



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11407/2019

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 9 March 2020

Decision & Reasons Promulgated
On 18 May 2020

Before

UPPER TRIBUNAL JUDGE PERKINS
UPPER TRIBUNAL JUDGE BLUNDELL

Between

T. V.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Jaquiss, Counsel, instructed by S Satha & Co
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. We make this order because the appellant is an asylum seeker and therefore entitled to privacy.
2. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the respondent on 15 November 2019 refusing him asylum or humanitarian protection.
3. In broad terms it is the appellant's case that the First-tier Tribunal's decision is riddled with error and has to be set aside. The respondent accepts that there is one

mistake of fact but contends that the decision taken as a whole is lawful and the appellant is not entitled to any relief.

4. We begin by considering exactly what the First-tier Tribunal did.
5. The judge began by setting out, correctly, the appellant's personal history. The judge noted that the appellant was born in 1995 and he said that he left Sri Lanka and travelled to Malaysia in February 2016 and then to Austria via the Maldives and Switzerland. He was arrested in Austria and claimed asylum and the application was unsuccessful. His agent then took him to Switzerland where he claimed asylum and that application was unsuccessful in March 2016. He then travelled to France where he was arrested and detained. He was released in November 2016 and travelled to Dubai. He was arrested when he arrived in Dubai because he had arrived on false documents and he was returned to Sri Lanka on 21 November 2016.
6. It is the appellant's case that he stayed with his aunt in Sri Lanka and left for a second time in June 2017, travelling to Malaysia and then an unknown country in Europe in July 2017. He says he entered the United Kingdom clandestinely in the back of a lorry on 20 July 2017. He claimed asylum on 2 August 2017 and inquiries revealed that he had claimed asylum in Austria and Switzerland. He was interviewed about his application in March 2019.
7. Having given necessary and appropriate self-directions on the law the judge outlined the respondent's case at paragraph 7 of her decision. The judge said the respondent recognised that if the appellant was credible then he had the basis of a sound claim for asylum because of his imputed political opinion.
8. The appellant said that his brother was "missing" having been taken by the army but his account of his brother being taken was full of inconsistency. The appellant first said that his brother was taken in 2007 and then stated it was in 2011 and then said that his brother was abducted, rather than taken in 2010. On one telling of his story the appellant said that his father took his brother to the army to make inquiries. In the judge's summary of the respondent's case, she stated that this "was not consistent with his claim that he was at risk due to his uncle's membership of the LTTE."
9. According to the judge, the respondent complained that the appellant said that he had a conversation with an army official at a road junction who told him that his father had been beaten and would die. That is grim but it was the appellant's case that that conversation took place in 2010 but his father was said to have been beaten in 2007.
10. The appellant stated that he went to a Heroes' Day event at Jaffna University in November 2015 and did not have any problems on the day but the army visited his house the next day. In another telling of the story he said he attended a protest in October 2015 and the army came looking for him the following day. The respondent did not consider it credible that the army waited until the following day on either version of the story, rather than arresting him at the event.
11. Confusingly the appellant claimed that his uncle died in 2006 and also that he did not know his uncle's whereabouts. He did not know his uncle's rank in the LTTE.

12. It was the appellant's case that he had been abducted by plain clothes officials on 27 November 2015, that being the day he said he attended the Heroes' Day event at Jaffna University and was held for a month and tortured and questioned about his uncle and brother. The respondent did not consider it credible that the appellant would be of interest to the Authorities in 2015 because of the actions of his uncle or brother many years before. His uncle had been dead for nine years at that point.
13. It was the appellant's case that he had been tortured and he supported that claim with injuries, scars and marks to his body, particularly the upper back but the respondent considered the marks could have been caused by other factors and that they did not confirm his claim to have been tortured as described.
14. It was the appellant's case that he had been taken to his uncle's house on release and he watched films until he left Sri Lanka in February 2016 but the respondent did not believe that he could have done that without seeking medical attention if he had in fact been injured as he claimed.
15. The respondent did not find it plausible that the appellant's uncle and his friend would be able to bribe the army and the airport officials. It was also the appellant's case that having claimed asylum unsuccessfully in Austria and Switzerland he was returned to Sri Lanka in November 2016 and he remained there until June 2017 without issue. The respondent regarded this as inconsistent with his claim to be at risk in the event of his return to Sri Lanka.
16. The respondent did not believe that the appellant had told the truth about his experiences and did not accept he was in fear of the army or of the EPDP. The respondent applied Section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 which, according to the respondent, required a finding that the appellant's credibility had been damaged.
17. According to the respondent, the facts established by the appellant did not put him within the category of people recognised in **GJ (Sri Lanka) [2013] UKUT 319** as being in need of protection. This was not an "Article 8" case or where exceptional circumstances were said to entitle him to remain in the United Kingdom.
18. The appellant did not attend the hearing. It was his case that he was not able to attend because he was unwell and this claim was supported by psychiatric evidence. The appellant had indicated through his solicitors that he was content for the matter to be determined in his absence which is what happened.
19. The First-tier Tribunal Judge then set out a summary of the appellant's case. The appellant identifies himself as a Tamil from Sri Lanka and in addition to using the present name and a date of birth, said to be in 1995, he has also used a different name and a different date of birth said to be in 1996. He said he has contact with his family. He claimed his older brother was abducted in 2010 and his own problems started in November 2015 when he attended a Heroes' Day event.
20. He said that in 2007 the army was involved in a "roundup" and his father took the appellant's older brother to an army base for an inquiry and the brother never returned. But he had given different accounts stating that the event had happened in

2011 or alternatively 2010 and that his father was beaten when he went to inquire about his brother in 2010.

21. The appellant attended a Heroes' Day event at Jaffna University in November 2015. Over 200 people attended the event which was to honour those who were missing. The army was present and watching but took no part on the day but the next day came to the appellant's home seeking him. However he gave a different account when he said that he was "wanted" because he attended an event in October 2015 when a female MP attended and the army were observing. He also claimed that on the day of the November event, 27 November 2015, the army visited his home and had kicked his mother.
22. The appellant said that on 28 November 2015 he was taken from his bicycle and blindfolded, his hands were tied and he was asked if he had been to a Heroes' Day event.
23. He said that he was then taken to an army camp at Palaly and questioned about his uncle and brother.
24. He said he was tortured three times a day and accused of trying to revive the LTTE. He was then beaten on the stomach and back and his feet burnt with cigarettes. He said that something akin to a skewer was inserted into his penis and he was burnt on his back with a heated knife. He said that he was released on 30 December 2015 when his paternal uncle paid the officers. He did not receive medical treatment or medication but on release he was taken to Chilaw and from there to the airport by a friend of his uncle. Airport officials were bribed and he was allowed to travel to Malaysia on 13 February 2016.
25. It was the appellant's case he had been involved with Tamil politics since he was aged 18 when he helped the Tamil Political Party arrange meetings and show people how to vote. His brother was not a member of the LTTE but went out with his uncle. The appellant said he feared the army as he had been forbidden to leave the country. He said that his brother had not disappeared and he intended to attend a protest in the United Kingdom (see the end of paragraph 9 of the Decision and Reasons; the meaning may not be clear).
26. The judge then summarised the appellant's own account for the hearing provided in a witness statement and from scarring reports, a psychiatric report and medical reports, as well as his TGTE identity card, web clips, photographs and background information. The judge summarised the statement where the appellant referred to his mental health conditions and submitted psychiatric reports and the difficulties he had with concentrating and focusing.
27. The appellant said he had been attending a pro-Tamil and anti-Sri Lankan Government demonstration in the United Kingdom. The appellant said that he came from an LTTE family and had the problems as stated in his interview. He had been constantly questioned and intimidated. He came to the adverse attention of the Authorities when he attended a Heroes' Day event on 28 November 2015 after which he was arrested and ill-treated. He said he was released after he signed a blank sheet of paper and on payment of a bribe. The airport officials were also bribed so he

could leave the country. When he was returned to Sri Lanka in May 2017 he was detained for 25 days but was able to be released with the help of the EPDP.

