Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07859/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 October 2021	**On 17 November 2021**
Extempore	

Before

UPPER TRIBUNAL JUDGE PERKINS
UPPER TRIBUNAL JUDGE RINTOUL

Between

BN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Solomon, Counsel instructed by Ask Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. BN ("the appellant") appeals against a decision of the Secretary of State to refuse his claim for asylum. His appeal against that decision before the First-tier Tribunal has been set aside for the reasons given in the decision of the Upper Tribunal for doing so. A copy of that decision is attached to this decision.

2. The appellant's claim at its heart is that he is a Sri Lankan national of Tamil ethnicity with an LTTE family background who, since he has been in

the United Kingdom, has been involved in separatist activities on behalf of the Transnational Government of Tamil Eelam ("TGTE"); and, as a result, he is at risk of persecution on return to Sri Lanka. It is also his case that his mental ill health is so severe, and as he is at risk of committing suicide, removal to Sri Lanka would be in breach of Article 3 of the Human Rights Convention on the basis of his mental health, that being in addition to the claim that he is at risk on account of his political views. It is also his case that he has established a family and private life in the United Kingdom, in particular a family life with his brother and that in all the circumstances of his case, his removal would be contrary to the United Kingdom's obligations pursuant to Article 8 of the Human Rights Convention.

3. The Secretary of State does not accept that the appellant would be at risk on return to Sri Lanka either on account of his political activities or identity or that removing him there would be in breach of Article 3 or Article 8 of the Human Rights Convention.

4. The appellant has a lengthy history in the United Kingdom. He has been here for now many years. He previously made a claim for asylum which was refused, and his appeal against that decision was dismissed by Immigration Judge Montgomery as long ago as 2007. That said, a number of facts were found in his favour: that he was a Sri Lankan citizen, he is of Tamil origin and that his older sister had been involved with the LTTE. That his brother is involved with the LTTE had also been found to be the case in the determination of the First-tier Tribunal's decision allowing the brother's asylum appeal.

5. In the light of the directions and decision of Upper Tribunal Judge Pickup handed down in December 2020 we are today concerned with the appellant's diaspora activities which had taken place in this country in the last few years. The activities are set out in the appellant's witness statement; they are also detailed in the witness statement of Mr Yogalingam and are also to an extent set out in the evidence of his brother. In addition to that oral evidence there is a substantial amount of photographic evidence and other documentary evidence which we accepted together confirm these activities.

6. The appellant's activities with the TGTE are described in the witness statement of Mr Yogalingam who gave evidence before us as including a number of things. He says, and this is consistent with the other evidence, that the appellant joined the TGTE in 2015 and volunteered in organising several public events in the United Kingdom in support of and creation of a free Tamil state in Sri Lanka. He has participated in various Remembrance Days including at Tamil Heroes Days, he has also attended demonstrations in front of the Sri Lankan High Commission, in front of 10 Downing Street and has donated blood and fundraised for Tamil Sports event in 2021 and volunteered for that.

7. The Secretary of State submits two things regarding this. First, even if it is taken at face value it is not sufficient to amount to significant profile which

is required the Secretary of State says under the relevant country guidance to put the appellant at risk. The Secretary of State also submits that there are doubts as to the evidence of his activities, in particular doubts as to the evidence given today of Mr Yogalingam and the evidence of his brother.

8. We turn first to the evidence of the brother. The brother's evidence is that he had assisted the appellant by taking him to several events, dropping him off and then picking him up later or waiting for him. The respondent submits this is vague, lacking detail and thus unreliable. We respectfully disagree with that submission. We consider that the evidence is what it is: his brother has explained to us and we have no reason to doubt him that for personal reasons he did not attend the demonstrations himself.

9. We consider also the evidence of the appellant attending such events is not inconsistent with him having mental ill health problems. We consider the submission that it was, is to an extent speculative; merely because somebody has mental health problems does not mean that they cannot attend meetings or demonstrations or participate in activities and we attach no weight to that submission.

