photographs of the appellant’s scars after her arrival in the UK in July 2013 with the presentation at the time of writing his report in 2015 in coming to his conclusion. The appellant has also provided a report issued whilst she was still in Sri Lanka, and just 3 months after the events, stating that she was admitted to Abisha PVT Hospital on 26th March 2013 with a history of being assaulted with: “multiple contusions found on the back and severe swelling of left wrist (fracture left radius) observed. She also made complaint of sexual torture. Then she was discharged on the same day following treatment.” I find that this to be strong supporting evidence that she was tortured in March 2013 in Sri Lanka. In addition there are the psychological reports of Dr Dhumad which conclude that she suffers from post-traumatic stress disorder with nightmares of torture and rape, avoidance of reminders of traumatic experience being unable to watch violent television and being afraid of the dark, and flashbacks of torture and rape. The respondent accepts that Dr Dhumad is an expert and that the appellant is suffering from psychological trauma, see the refusal letter at paragraph 18. I find this evidence strongly supportive of the conclusion that the appellant was tortured in the way she describes.

44. I give particular weight to the letter from Mr Punethanayagam because he is a lawyer and expert found to be reliable by the Upper Tribunal in GJ. As set out at paragraph 143: “Mr Anton Punethanayagam is a barrister who has practised at the Sri Lankan Bar in both Colombo and Vavuniya and has represented about 3000 persons detained under the PTA over the last two decades. His standing in the legal community in Sri Lanka is high.” His evidence of the criminal processes was found to be “useful and reliable” at paragraph 275 of GJ. As was the accepted evidence before the First-tier Tribunal the letter of 9th June 2015 was verified by the British High Commission as truly coming from Mr Punethanayagam. Mr Punethanayagam states in this letter that he sent a junior attorney to the police station in Vavuniya on 22nd March 2013 and he was informed by them that the appellant had been detained by CID for questioning about her LTTE activities, and later he was informed by her husband that she had been released through “informal ways”. I do not find that it is of any relevance if the appellant thought that the lawyer had been instrumental in her release through bribery, I therefore take a different view on this issue to Judge Traynor for the following reasons. The appellant was clearly detained at the time, and both the lawyer and her husband were attempting to investigate and obtain her release, so it is plausible she would not have known who precisely had done what. I find the letter of Mr Punethanayagam is clear reliable evidence that the appellant was detained on suspicion of Tamil separatism in March 2013 by the CID, and when combined with the medical evidence that it has been shown that during this detention she was tortured.
45. This evidence is also consistent with the credible testimony before me of the appellant and that of her brother who was told about the detention by relatives whilst she was in Sri Lanka, but then directly from the appellant on her entry to the

UK in July 2013 when he met her at the airport. It is also consistent with the written evidence of the appellant's husband, father and sister.

46. As I find that the appellant was arrested, detained and tortured by the Sri Lankan government for reasons related to Tamil separatism in March 2013 it follows that I find that she has already been the victim of persecution for reason of her imputed political opinions, and that this is a serious indicator that she will be subject to future persecution unless there are good reasons to consider that it will not be repeated, applying paragraph 339K of the Immigration Rules. As this detention and torture took place after the end of the war in 2009 the guidance in GJ applies, and it follows that the appellant would only have been detained and tortured for political reasons if she was seen as a threat to the integrity of the Sri Lanka state and to have a significant role in post-conflict separatism, see GJ particularly at point 7(a) of the guidance.
47. I find that there is nothing in the evidence about what has happened with the appellant personally since March 2013 that would constitute good reasons why she would not be at real risk of further serious harm. Indeed, in this case I find that there is evidence that shows the appellant's risk of serious harm has if anything become higher due to the following factors.
48. The evidence before the Upper Tribunal is that she is a highly politicised Tamil poet, whose profile has increased particularly since 2017/2018 when she had 5 books of poems published and some of her work translated into English. I also find that her husband was detained in December 2017 as a result of her profile and literary work, particularly as once again I have a letter from the lawyer Mr Punethanayagam, whom I have found to be a reliable source of information. Mr Punethanayagam states that a junior from his office went to Vavuniya police station and was told that the appellant's husband was in the CID custody unit because he had been involved with a book release for the appellant, and because the authorities wanted to arrest the appellant for activities against the Sri Lankan government. Mr Punethanayagam's junior was able to obtain the release of the appellant's husband on the basis he argued that her husband was not in contact with the appellant and had just attended the book launch at the request of the organiser. In addition, there is the written evidence of Mr SRU, the head of the London Tamil Literacy Association who provides evidence that he was also harassed by the authorities as a result of his involvement with the Sri Lankan launch of the appellant's book. I do not find the lack of evidence on whether the appellant's books have been formally banned by the Sri Lankan government is relevant to the issue I have to decide: the question that is relevant for me to consider is whether her writing increases her risk of ill-treatment on the basis of imputed/ actual political opinions and I find that the credible evidence of the detention of her husband and harassment of Mr SRU is supportive of her literacy activities increasing her risk of ill-treatment if she were to return to Sri Lanka.
49. The appellant has also clearly become active with TGTE, a proscribed organisation, since January 2017. Mr Nathan drew my attention to the CPIN Sri Lanka: Tamil