28. The appellant recognised that he had given confusing accounts because of differences in dates. He attributed that to mental ill-health. He said his brother was abducted in 2010. He did not know why he was not arrested at Heroes' Day but only the day after and he feared the army and the EPDP and did not see why the fact that the Austrian and Swiss Authorities had not accepted his claim should determine the outcome of his application in the United Kingdom.
29. It was the respondent's case before the First-tier Tribunal Judge, put by the Presenting Officer, that the amount of torture claimed was not consistent with the scarring report. The appellant had also claimed asylum in two other countries where he had been unsuccessful and he had been returned from Dubai and was able to enter and leave Sri Lanka. It was said that he had a limited profile in Sri Lanka. His modest sur place activities would not create a risk.
30. The appellant's case to the First-tier Tribunal Judge was that he came within the category of people identified in headnote 4 of GJ, namely a person who had previously been detained by the Authorities.
31. Importantly it was submitted that the immigration history as recited in paragraph 44 of the refusal letter was just wrong and not in accordance with the answers the appellant had given to questions 238 and 242. The judge was outlining the case but we note in parenthesis that the appellant's recorded answer to question 239, "Is there anything you would like to add or clarify?" is "When I went back in May 2017 I was caught and that was a factor to motivate me to get out of the country. Some kind of torture I went through, I am unable to speak about it. Now I can't even cry, all those years I cried now no tears come out of my eyes. Everyone sleeps peacefully now I have got to a stage where I have to take tables(sic). They put a wooden piece into my penis and I have difficulties urinating".
32. Paragraph 44 of the respondent's letter said that the appellant returned to Sri Lanka from 2016 to 2017 without difficulty but he had said that he had been detained and tortured. Further the appellant had given details of the physical abuse involved. He was detained and abused on return and the letter was just wrong to say otherwise.
33. The appellant's bundle included a scarring report that supported his account. The scars on the upper back were "highly consistent" with the appellant's account. Other scars were similarly "highly consistent" and the scars around the ankle were "typical".
34. Clearly the scars had got there somehow and it was the appellant's case that he had not inflicted them himself.
35. The appellant was not fit to give evidence, that claim was supported by a psychiatrist. He had a severe Depressive Episode and Post-Traumatic Stress Disorder. He did have family members who were active with the LTTE and his brother had disappeared. His fingerprints had been taken and it was his case that he would be detained on return. He was vulnerable and that increased the chances of his being persecuted because any ill-treatment would bear heavily with him.

36. It was the respondent's case that the appellant's claim to have been released on payment of a bribe indicated that he was of no real interest to the authorities and he would be unlikely to be re-detained.
37. Specifically, the claim that he had difficulty urinating was not supported by any medical evidence.
38. Starting at paragraph 14, the First-tier Tribunal began its analysis of the evidence under the heading "Findings and Decisions" with reference to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This is the Section which deems certain conduct to be discreditable. It is the appellant's case that he has been to Austria where he claimed asylum unsuccessfully and to Switzerland where he claimed asylum unsuccessfully and to France where he did not claim asylum at all, even though he had dealings with the Authorities, because he was arrested and detained.
39. The judge found that the appellant's failure to claim asylum in another safe country and his willingness to use false documents to travel (this is a reference to the trip to Dubai) diminishes his credibility.
40. The judge noted with regret that the Tribunal had not been told the reasons for the states of Austria and Switzerland refusing asylum. It would have been interesting to know what the appellant had said when he pursued those claims and why they were not accepted. However all that is known is that two unsuccessful claims were made. Nevertheless the judge found that these refusals in themselves undermine the veracity of the claim.
41. At paragraph 15 the judge considered further if the appellant's credibility been damaged.
42. The judge was concerned that there had been different accounts of the events leading to his arrest and torture during his return to Sri Lanka between November 2016 and July 2017. Initially the appellant had claimed only to have been tortured and detained in 2015. He stated that he was arrested and fingerprinted on arrival in 2016. In the later asylum interview he said that he was arrested on arrival in November 2016 and a friend got him out in December 2016. No explanation was offered for how his friend arranged his release. He then claimed for the first time that he had been arrested and tortured in May 2017 following which the EPDP arranged for his release. There is nothing in the psychiatric report to suggest that he told the psychiatrist he had been tortured. He did mention being detained in 2017 but not being tortured. The scarring report refers to a complaint of torture in 2015 and to his being rearrested in May 2017 but makes no mention of torture in May 2017. Although the appellant referred in his statement to being arrested in May 2017 he had not referred to being rearrested on re-entry to Sri Lanka as claimed.
43. The judge found that the appellant was able to return to Sri Lanka in November 2016 and while he may have been stopped at the airport, and he did not have a proper passport and was returned as a prisoner, the authorities were content for him to be released after the intervention of a friend. The judge found this highly indicative of the appellant not being "wanted" by the Authorities. The judge did not accept that

the appellant was tortured in detention in 2017. The judge reached that conclusion because of inconsistencies in the evidence which he found damaging. The judge clearly found it significant that there was no medical evidence of urinary issues which surprised him given the appellant's claim to have suffered a skewer being inserted into his penis.

44. At paragraph 17 the judge looked at the psychiatric report which says that the appellant was suffering mental health issues so that he could not give evidence. The judge regarded this as inconsistent with the GP notes which record the appellant was conversing well, cheerful and without suicidal thoughts. Although the appellant attended the GP in November 2019 reporting a worsening depression he was found to be coherent with clear speech and no thoughts of self-harm or suicide and showing good insight. He was referred to Mental Health Services in December 2019, just a week before the hearing where he appeared to be well presented and engaged.
45. The judge found that the appellant was in a relatively stable condition until a few weeks before the hearing. He told his GP that he had stayed in his room all day but that did not fit with his claim to have attended demonstrations in central London which he supported by photographs.
46. The judge found the credibility of the central claim to have been tortured when he was arrested to be damaged by his inconsistent account and vagueness about dates. By way of example the judge pointed out that he stated in answer to question 86 of the interview that his problems started in 2010 when the army came and wanted to take his brother but from question 87 he said that that happened in 2007 and at 95 that it happened in 2011. By the time he got to questions 107 and 108 he said the incident was in October 2010 as he had previously claimed. The appellant had stated he attended Heroes' Day in October 2015, then changed that to November 2015, then said he was arrested on 28 November 2015.
47. The appellant had submitted no supporting evidence that his family were involved in the LTTE or that his brother had disappeared. The appellant was unclear if his brother was dead or disappeared but had said that he was dead. He did not claim medical attention even though he said that he was injured.
48. The judge noted that although the scars were in some cases "highly consistent" with the account, the scars cannot be dated and the judge found that the scars were not as extensive as the appellant's account would suggest. The judge said at paragraph 18: "given the several credibility issues, I do not consider that the scars are determinative."
49. The judge then went on to note that the appellant claimed that he was released on a bribe in 2016 and did not say how the sums needed to pay the bribes were raised or what contact arrangements were made. However the judge recognised the appellant "clearly has mental health issues" but said that the diagnosis of PTSD is based on the appellant's account which the judge did not accept. The judge explained "as I have not accepted the appellant's account, whilst I accept the diagnosis I do not accept the claimed cause."