10. We note also the submission that the brother's evidence is vague and concerns have been raised about his account of what had happened to the appellant's brother or the aunt and sister in Sri Lanka and how it has been reported. We bear in mind that that was some twelve or thirteen years ago. We accept in light of the findings of fact made about the brother in his asylum appeal there may well be reasons why he does not want to go into detail about that or what happened in Sri Lanka. We accept his explanation and we do not find that this detracts from his credibility. We reject in particular the submission that this has been made solely to enhance the core claim in respect of contacting the Red Cross to seek information. There is we accept no documentary evidence of the parents' death but equally that is the consistent evidence of the appellant all the way through his claims for a number of years and we see no reason to doubt that given that it is also the evidence of his brother and there would appear to us to be no good reason why they would seek to lie about that over such a long period.

11. We then turn to the evidence of the activities which was to a significant degree fleshed out with what was said in oral evidence from Mr Yogalingam. He explained to us that the appellant had been involved in the production of placards and the carrying of placards, banners and similar material to demonstrations and bringing them back to the office. He explained also the appellant was not involved in the writing of those given that these are in English and the appellant of course does not speak or write English. We accept also his evidence that the appellant stood outside temples and schools, selling raffle tickets, raising funds. We note that there is no photographic evidence of that but we accept Mr Yogalingam's explanation that that is because people might not wanted to

be photographed while making donations to the cause or buying raffle tickets for events such as the sports meetings.

12. We accept that the evidence is that the appellant's activities are at a relatively low level; this is not somebody who is involved in correspondence with the authorities, it is not a high profile role in the sense of a public-facing role.

13. We note the submission that the evidence of Mr Yogalingam is contradictory with respect to the appellant's mental health and ability to carry out the activities. We have read in our preparation for this case the multiple medical reports in this case. We recognise that these are of course snapshots at a particular time but taking it as a whole we do not find that there is any proper indication that means the appellant would not, for example, as was told to us attend demonstrations and participate in pro-Tamil activities. Properly understood, Mr Yogalingam's evidence is not contradictory; it is, rather, the more detailed and nuanced account of what is a complex situation involving somebody who has serious mental health problems but equally, on the evidence of Mr Yogalingam is committed to a cause. He gave us illustrations about people who were participating who were in a similar situation to the appellant.

14. Pausing there to take stock, we accept the evidence of Mr Yogalingam and we accept the details as regards the appellant's activities. We accept that he has participated in numerous demonstrations, for example, marshalling, taking placards and banners to and from demonstrations, and on the evidence of Mr Yogalingam he had been asked to marshal. Although Mr Yogalingam did not confirm that the appellant was wearing a hiviz vest, Mr Solomon pointed out that that can be seen from the photographs.

15. We bear in mind that the appellant's activities in connection with the TGTE have been carried out over a significant period of time, albeit perhaps actively in the last couple of years, but the period of time is now some six years. In short, we accept the account given by the appellant and Mr Yogalingam of the level of his activities on behalf of the TGTE.

16. We bear in mind also that there are previous negative credibility findings and we bear in mind also our duty to have regard to **Devaseelan** as to how we should approach the appellant's testimony.

17. We note that in this case, with regard the activities on behalf of the TGTE we bear in mind that these are supported by the evidence of Mr Yogalingam and significantly the appellant's documentary evidence. We find, taking the evidence as a whole, and applying the principles set out in Devaseelan, that any doubts arising from the previous findings as to the appellant's intentions and his motivation behind his activities have been dispelled.

18. Having made these findings we then go on to consider the extant country guidance in this case set out in KK and RS (Sur place activities, risk) Sri Lanka (CG) [2021] UKUT 130. We consider it appropriate here to start by looking at paragraphs 9 and 10 of the judicial headnote. We note that it is reasonably likely that the government of Sri Lanka will obtain information of the fact that the appellant was associated with the TGTE as he had attended meetings and demonstrations and how frequently, also the nature of these events and whether he has had a prominent part. The Sri Lankan government will also be aware that the appellant is actively involved in that he has been involved in commemorative events such as Heroes Day, has been involved in fundraising and has given a speech, albeit that that has a limited presence on social media. He has also been photographed and has signed a petition which is anti-government. We accept also that the appellant would be returned to Sri Lanka on a Temporary Travel Document

19. We then turn to what is said at paragraphs 20 and 21 in the judicial headnote in this case. The question is still whether the individual has, or is perceived to have, undertaken a significant role in Tamil separatism remains the appropriate touchstone. This is an evaluative judgment and the government of Sri Lanka will seek to identify those whom it perceives as constituting a threat to the integrity of the Sri Lankan state.