Separatism June 2017 at paragraph 6.2.2 under the heading De-proscription of Tamil groups” it states that: “Membership or affiliation to the [de-proscribed] groups is no longer regarded by the government of Sri Lanka as terrorism or terrorist activity.” He argues that the strong implication of the CPIN is that membership of an organisation like the TGTE that continues to be proscribed is seen as terrorism by Sri Lankan government. I find to the lower civil standard of proof that there is a real risk that this is the case, and find that this is supported by the stance of Mr Yogalingam of the TGTE of not giving funds openly to charities in Sri Lanka because of the problems this would cause the organisations. I find that whilst the appellant is not a leader of the TGTE she is strongly and visibly affiliated with it. I am satisfied that it is likely that the Sri Lankan government are aware of the appellant’s activities with the TGTE due to their having sophisticated intelligence in the diaspora, as found in GJ. There is evidence before me which I find credible that she has been on platforms at public events with Mr Yogalingam including her own book launch, as well as having been visible at high profile protest such as trials and protests at the Sri Lankan High Commission and in Downing Street. I find that this increases the likelihood that she would be at real risk of serious harm as a result of her actual and imputed political opinions if returned to Sri Lanka.

50. Further I note, in addition to all of the above, that in accordance with RS (Sri Lanka) v SSHD [2019] EWCA Civ 1796 applying the correct standard of proof of a reasonable degree of likelihood as I have found that the appellant escaped from detention through unlawful means, and indeed breached reporting conditions, then it is likely that an arrest warrant has been issued against her and that she is therefore on a stop list for this reason, and would additionally fall within risk factor 7(d) of GJ.
51. I conclude therefore that the appellant has shown that she has a well founded fear of persecution based on her actual and imputed political opinions, as I find that she is at real risk of being detained by the security forces on return to Sri Lanka and interrogated about her political beliefs and activities, which include her literature and membership of the TGTE, and that in accordance with GJ any such interrogation brings with it a real risk of the use of serious harm and torture.
52. It follows that to return the appellant would also therefore be a breach of Article 3 ECHR and a disproportionate interference with her Article 8 ECHR private life rights.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal with no findings preserved.
3. I remake the appeal by allowing the appeal under the Refugee Convention and for the same reasons on human rights grounds.

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

Signed: *Fiona Lindsley*
Upper Tribunal Judge Lindsley

Date: 6th January 2020

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Sri Lanka born in 1972. She came to the UK on a visit visa to attend her mother's funeral in 2013, and returned to Sri Lanka. She applied to come to the UK on two further visits with her husband and children but both applications were refused. On 10th December 2013 the applicant came to the UK and claimed asylum based on her fear of political persecution. Her application was refused in January 2015, and her appeal was dismissed by the First-tier Tribunal in May 2016, however this decision was set aside by the Upper Tribunal and it was remitted to be reheard. The appeal was reheard and dismissed by First-tier Tribunal Judge Traynor in a decision dated 20th July 2017, which was upheld on appeal, and the appellant became appeal rights exhausted in September 2018.
2. The appellant made further submissions on 10th January 2019, which were accepted as a fresh claim but refused by the respondent in a decision dated 4th February 2019. Her appeal against this decision was dismissed by First-tier Tribunal Judge Davidson in a determination promulgated on the 29th May 2019.
3. Permission to appeal was granted on the basis that it was arguable that the First-tier judge had erred in law in failing to refer to the expert medical report of Dr Dhumad, and in failing to consider the evidence of the appellant in the context of her mental health problems.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions - Error of Law