50. Dealing with sur place activities the judge noted that the witness statement did not provide details of the activities and the only evidence of sur place activities were photographs in the appellant's bundle which were claimed to be the appellant attending a demonstration. The appellant did not attend the hearing and the judge said "so I am unable to identify the appellant as being the claimed person in the photograph".
51. In any event the photographs were said to be of a demonstration outside Westminster Magistrates' Court relating to the trial of a Sri Lankan diplomat and the judge said that even if the appellant did attend the demonstration "it was not outside the Sri Lankan Embassy where there may be surveillance, and the appellant has not submitted evidence that attendees at the demonstration would be known to the Sri Lankan Authorities."
52. The judge went on to dismiss the appeal.
53. Permission to appeal was given by a First-tier Tribunal Judge who said:

"It is correct to observe that the judge does rehearse the evidence at some length, detailed a number of inconsistencies and apparent contradictions. I am also mindful that reasons for decisions can (and often should) be brief, and cannot be expected to deal with every point raised. However, it is arguable that in the analysis of the evidence the judge does not make sufficiently adequate and clear findings as to important aspects of the case, including the fact and extent of the torture claimed to have taken place in 2015. Given the potential significance of this matter it is arguable that an error of law has been made. It is therefore unnecessary to consider all the other grounds raised at this stage in detail, but it does seem to me that they also raise arguable errors of law."
54. The grounds supporting the application were drawn in emphatic terms by Miss Charlotte Bayati of Counsel and relied on before us. We consider them below.
55. The first ground in paragraph 3 contends that the judge, having identified matters which "she considered cast doubt on the Applicant's account" did not follow through and decide if in fact he had been detained and tortured in 2015, 2016 or 2017. The ground was particularly concerned that the judge failed to state whether he accepted or rejected the appellant's claim of being detained in 2015 for a month and ill-treated following detention at a demonstration and again failed to make a finding on whether he was detained for a month on his return to Sri Lanka. The judge did accept that the appellant was arrested and managed to arrange for his release but not the length of the detention. The judge also failed to make any findings on whether the appellant was detained in May 2017 as claimed, merely that he was not satisfied that the appellant was tortured during that detention.
56. Next the grounds complain that there were errors of fact.
57. First it is said the judge had found the appellant had only said in his screening interview that he was arrested and fingerprinted on arrival at the airport in 2016 whereas in fact, according to the appellant, he had stated clearly in answer to question 5.6 that he had been detained in November 2015 and again when he was returned to Dubai at the airport when he was detained for a month before being released. It is, according to the grounds, wrong for the judge to say that the appellant only mentioned arrest and fingerprinting on return to Sri Lanka.

58. Next it is said that the judge erred in stating that the psychiatrist's report did not show that the appellant had claimed to be tortured in 2017. It did. The psychiatrist had referred expressly to the appellant's claim to have been detained in 2015, 2016 and 2017.
59. It is also said the judge failed to appreciate that the appellant had said that a skewer had been inserted into his penis when he was interviewed at the screening and substantive stage and this method of torture was acknowledged in the report of Dr Martin and Dr Dhumad.
60. It is then said that the judge failed to take proper account of the evidence of Dr Martin. Dr Martin was assessing scars that were claimed to have been caused during November 2015 detention. Given the function of the report it is unremarkable, according to the grounds, that no mention was made of torture in 2017 because that alleged torture did not give rise to the points that Dr Martin was asked to consider.
61. The grounds then turn attention on the analysis of the evidence of Dr Martin. This was said to be wrong. It is said that the First-tier Tribunal Judge erred in failing to regard the extent of the injuries identified by Dr Martin and further erred in saying that the scarring is not as extensive as the applicant's account suggested.
62. Dr Martin identified three different areas of scarring, the first being a scar seven centimetres long on the appellant's back which was "highly consistent" with being burnt with a heated iron rod, the second area was an area of "several scars spread on different parts of the back and left shoulders" and this was "highly consistent" with being beaten and the third area being numerous scars on both ankles which were recognised as "typical" of burns caused by torture typically with cigarettes which is what the appellant had said had happened to him. According to the grounds the doctor had concluded overall that the appellant's scars were "typical of torture as claimed" and the grounds describe this as significant evidence supporting his claim to have been tortured. The grounds continue that whilst the evidence may not be determinative it was weighty and should not be discounted lightly.
63. The grounds also say that the judge wrongly held out himself to be an expert in stating the scarring was not as extensive as the torture claimed. It was a remark that could not be substantiated. There was clear evidence of scarring and it should not be discarded because of the subjective expectations of a person without appropriate qualifications.
64. The judge was also said to have erred when dealing with alleged diaspora activity.
65. The judge said that *because* the appellant had not attended the hearing he could not identify the appellant as claimed in the photographs. The grounds assert that the judge was in a position to identify the appellant. The judge had the benefit of what is described as "a very clear recent photograph in Dr Martin's report and a clear photograph of the appellant on his Tamil Eelam card". Those things according to the grounds were quite good enough to show that the appellant had attended a rally.
66. The grounds disagree that the judge was entitled to conclude there was no evidence to show that attendees at the demonstration outside Westminster Magistrates' Court would be known to the Sri Lankan Authorities. News reports showed that officials

of the Sri Lankan High Commission were present at the hearing and were criticised for taking photographs in the Magistrates' Court. Perhaps more importantly the grounds contend that the report was on a news report that was accessible publicly.

67. It was said that the learning of the Tribunal in **GJ (Sri Lanka)** shows that the Sri Lankan intelligence forces are sufficiently sophisticated to know who attends demonstrations in the United Kingdom and that should have been recognised.
68. It is said the judge had no regard to the appellant's claim, supported by documents in his bundle, to be a volunteer member of the TGTE, and had an identity card showing his membership of the organisation. It is a proscribed organisation and the appellant is liable to prosecution as a volunteer member. This point was not considered.
69. The grounds maintain that the appellant's case showed that he at least risked being perceived as someone who was a destabilising influence on the integrity of Sri Lanka. In short the grounds contend the appeal should have been allowed.
70. These and other points were taken in the oral submissions.
71. Mr Clarke was not cowed.
72. He accepted, as is plainly the case, that the First-tier Tribunal Judge had made mistakes of fact as alleged in the grounds. The judge was wrong to say the appellant had only claimed at his screening interview that he was arrested and fingerprinted on arrival at the airport in 2016. He said that he had been detained in November 2015 and that he was detained for a month when he was returned from Dubai.
73. We cannot sweep away this error in the way the Mr Clarke urged. Whilst it may be that not very much turns on when the appellant was in fact fingerprinted that is not the point. What matters is the judge has used a peripheral matter as an indicator that the appellant is dishonest. That is unobjectionable in itself although always dangerous with peripheral matters because they must not be over emphasised but the judge has used a bad point. The judge was also wrong to say that the appellant had not told his psychiatrist that he had been tortured in 2017 when he had. The judge was also wrong to criticise the absence of matters in Dr Martin's report that were not part of Dr Martin's deliberations.
74. We also agree that the judge clearly was in a position to identify the appellant in the pictures taken outside the Magistrates' Court by comparing the image with the clear photograph of the appellant in the medical report. We could and are satisfied that it was probably the same person.
75. We have reflected on this and Mr Clarke's determined arguments that the adverse credibility finding was open to the judge and was reasoned adequately. On any version of events there are difficulties in the appellant's case. It is part of his case that he is a bad historian and whilst medical evidence might absolve him from any kind of moral blame it does not make it any easier to prove his case and an account certainly does not have to be believed because it is told inconsistently by a person who has been traumatised.