20. We turn then to whether the appellant has undertaken a significant role in this case, as that the guidance requires us to do. The issue question is whether the activities might be high profile or prominent, but that assessment must be informed by the indicators identified in the guidance. In this case there are a number of factors which we consider relevant. First, the appellant has been involved with the TGTE which it is well-known is a separatist organisation and has been proscribed in Sri Lanka. It is evident also that the Sri Lankan government maintains an interest in this organisation and its activities in the United Kingdom. The appellant's activities we accept here are at a relatively low level but they have been frequent, they have taken different forms and they have been carried out over a significant period of years indicative of the commitment to the cause. There is limited relevant history in Sri Lanka in light of the findings made by Judge Montgomery but there is in this case significant and relevant family connections in the form of the older sister and brother who were involved with the LTTE. Whilst we note the submission that he was adopted, nevertheless that does not alter the fact the appellant is the last sibling of two LTTE members and we cannot discount the possibility that that is known to the Sri Lankan authorities.

21. Taking all of these factors into account we find on the particular facts of this case and in the particular circumstances of this appellant and his connections and activities that he will be seen as having had a significant role but is at risk of being detained and subjected to persecutory treatment in Sri Lanka, that treatment being contrary amounting to persecution for the purposes of the Refugee Convention and ill-treatment contrary to Article 3 of the Human Rights Convention.

22. We find further that this will be on account of his actual perceived political views and/or ethnicity and for that reason we are satisfied that he ought to be recognised as a refugee. Having concluded that he is a refugee we must formally dismiss his appeal on humanitarian protection grounds as being a refugee he is not entitled to humanitarian protection.

23. We turn then to Article 3 of the Human Rights Convention. We have already found that the appellant is at risk of ill-treatment on return which is sufficient to amount to persecution. We find that ill-treatment would also be in breach of Article 3 of the Human Rights Convention. It is therefore not necessary for us to consider whether in the alternative his removal would be a breach of Article 3 on mental health grounds. We have considered the situation in the light of MY (Suicide risk after Paposhvili) [2021] UKUT 232 but having considered the medical reports in detail we are not satisfied the appellant's mental ill health is such that even in light of Paposhvili the risk of suicide bearing in mind the test set out in J v SSHD[2005] EWCA Civ 629 and in effect following the observations in MY that the risk in this case is sufficient but the appellant would meet the still very high threshold necessary to engage Article 3 on mental health grounds.

24. Having found that in any event the appellant's return to Sri Lanka would be in breach of Article 3 of the Human Rights Convention, and also that he ought to be recognised as a refugee and granted status, it is unnecessary for us to consider whether his removal would be in breach of Article 8 and we do not consider that in the light of these findings it is necessary or sensible for us to reach a finding under Article 8 so we do not do so.

25. Accordingly, for these reasons we are satisfied the appellant has a well-founded fear of persecution in Sri Lanka on account of his political views and/or ethnicity and for these reasons we allow his appeal on asylum and human rights grounds.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and we set it aside.

2. We allow the appeal on asylum and human rights grounds.

3. We formally dismiss the appeal on humanitarian protection grounds.

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

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

and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 2 November 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

Annex – Error of Law decision

IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07859/2019

THE IMMIGRATION ACTS

Heard at Field House
On 6 January 2020

Decision Promulgated

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Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BN
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr P Singh, Home Office Presenting Officer
For the Respondent: Mr R Solomon, Counsel, instructed by Ask Solicitors

DECISION AND DIRECTIONS

Although the appellant in these proceedings is the Secretary of State, for ease I continue to refer to the parties as they were before the First-tier Tribunal.

The appellant is citizen of Sri Lanka born in 1979. He arrived in the UK on 21 May 2007 and made a claim for asylum on arrival. His claim was rejected and his appeal was dismissed after a hearing on 9 August 2007.