5. In the appellant's grounds it is argued in summary as follows.
6. The appellant's asylum claim is based, in short summary, on a fear of persecution if returned to Sri Lanka because she is a published author in Sri Lanka who has documented the sufferings of the Tamil people in the civil war and at the hands of the Sri Lankan government. She says that she was detained and ill-treated in Sri Lanka in 2013 after visiting London, and that her husband was detained after the launch of one of her books in December 2017. She also says that she has attended anti-government demonstrations in the UK, and that this will additionally place her at risk
7. Firstly, it is said that there was an error by the First-tier Tribunal in failing to consider the evidence of Dr Dhumad in the findings section of the decision of the First-tier Tribunal at all, and further there was a failure to consider the medical evidence (the scars report of Dr Martin, taken with the evidence of Dr Dhumad that she suffered

from PTSD as a result of her experience of torture) in the round when determining the credibility of the appellant.

8. Secondly, it is argued that there was a failure to consider the evidence of Dr Dhumad when considering whether the quality of the appellant's evidence might have been affected by her mental health, particularly as she was found to suffer from poor concentration, and given the First-tier Tribunal found that she was vague and had to correct herself and that this was reason not to find her a credible witness, see paragraphs 48 to 49 of the decision. There was also a failure to consider whether the appellant was a vulnerable witness, and if so to conduct the hearing accordingly.
9. Thirdly, it is argued that there was a failure to take into account evidence from the country guidance case of GJ about the extent of the Sri Lankan authorities penetration of events in the UK when concluding that reading and speaking at Heroes Day in the UK would not put the appellant at risk.
10. Fourthly, it is argued that a number of pieces of key evidence were not taken properly into account by the First-tier Tribunal namely: the evidence of the appellant's father who was found to be credible, and who gave evidence about the appellant's husband's arrest in 2017; the evidence of Mr U another writer whose evidence was not assessed by the First-tier Tribunal and who said he had been interrogated by the security forces about the appellant in 2017; two letters from a lawyer, Mr Anton Punethanayagam, who was a witness found reliable in GJ, about the appellant's detention in 2013 and her husband's detention in 2017.
11. Fifthly, it is argued that there was a failure to deal in sufficient detail with the risk of suicide if the appellant was removed to Sri Lanka, this being raised in the evidence of Dr Dhumad.
12. Mr Walker accepted that there were errors of law in the decision that meant that the decision of the First-tier Tribunal could not stand, particularly in relation to the failure to consider material evidence in the form of the report of Dr Dhumad and the witnesses.
13. It was agreed by Mr Walker and Mr Nathan that the matter could be retained in the Upper Tribunal for remaking but that it would need to be adjourned to another day due to the likely length of the hearing; because the previous firm of solicitor's bundles put before the First-tier Tribunal were not all with Mr Walker; and because there was no Tamil interpreter present and not all the witnesses were present.

Conclusions – Error of Law

14. I find, as agreed by both parties, that the First-tier Tribunal erred in law for the reasons set out in the first, second and fourth grounds above. In these circumstances, as the faulty findings go (amongst other things) to the credibility of the appellant's evidence, which in turn is fundamental to the determination of the appeal, the decision and all of the findings must be set aside. In these circumstances I do not need to consider the other grounds.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal with no findings preserved.
3. I adjourn the re-make of the decision to the 17th December 2019.

Directions:

1. The appellant's solicitors must file and served a consolidated bundle containing only relevant documents on the Upper Tribunal and respondent by 4pm on 6th December 2019.

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

Signed: *Fiona Lindsley*
Upper Tribunal Judge Lindsley

Date: 15th October 2019