76. Further there is clearly a statutory requirement to find that the appellant's credibility has been damaged and the appellant's willingness to attempt to deceive the authorities in Dubai by travelling on a false passport is clearly discreditable behaviour.
77. Nevertheless we are told frequently that credibility findings are done properly when they are based on an overall "in the round" evaluation and once the thoroughly bad point has entered the mix it becomes difficult to say that any of the points are untainted.
78. Many more points were taken before us but we are not satisfied with this decision. The First-tier Tribunal Judge made mistakes that we find are important and we set aside the decision.
79. Given that the appellant did not give evidence before the First-tier Tribunal we see no reason not to move seamlessly to making a decision on the evidence that is before us. We had clear that ALL disposal options were open to us and there was no application to adduce more evidence.
80. In reaching this conclusion we have said very little about Counsel's arguments before us. This is because, for the reasons indicated above, we see no need to particularise them. We have considered them and found them helpful.
81. We remind ourselves that the appellant must prove his case but the standard of proof is low. It is sufficient if he establishes a "real risk" based on an evaluation of the evidence as a whole that returning him would expose him to a risk of persecution or treatment contrary to his rights under Article 3 of the European Convention on Human Rights.
82. The immigration history is set out in the Secretary of State's bundle prepared for the Tribunal.
83. It is accepted that the appellant is a Sri Lankan national born in May 1995.
84. His history shows he has claimed asylum in Austria in 2016 unsuccessfully and then in the same year in Switzerland. In August 2016 he travelled to France and then back to Dubai on a false passport but he was refused entry and deported to Sri Lanka. He said he was taken to Sri Lanka on 21 November 2016 (that is how we read the summary) and left Sri Lanka for Malaysia on 2 June 2017. He was therefore in Sri Lanka for a little over six months. In June 2017 he had travelled from Malaysia to Europe. He claimed asylum in the United Kingdom on 2 March 2017. It was refused and certified on safe third country grounds but he was not removed and he attended an asylum interview in March 2019.
85. We begin by considering his screening interview on 2 August 2019. We remind ourselves that the purpose of a screening interview is to outline the nature of the claim so that it might be processed expeditiously so a degree of imprecision on the part of the asylum seeker or the record keeper is easy to excuse provided it was consistent with the purpose of the interview which was to categorise the claim correctly.

86. According to the record, in his screening interview he identified himself with the name and birth date that he used before the Tribunal but volunteered promptly in response to an early question that he had used a different passport containing his photograph but he was vague about name and date of birth. He said that he had had a Sri Lankan passport and identity card in his own name but it was confiscated by the Sri Lankan Army in 2015.
87. He was a Tamil who followed the Hindu religion and came from the Jaffna area of Sri Lanka. In response to questions about his health or any special needs he said that he suffered from insomnia over a three year period in Sri Lanka and he took medication but not in the United Kingdom. In answer to question 2.1 he said: "I get fits since childhood, it comes if I physically work too hard whop (sic) when the army beat me I got fits". He said he last had a fit in 2015. He did not take medication.
88. He made it plain that he had mental health problems which affected his sleep. He said:
- "I get sad about the things which have happened to me and also to what happened to my brother, he died, my father was also tortured and suffered injuries to his back passage."
89. He said the army had beaten him, that his gums were wasting, that the army inserted something into his penis similar to a skewer so he had a burning sensation when he passed urine and he had marks over his body from cigarette burns and on his back where he was burnt with a heated knife.
90. He had no treatment or medication for these conditions.
91. He was asked about travel to the United Kingdom. He had been fingerprinted in Sri Lanka when he was captured in November 2015 and detained for more than one month.
92. His fingerprints were taken in Austria and in Switzerland. He was also taken to Dubai but could not enter the country because his faulty documents were detected. He said when he was returned to Sri Lanka his mother told him not to return home because there was a risk of a search for him and he stayed with an aunt in Jaffna.
93. He gave details of his journey to the United Kingdom and how he hid in a vehicle to facilitate entry.
94. When asked to give a brief indication of the difficulties he would face in Sri Lanka he said in the event of his return he would not be alive. He feared the army. His summary is in the following terms:
- "The army abducted my brother. I had an uncle, father's younger brother who was with the Tigers, it was because of him my brother was abducted. So I along with other people when and highlighted about the missing people, my brother. We attended the National Heroes' Day celebrations."
95. He said the Sri Lankan Army believed he was trying to reorganise the Tiger group.
96. He had never been in Government employment including the armed services.
97. He was asked if he had ever been detained and he said he was detained by the Sri Lankan Army in November 2015 for one month, then again when he was returned from Dubai into Sri Lanka. He was also detained for about ten to fifteen days in

Austria and five to six months in Switzerland and five or six days in France. In answer to a question if there was any particular reason why he ought not to be detained he said: "I have a problem, if I am alone I would be thinking all the time."

98. He was then interviewed on 28 March 2019. In the course of that interview he began by saying he was taking medication for insomnia and he had mental health problems. He also had fits. He had had not fits since he had come to the United Kingdom and had medication for insomnia. He had thoughts of self-harm. Bad memories concerning his experiences in Sri Lanka troubled him particularly at night. He referred to one example of wanting to dash his head against the wall and his uncle stopped him.
99. He had produced pictures of his scars and pictures of him protesting in Westminster that he produced to be considered.
100. He was satisfied with what he had said in the screening interview. He gave details of his work and accommodation in Sri Lanka.
101. In answer to a question about how many siblings he had he said his older brother was abducted but altogether he had three. He was the third child. He repeated that a brother had been abducted. He was asked a series of questions about matters appertaining to Sri Lanka, presumably this was an attempt to test his claim to be a Sri Lankan national and he answered the questions satisfactorily. Dealing about his reasons for claiming asylum he said that his life was at risk and he came to a democratic country "so I feel that justice will be done for me". He feared both the army and the EPDP.
102. He feared the army because his uncle was an LTTE member and because they had taken his brother for inquiry and never released him. Asked about his personal fear of the army he said that there was a protest about missing people that he attended and he held his brother's photograph and chanted slogans. He had also helped rehabilitate a friend of his uncles who was ex-LTTE and he worked on "our farm".
103. The interviewing officer, appropriately, assured the appellant that he would have an opportunity to explain how events unfolded and invited him to answer the question asked and to explain why he feared the army. He replied: "I have engaged myself in the great Heroes' Day events, for example I lighted a candle." He then explained that the army had called him and accused him of supporting the LTTE because he was his uncle's nephew. The army wanted information about the location of his uncle and threatened to detain him like his brother and that he might too disappear.
104. He identified his uncle by name and confirmed that his uncle was a member of the LTTE and he was helping with armaments. He explained that he delivered arms on instructions. He was not the driver but travelled with the driver. He did not know his rank in the LTTE. He pointed out he was about 10 years old at the time. His uncle was an LTTE member as long as the LTTE existed and he did not know his present whereabouts.
105. He described the EPDP as a political group that supported the Government.
106. The appellant denied having any political opinion.