On various occasions the appellant made further submissions which were rejected until the latest further submissions made on 18 July 2017 which were accepted as a fresh claim. However, the claim was refused and the appellant appealed to the First-tier Tribunal against that refusal. His appeal came before First-tier Tribunal Judge Coutts at a hearing on 17 September 2019 which resulted in the appeal being allowed on asylum and human rights grounds.

Judge Coutts's Decision

Judge Coutts summarised the basis of the appellant's claim and identified the documentary evidence that he had before him. Although the appellant attended the hearing he did not give evidence because of his poor mental health, there being a psychiatric report from Dr Saleh Dhumad, dated 9 September 2019, which stated that he was unfit to give evidence. There was, however, oral evidence from the appellant's brother, SN, whose evidence was summarised.

Judge Coutts also summarised the decision in the earlier appeal of 2007, noting that Judge Montgomery, who heard that appeal, rejected the appellant's claim to have been arrested, detained and ill-treated. However, he also noted the positive findings in the appellant's favour, namely that it was found that he was a Tamil from a northern province, that he had scarring to his face and body, that his sister was in the LTTE and that his brother, SN, had been granted refugee status in the UK because of his involvement with the LTTE. It was also accepted in that decision that the appellant's brother and younger sister were arrested by the Sri Lankan Army in 1998 and taken to a camp for questioning, from which his brother escaped. Judge Montgomery had also accepted that they had been detained because the Sri Lankan Army had been informed that the appellant's older sister had joined the LTTE in November 1992.

I set out Judge Coutts's conclusions in full as follows:

> "46. The appellant's claim was dismissed by a previous tribunal in a decision which was promulgated on 17 September 2007.
>
> 47. It is important to note here that the hearing before me was not an appeal against that tribunal decision; rather, it was an appeal against the decision of the respondent dated 9 August 2019 in relation to the future submissions the appellant has made.
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> 48. Having said that, the previous tribunal decision is the starting point for my assessment and in line with accepted practice, and before the hearing commenced, I agreed with the parties the approach to be taken in accordance with the principles in **Devaseelan**.
>
> 49. The starting point therefore is that the appellant was previously found by the tribunal to not be credible in relation to his arrest, detention and ill-treatment at the hands of the Sri Lankan army.
>
> 50. However, other aspects of his claim that related to his background, the scarring to his face and hands and the situation of his family in Sri Lanka as members and supporters of the LTTE were accepted.

51. I have taken all of this into account together with the appellant's further submissions and the oral and written evidence before me.

52. My findings therefore, in the round, on the lower standard, are as follows:

53. The previous tribunal accepted that the appellant had scarring to his face and hands which is, of course, now historic. However, I find that it was significant that it was accepted at the time of his previous appeal in 2007.

54. The appellant continues to maintain that he was arrested, detained and ill-treated by the Sri Lankan army in 2007 owing to suspected involvement with the LTTE and participation in an attack which had occurred in Vavuniya and that the scarring to his body happened at this time.

55. I have no reason to doubt this claim by the appellant.

56. It is supported by the psychiatric reports of Dr Lawrence and Dr Dhumad who both opine that the appellant is suffering from PTSD relating to the ill-treatment he experienced when he was arrested and detained by the Sri Lankan army in 2007 before he came here. They also both conclude that it is unlikely that the appellant's symptoms are made up and they believe them to be genuine.

57. It is further supported by the background evidence which identifies ill-treatment of the kind experienced by the appellant as being ones commonly used by the Sri Lankan authorities.

58. It is also not implausible that the appellant would be involved with the LTTE during the period concerned, when the war was still waging, as he comes from the northern part of the country and from a family who supported the Tamil cause. His sister was a senior member of the LTTE and his brother, who gave oral evidence, had been accepted as a refugee prior to the appellant's arrival here.

59. Given my findings above can the appellant be safely returned to Sri Lanka? I find that he cannot.

60. The background evidence suggests that now, in the post conflict period, the Sri Lankan authorities are paranoid about the threat of a resurgence of the LTTE. Their aim being to contain a resurgence of this terrorist group and suspicions extend to former members or supporters of the LTTE such as those in the appellant's position.