107. Asked why he feared the EPDP he explained that he had helped another Tamil party by posting notices and at election times going to the voting booth and encouraging support for his party. The implication is that he had made enemies. He identified the party that he supported as the Sri Lankan Tamil Political Party. He was not a member but helped them. He said the EPDP were linked with the army and they were angry because he had supported the pro-Tamil party and because he came from a "Tiger family". He thought that they thought he was influenced by his uncle. He feared the EPDP because they acted as spies for the army and he thought they would be out to provoke the army against him. Asked if he had had any negative encounter with the EPDP he said when his father was "in the field" the EPDP had beaten him and they would throw stones at the house at night.
108. He was then asked when he participated in a Heroes' Day event. He said in Sri Lanka on 27 November 2015.
109. He was then asked how he knew it was the EPDP that threw stones and he replied that they had attacked his father. We find it plain that he did not know that it was the EPDP who threw stones but that is what he thought. He then said that his problems started on 28 November 2015 which was the day after he claimed to have attended the Heroes' Day event.
110. He was asked to explain what happened that day. He said after attending the Heroes' Day event he came home and he found his parents crying. He said they his parents had been warned "I won't be there anymore and wanted to know where I was". He said they had also kicked his mother and his mother asked him to leave the house and go.
111. He had had problems before 27 November 2015. He had had problems in 2010 when the army came home and wanted to take his brother for inquiry. He was then asked if he personally had had any issues with the army or the EPDP before 27 November 2015. He said in 2007 he felt he had to change his name. The answer is a little hard to understand but he seems to be suggesting that his name linked him to his uncle and that caused difficulties and after that his parents changed the family name.
112. He said that when the army were expected LTTE activity in the area they "do a round up" took people to the temple.
113. He was asked (question 91) if he had any issues himself that day apart from the fact that he was asked about who had named him. He said:
 "Father took my brother to the army for the enquiry. But it as (sic) nighttime but they had not returned. The following day my father went to the army to enquire about my brother".
114. He had forgotten the date in 2007 when the roundup took place.
115. He insisted that he could not remember the month when his father fell victim of the 2007 roundup.
116. He was then asked (question 94): "In 2007 did you personally experience any other negative encounter with the army?" He replied "my father had urine problems, after they beat him he went to hospital".

117. When pressed about his personal negative encounters in 2007 he said that his father went to hospital in 2011. The next question (96) suggests the interviewing officer, understandably, was becoming frustrated and he politely asked the appellant to concentrate on the question. Reminding him that he was asking the appellant about any problems he may have had in 2007 and he replied: "They warned me that you have to change your name otherwise we will not spare you as you are a little boy. This is not the name for you. You have to change your name".
118. He explained that, according to the Sri Lankan officials, only LTTE members have names like the name he had then.
119. He then said that he was aged 12 in 2007 when his parents changed his name and he recalled it being in the month of November. This appears consistent with his declared date of birth.
120. He said that in 2008 the army checked at the school to see if his name had indeed been changed. He was told that by a relative that worked in the school.
121. He was then asked when he next had problems with the army after 2007 or with the EPDP. He replied "I was returning home from the hospital. The army would stand in the junction and call me and asked me some questions as to where I have been." He explained that they were not threatening towards him but they did tell him that he did not "need to go" to his father. Rather they said that they had beaten him and he would die.
122. He was asked why his father was beaten and explained that his brother was taken for an inquiry and since he had not returned home his father went to find out about the appellant's brother and he was beaten. When asked, he said that his father asked about his brother in October 2010 which was the occasion his brother was taken.
123. After a short break he was asked why he had attended the Heroes' Day event and he replied "because they have sacrificed their lives for us". Unsurprisingly in answer to a supplementary question he explained that he meant the LTTE. Nevertheless he said he was only a small boy and he did not support the LTTE. He was young when the war ended and he attended the event because it was commemorating people who had sacrificed their lives for the Tamil cause. He said the event was mostly attended by young boys and he went with about eight friends. He explained that the event was on the premises of Jaffna University and he said "we pay homage and put flowers and put garlands around their photographs". He thought that most of the people present were students and definitely more than a 100 people attended. He guessed that the number was about 200. It was an annual event so he knew it would take place. Similar events took place at different locations on the same date. Sometimes ceremonies are in temples and bells are rung.
124. He did not attend the event in 2014 or 2013. He was prompted to attend in 2015 because there was the added dimension of protesting about "missing people".
125. He did not know if there were Government officials present at the event. The army was on patrol outside. He said that the army "always" stay outside the university to watch who goes in but he had no encounters with the army that day. He said the army came to his home the next day, 28 November 2015. They were searching for

him because he had attended the protest about missing people and had shouted slogans against the army. Asked what slogans he had shouted he replied "LKA had only taken my brother and he still has not come home" and "to hand him over to us is the Government's responsibility" and "the people who had done it should be punished". It may be that something has been lost in the translation.

126. He then said that he attended the "missing people's protest" in October 2015 and he attended with another person who had a loved one missing. That was just a person who had been introduced by a friend two or three days before the protest took place. Between 70 and 80 people were at the protest which took place next to the nallurt. He said that was usually regarded as part of Jaffna. There was one female MP present and the army were some distance away watching. He was not approached on that occasion. He said that they had been to his house on the same day as his protest (143). He said they attended his home in October 2015 to inquire about him. They went home. He believed they had sent people to monitor him and see what he was doing.
127. Question 148 begins with the, in our experience unusual observation "(Applicant falls asleep)" but he was asked and said he indicated that he was able to continue, so they did.
128. He said that he had been monitored since he was helping the Tamil Party. That did not stop him attending the commemoration and he said two lives had been lost, one was his uncle and the other his brother.
129. He was asked about his uncle's death. He said that his uncle moved to the Vanni area in 2006 and they had one telephone conversation and had not been in contact since. After the war ended his friend came for rehabilitation and said his uncle's whereabouts were not known.
130. He was then asked about 28 November 2015. The appellant said that he was going to work and he saw some army personnel standing in civilian clothing and they stopped his bicycle. Someone then threw him from the bicycle and tied his own hands behind his back and blindfolded him and put him in a jeep. He said this happened about 6 o'clock in the morning and he clarified that it was the day after attending the Heroes' Day event on 27 November 2015. Nevertheless he returned home after the event on 27 November but before he got home on the 27 the army had visited and kicked his mother who told the appellant to leave.
131. He said he knew they were army officials because they took him to an army camp. When he was there he was slapped. He was asked to sign a blank sheet of paper and when he refused they scraped his wrist with scissors. He described the camp as "big" with a barbed wire fence. In the room where he was interrogated there were five or six "officers" and the appellant, all asking questions. Questions were, for example, "where is your uncle" or "where is my brother" or "why did you attend the protest".
132. The interviewing officer asked the appellant if he could explain why they asked about the whereabouts of his brother and uncle if it was the army who had taken them. He was not able to offer an explanation for that.

133. He said he was detained on that occasion. He was released on 30 December 2015.
134. He was asked about the officials, they were all in civilian clothing. He said in the whole period of his detention of one month he was tortured. He said it was dark, there were sandbags and a bench in the interrogation room and he would be seated on the bench and he would be asked questions from the opposite side. He described it as a narrow long room.
135. He was given food once a day and he was given water. He said he was tortured three times a day, mostly on his back and stomach, and he was beaten which is why he could not sit properly in a chair and they also burnt him on his feet with cigarette burns. He said when they were torturing him they accused him of trying to revive the LTTE. He said he had no idea if they had any evidence to support that suspicion but that was the accusation. He was released after his uncle got in touch with a friend and gave some money. It is a different uncle that assisted. The uncle in the LTTE was a paternal uncle.
136. He said he was released during the night. He was taken in a jeep somewhere and stopped and they put him out and told him he would be picked up which he was. He did sign the blank sheet of paper but he did not sign anything on release. His maternal uncle's friend collected him. He allowed him to talk to his parents who said he must go somewhere else and he left the country after his release. He said he left by an aeroplane on 13 February 2016 from Katunayake Airport which we understand is the main international airport service in Colombo.
137. There was a further break.
138. The appellant confirmed afterwards that he was feeling fit and well. He said that after he was released on 30 December 2015 he stayed at the home of a friend of his paternal uncle. He did not go out when he was staying at that house. He remained indoors and watched films. His uncle's friend had family living in the house and the appellant had a room there. He left for the airport by a van. It was a five hour drive away but they came across no trade checkpoints on the journey.
139. He was asked how he got through the airport without attracting attention. He said his uncle's friend accompanied him and airport officials had been bribed. He was asked why his uncle's friend would do that for him. He replied: "he only pointed at the counter that I should go, and they never asked me any questions". His uncle's friend went with him on the aeroplane.
140. The recorded answers from around question 201 seem to us a little confusing and appear to have confused the interrogator a little too. The appellant said that he thought he could "find the solution for my brother's disappearance" and that would lead to the culprits being punished. He said they still do not know what had happened to his brother but when asked how he knew the Government was responsible in any way he replied in question 204: "because they came home and took my brother for an inquiry". When pressed to explain how he knew it was Government officials who were complicit in his brother's disappearance the appellant just repeated that they had taken him for inquiry and never released him. He said he knew that they had not been released because "when my father went and

asked them, they said they hadn't taken him". Then the officers who arrested his brother arrived in uniform.

141. He said that in addition to encouraging people to vote for the Tamil Political Party his other political activity had been the protest meeting about missing people. He had helped with the campaign for the Tamil Political Party. For example he gave out voting cards and showed people how to vote.
142. It was put to him that he had claimed not to have had any political views and he said he was supporting them in the hope of getting a favour from them. He thought they could put pressure on the government to find missing people. He became involved with the Tamil Political Party since 2013. He would make announcements about meetings and tell people how to vote. He was 18 in 2013.
143. There is a helpful note at question 215 where it seems the interpreter made plain that "the Tamil Political Party" was a reference to the Tamil Nation Alliance which had been interpreted in the way indicated.
144. The appellant explained how he got to know about the TNA. They came to the village and canvassed. His brother was not a member of the LTTE but he used to go with his uncle.
145. He was then asked about his journey to the United Kingdom and he was asked to explain why he feared the army. He said when they released him they told him that he should remain in the country and not talk about his brother disappearing. He had not done as the army instructed and he was frightened.
146. He had taken part in a protest instead. He said he took part in a protest in the United Kingdom because:

"we have lost all our rights, even my uncle sacrificed his life, so many people have given their lives for our sake. Because of this my life is like this. So I am in desperate mood."
147. He was then asked to explain why if, as he claimed, he had no political views he would want to support the TNA actively and protest against affairs in Sri Lanka. He replied:

"I took part due to my frustration. They are the majority and we are the minority. No matter what we do we are not going to get anything. If we do anything here, at least the Government will pressurise LKA Government and get something done."
148. He said (question 223) that in the United Kingdom he took part in the great Heroes' Day event on 27 November 2018 and then

"last year an army official called Frenando showed the sign of a cutting a throat and we protest, mid-part of last year, that photo I have given is 14 March 2019 opposite Westminster took place."
149. It was put to him that in his screening interview he said his brother had died and now he only talked about brother being missing. He replied that he did not expect his brother to be alive and that is why he said he was dead. He then said in his screening interview he had named various countries he had travelled through but today said he had travelled through unknown countries. He said that he had explained what countries he was travelling through when he was sent back to Sri

Lanka. He was quite matter of fact that he had gone to Dubai on a fake passport and got caught. He returned to Sri Lanka on 21 November 2016 and was stopped at the airport. He did not have a travel document. He had been deported. He was then put in prison until 20 December 2016. He was asked why he was detained and he said:

“So they could inquire and have a court case. If they file a case against me I would not have been able to leave the country and so he quickly aided my release.”

150. At question 234 he was asked “why would the official want to file a case against you?” And he replied “because from Dubai they sent me with handcuff like a prisoner.” He accepted that in their minds he had dishonoured the country by travelling on a false passport. When he was released or escaped his parents had advised him not to go home and he went to stay with an aunt and his aunt got him a job in a shop.
151. He said he first left Sri Lanka in February 2016 and second time left it in July 2017. Any contrary suggestion was an error in the screening interview record. They had put June but it was July.
152. Asked if there was anything he wanted to clarify he said when he went back in May 2017 he was caught and that motivated him to leave the country. He then said:

“Some kind of torture I went through, I am unable to speak about it. Now I can’t even cry, all these years I cried no tears come to my eyes. Everyone sleep peacefully now I have to get to a stage where I have to take tables [tablets?].”
153. Then he said this was a reference to putting a wooden piece into his penis and he had difficulty urinating. He was embarrassed talking about it. He said the effects were still there, his legs shake if he was sitting for a long time.
154. We find question 242 and its answer interesting because of the way the appellant expressed himself. He was asked: “Did all the events we spoke about happen before your first departure from Sri Lanka?” The recorded reply is: “Yes, only the incident in May that happened when I returned.”
155. He was called by the army in May 2017. Then said he had just finished work going to his aunt’s house and he went to a shop to purchase some items, he was seen by the army and soldiers went to the house and asked his mother about him who denied any connection with him. They then came to the shop and waited to catch him, they caught him, beat him severely and took him to Palaly Camp and detained him. He was questioned about what he was doing for the LTTE and scolded for leaving the country contrary to their instructions. They then demanded that he declare his uncle’s whereabouts or they would shoot him and they put the gun in his mouth and threatened him.
156. He said they did not believe him when he indicated his uncle had died.
157. He was asked why he had not mentioned this earlier and he replied “you’re only asking about it now, that is why I’m telling you about it now”. He was detained for 25 days. He escaped with the assistance of the shop owner getting in touch “with the EPDP”. He said the EPDP member came to the camp and took him out and took him to his uncle’s house. It was pointed out that he had said he feared the EPDP and he

replied: “the shopkeeper did not tell him who I was, just said I am someone who needs help and he got me released”. He then indicated in reply to a question about if he had forgotten anything that “because of the medication, I forget things, sometimes I remember now and sometimes I forget. That’s all for now.”

158. The appellant made a witness statement dated 22 December 2019.
159. It began with an apology for the late submission which he attributed in part at least to poor concentration and an inability to focus. He was troubled at the prospect of return to Sri Lanka. Indeed he indicated he would rather end his life in the United Kingdom.
160. He complained that he had suffered from nightmares and flashbacks and he was on antidepressant medication. He said he now had suicidal ideations and he was embarrassed to be like that. He said:

“I find it difficult to sleep and wake up in sweats and I get flashbacks of what they did to me when I was in detention in Sri Lanka and I have the scars to show what they did. What makes me worse, is that I suffer from fits and it really makes me nervous.”
161. He provided a psychiatric report from Dr Dhumad.
162. The appellant recognised that he was not always clear and said his solicitors had a lot of difficulty in getting clear answers from him. He said he had been attending pro-Tamil and anti-Government demonstrations in the United Kingdom and that had helped him come to terms with the situation in Sri Lanka.
163. He said the country situation had changed and the Rajapakse family are back in power and he regards the situation to be that the Tamils face a serious risk in the event of return. He repeated that his paternal uncle was in the LTTE and his brother was abducted by the army as a result of their uncle’s notoriety.
164. He said his problems started in Sri Lanka many years ago, that his brother was taken in a roundup in 2010 and that he was told to change his name as it sounded like an LTTE member’s name.
165. He had incidents of being questioned, intimidated and threatened by the army.
166. The end of the statement is incomplete and refers to something happening involving his father in October 2010.
167. He then said he attracted the adverse attention of the army by attending an LTTE Heroes’ Day celebration on 27 November 2015. He said it was not in 2017 as was recorded in answer to questions at interview. He said that was a clear typing error.
168. The army came to search for him on 28 November 2015 when he was stopped on his bicycle and arrested and questioned about his uncle’s whereabouts and brother’s whereabouts and taken away and horrifically ill-treated and he had explained that. He then repeated the claim to have left detention after signing a blank sheet of paper and released on a payment of a bribe. He said he was able to get through the airport in February 2016 because bribes had been paid to an immigration official and he went to an appropriate counter and was allowed to pass through.

169. He said he was very worried about returning to Sri Lanka as he had previously been involved with the TNA a Tamil nationalist party which is perceived as pro-LTTE and he was afraid of being arrested again and as he had left detention illegally and warned not to go anywhere he had invited trouble.
170. He said his problems did not end because when he was deported from Dubai he was rearrested and detained for 25 days and questioned about his past.
171. He repeated he could not concentrate and had produced a psychiatric report about that.
172. Dealing with specific points he said that his brother was abducted in 2010. He accepted he gave an inconsistent and unclear account but he attributed that to the mental health problems and he apologised. He then said the army came to arrest him on 28 November 2015. He had no explanation for the Home Office not arresting him on the Heroes' Day. He could not speak for the army, he could only say that they came to arrest him the next day.
173. He believed that his uncle was an LTTE martyr but he was young at the time.
174. The authorities had told him that his uncle had come out of rehabilitation and the appellant was questioned about his LTTE activities, his uncle and his brother but he did not know whether the authorities had told him the truth. He attached a medical report and insisted that corruption was widespread in Sri Lanka and especially at the airport. He did not agree that he should be refused asylum because his application was refused in Switzerland and Austria.
175. He feared both the army and the EPDP. He said the author of the refusal letter does not realise that the EPDP are corrupt and can be bribed and work with the army and outside the army and he was at risk from them.
176. He did not agree that failure to claim in other countries meant that he was not telling the truth about his claim.
177. He concluded by signing the statement to indicate that the statement was true and accurate and had been read back to him in Tamil. Given that paragraph 9 peters out mid-sentence that is regrettable.
178. There is a medical report from Dr Andres Izquierdo-Martin who is a consultant in emergency medicine and whose relevant qualifications include his being a fellow of the Royal College of Surgeons and a fellow of the Royal College of Emergency Medicine. He said he had considerable experience working in plastic surgery in a burns unit and claimed specific expertise in writing reports on victims of torture and had prepared in excess of 800 such reports.
179. He found a variety of scars. He was particularly concerned with a pigmented scar some seven centimetres (about two and three quarter inches) on the left side of the upper back which was attributed to being burned with a heated iron rod. There were several small scars attributed to being beaten and scars around the ankles attributed to being burnt with lighted cigarettes. A scar that was said to have been caused with a thin heated knife was described as "highly consistent" with the description of the events complained of. He could not attribute any sensible alternative cause. It was

not the kind of mark that would come as a result of accidental injury. Even if there was some reason to suspect the appellant might have inflicted it on himself, it would be difficult to see how he could have manipulated the knife to have caused the injury. In any event self-inflicted injuries tended to be more superficial. He was not aware of any kind of cultural or religious activity that produced scarring of that kind.

180. The scars caused that were attributed to repeated beating were described as “highly consistent” and the scars caused on the feet attributed to cigarette burns were typical. He had explained elsewhere that it was very difficult to date scars but they were consistent with injuries more than two years earlier.
181. The report is supplemented by a very clear “front on” photograph of the appellant’s face.
182. There is then a report from Dr Saleh Dhumad who is a consultant psychiatrist. He is presently working as a private consultant psychiatrist but was a National Health Service consultant psychiatrist for eight years. His relevant qualifications include membership of the Royal College of Psychiatrists and a masters degree in cognitive behavioural therapy.
183. The appellant was found to present with low mood, loss of appetite, weight loss, loss of concentration, suicidal ideation and poor sleep. It was the doctor’s opinion that he was suffering from post-traumatic stress symptoms such as avoidance, flashback and nightmare.
184. Dr Dhumad found his observations consistent with the diagnosis of the general medical practitioner and the Mental Health Service. He regarded him as unfit to attend court and give evidence although fit to provide a statement which could be taken in congenial conditions. We would be inclined to have assumed the next observation if it had not been said but we record that Dr Dhumad said:

“At 16.8 I have considered the possibility that he might be feigning or exaggerating his mental illness. I have not taken his story at face value but carefully examined his symptomology and his emotional reactions during the interview. I have also considered the evidence before me. It is my clinical opinion that this clinical presentation is consistent with a diagnosis of depression and Post-Traumatic Stress Disorder.”
185. He then went on to explain that comment. He regarded the appellant’s attendance at Tamil demonstrations in the United Kingdom as “a healthy way for sufferers to express their anger towards the Sri Lankan Government, where they feel safe and supported by empathetic people and other victims.” He went on to describe this as “therapeutic”.
186. There is medical evidence from the National Health Foundation which we regard as supportive.
187. There is also a document entitled “The Impact of Torture on Post-Traumatic Stress Symptoms on War Affected Tamil Refugees and Immigrants”. We have not found that report helpful. We do not criticise it in any way for its learning but its conclusion, that the study of Tamil torture survivors from Sri Lanka living in Australia exhibited high levels of PTSD symptoms and compatriots who had experienced other forms of war trauma, is inherently unremarkable and only of

peripheral relevance because it tends to show that Post-Traumatic Stress Disorder is more common amongst people who have had adverse dealings with the Sri Lankan Authorities than who have experienced other kinds of trauma. We do not think it adds anything to the evidence of Dr Dhumad.

188. There is a Tamil membership card showing a person with the appellant's name to be a Tamil Eelam national. There is a picture on that card which closely matches the picture that is incorporated in the medical report of Dr Izquierdo-Martin and we are satisfied it is clear evidence that the appellant has obtained a Tamil Eelam national card.
189. We note there are photographs of the appellant in the photocopied bundle before the Tribunal. They are identified particularly at page 78 where a person who standing in a crowd of demonstrators is highlighted with a manuscript circle and the letter "A". These are side pictures, rather than full frontal pictures and are therefore less valuable than they might have been but still suggest to us strongly that the appellant was at that demonstration. There is then an article entitled "Case against 'beheading' Brigadier who made a gesture of beheading to be reheard". This is a reference to a former of defence attaché for the High Commission for Sri Lanka who had been convicted at the Westminster Magistrates' Court for making a "beheading" gesture in a way that might be thought to be intimidating demonstrators who attended the court hearing. We do not find it necessary to delve into that at all. The point is that the LTTE flag was on display outside the court and a sometime high official of the Sri Lankan High Commission was seen expressing his disapproval of the demonstrators. We remind ourselves that this is a newspaper report and that journalists are not subject to peer review but it gives some weight to the claim that the Sri Lankan Authorities were indeed interested in events taking place at that court when the demonstration took place.
190. There is a complementary article from the Colombo Telegraph referring to the case as a judgment on diplomatic immunity. This supports the contention that there was considerable interest in the case in Sri Lanka and therefore the contention that the authorities would be interested in the identity of demonstrators.
191. There is also evidence that the former defence chief who led brutal suppression of the Tamil Tigers wins a presidential election. It is against this background that we have to make findings.
192. Whilst acknowledging the reasons advanced by the Secretary of State for disbelieving the appellant and accepting the inevitability of his failure to claim asylum on his way to the United Kingdom as damaging to his credibility we do not find these points particularly illuminating.
193. We prefer to start with the evidence that is unarguable and this is the medical evidence. The evidence relied upon comes from apparently competent medical practitioners with appropriate experience who have produced reports subject to the conditions requisite of expert evidence. They have been disclosed properly, there is nothing obviously deficient in their contents and there is no counter evidence against which we might check or balance the opinions.

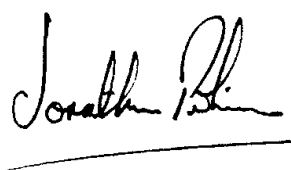
194. We accept that the appellant is suffering from Post-Traumatic Stress Disorder, we accept that that is particularly prevalent amongst people who claim to have been tortured by the Tamil state and, most importantly in this case, we accept the perfectly clear evidence that the appellant is a man who has been ill-treated. The weakest evidence concerns the scarring on his ankles and even that is persuasive. The other scars on his body, and most importantly the burn mark, on his back are, we find, clearly indicative of a man who has been seriously ill-used.
195. The starting point in our decision making therefore is that this man is a Tamil, that he is a citizen of Sri Lanka, he has had problems with the authorities, that he has been ill-treated and, at least as far as the burn mark is concerned, ill-treated in a way which is most complained of, in our experience, by people with links to the Tamil cause.
196. Against this clear finding we have to look at the damaging effect of his damaged credibility. It of course does not undermine his claim to have been injured which is established by another route. We do not become excited about the difficulties in the chronology. The core story that he told is not particularly difficult to learn. The fact that he could not tell the story straight is, we find, at least as consistent with somebody who has memory and cognitive difficulties as a result of stress and trauma as it is from somebody who just cannot remember a simple lie.
197. The appellant is a Tamil from Jaffna which at the material times was an LTTE stronghold. Many people living there had links with the LTTE leading to members of their family taking part and themselves being taken away by the Sri Lankan Authorities. The appellant's claim is inherently plausible and supported by the evidence of scarring. Given the low standard of proof applicable to these proceedings we are satisfied that he has been tortured by the Sri Lankan Authorities because of his perceived links with the LTTE.
198. His references to fearing the EPDP are rather hard to follow. It is, we find, a strange suggestion that this organisation which is essentially pro-Government and anti-Tamil, uncritically supported the appellant for corrupt purposes and now bears him a grudge for reasons that were not well explained. Whether this is a part of his story that is just not explained very well or a gloss on the truth which has not really stood up to scrutiny we are not sure but we do not accept there is any proper basis for accepting there is a fear of the EPDP.
199. It does not follow from this that he has *now* a genuine and *well-founded* fear of the Sri Lankan. We are not particularly concerned about exactly what happened to him when he returned to Sri Lanka from Dubai. What is most significant to us is that he was returned and whatever interest in him was expressed by the Sri Lankan Authorities he was released and released in circumstances that enabled him to escape through the international airport to the United Kingdom. It may be that corruption eased his passage at some stage but the fact that he was released indicates that he is not a man who is prominent or on any kind of wanted list or actively sought by the Sri Lankan Authorities. Nor is there any reason to think that he should be. He was plainly a young person at the time of the greatest LTTE activity.

200. However we accept that he has been ill-treated and we regard it as inherently likely that there will be some sort of record of official interest. Indeed the scar on his back would indicate such ill-treatment and, possibly, it was put there for precisely that purpose.
201. Given his previous ill-treatment at the hands of the Sri Lankan Authorities we find that if he does come to their attention there is a real risk of further ill treatment.
202. Not without some hesitation we have come to the conclusion that there is a real risk of his coming to their attention. There are two reasons for this. Firstly his past links, which we accept are because of some family activity, means he is known or known about to certain officers and if things become difficult in Sri Lanka again he is in the kind of category of people who might be of interest.
203. Importantly that is supplemented by our acceptance that he has taken part in Tamil separatist activities in the United Kingdom. It is proved at least to the low standard necessary in these proceedings that he was part of a crowd that was demonstrating against the Sri Lankan Authorities at a Magistrates' Court. It is also plain that there was considerable interest by the Tamil Authorities in what happened there. We have no way of knowing with any confidence just how much recognition software there may be or ability to link people to United Kingdom activities but we accept that in many cases a real risk that the link will be made and this is such a case.
204. We reminded ourselves of the overall guidance in GJ (Sri Lanka) CG [2013] UKUT 319 (IAC), as well as what was said subsequently by the Court of Appeal in MP & NT [2014] EWCA Civ 829 and ME (Sri Lanka) [2018] EWCA Civ 1486. The Sri Lankan authorities clearly perceived the appellant to be of interest in 2015 and 2017, years after the war had ended. He was seriously ill treated for that reason. The fact that he has suffered in that way in the past is probative of the likely attitude of the Sri Lankan authorities upon his return. There is no reason to think that circumstances have changed for the better and, in light of his participation in diaspora activities, some reason to think that they have changed for the worse.
205. We come to the clear conclusion that there is at least a real risk of the appellant being detained again and suffering the same ill treatment he suffered in the past. We have very much taken on board the damage the appellant has done to his case partly by his late claiming asylum, partly by being a poor historian which may not in any way be his fault but does make his evidence less reliable but for all the reasons given we find that he discharges the low standard of proof and we allow the appeal. He is a refugee.

Decision

206. We set aside the decision of the First-tier Tribunal. We substitute a decision allowing the appellant's appeal against the decision of the Secretary of State.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 6 May 2020