61. It also suggests that those returned to Sri Lanka are likely to be detained and interrogated about suspected LTTE activities and can expect to be very harshly treated. It is reasonable to conclude that the appellant would be of particular interest to the authorities given the involvement of his family with the LTTE and his having previously escaped from custody. It is therefore not implausible to think that his name would appear on a wanted list.

62. Moreover, the appellant has claimed asylum here and this, together with his diaspora activities, present a further risk factor for the appellant.

63. It follows from the above, that there are substantial grounds for thinking that the appellant will be detained by the Sri Lankan authorities and that this will present him with a real risk of persecution. Given the appellant's account of his past persecution he will be perceived by the Sri Lankan authorities as being a threat to the integrity of Sri Lanka.

64. I have also taken into account, as required by section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004, any conduct by the appellant which is damaging to his credible. I consider that the appellant's conduct in entering the United Kingdom unlawfully and by using a forged passport to damage his credibility. However, I have considered this evidence in the round, with the other evidence in the case, and find that such damage was minimal because I found his claim to otherwise be credible for the reasons already given.

65. Given the conclusions outlined above, I find that the appellant has discharged the burden of proof to establish that he has a well founded fear of persecution and is entitled to a grant of asylum. I come to the conclusion that the appellant's removal would cause the United Kingdom to be in breach of its obligations under the Refugee Convention."

The Grounds and Submissions

The essence of the complaint by the respondent in relation to Judge Coutts's decision is in terms of a failure to apply the *Devaseelan* principles when allowing the appeal. It is asserted that Judge Coutts misrepresented the findings made in the earlier appeal in relation to the causation of scars, had failed to treat Judge Montgomery's findings as the starting point in the appeal and had failed to give good reason for departing from those findings.

It is further argued that Judge Coutts failed to have regard to the country guidance decision of *GJ and others (post-civil war: returnees) Sri Lanka* CG [2013] UKUT 00319 and did not explain why the appellant's *sur place* activities would put him at risk on return.

In his submissions, Mr Singh relied on the grounds and referred to various aspects of Judge Coutts's decision to illustrate the contention that he had failed to have proper regard to the *Devaseelan* principles. In addition, it was submitted that what was said by Judge Coutts at [62] in terms of the matters that would put the appellant at risk on return, was insufficient to reveal what it is about his diaspora activities that would create a risk.

In his submissions, Mr Solomon pointed out that there was psychiatric evidence before Judge Coutts that was not before Judge Montgomery, who only had a GP's letter in relation to the appellant's mental health.

It was submitted that there was no 'misrepresentation' of Judge Montgomery's decision by Judge Coutts in relation to scarring. Judge Coutts had simply stated that the fact of the scarring was accepted by Judge Montgomery. Furthermore, it was submitted that Judge Coutts set out in detail the findings made by Judge Montgomery in the earlier appeal and did clearly take that decision as his starting point.

So far as diaspora activities are concerned, Judge Coutts's conclusions need to be read in the context of his summary of the appellant's case which included at [35] – [36] his account of his activities in the UK, his membership of the Transnational Government of Tamil Eelam ("TGTE"), as well as the photographs of his activities. I was referred to aspects of *GJ* in support of the contention that Judge Coutts had properly applied that country guidance to the facts of the appellant's case.

In his reply, Mr Singh submitted that Judge Coutts needed to have done more than "scrape the surface" in explaining what it is about the appellant's diaspora activities that would create a risk on return.

Assessment and Conclusions

At the conclusion of the hearing I announced to the parties that I was satisfied that Judge Coutts did err in law such as to require his decision to be set aside. My reasons are as follows.

In her decision promulgated on 27 August 2007, Judge Montgomery undertook a detailed assessment of the appellant's claim and gave extensive reasons for her findings. It is clear, however, that she rejected the appellant's claim to have been arrested, detained and ill-treated or that he would be at risk on return, applying the then current country guidance of *LP (LTTE area – Tamils – Colombo - risk?) Sri Lanka* CG [2007] UKAIT 00076. It could not be said that that country guidance was more restrictive in its application than the current country guidance of *GJ*; far from it. Thus, insofar as there is any implicit contention that on the basis of the findings made by Judge Montgomery, and applying existing country guidance, the appellant might have succeeded in his appeal, any such contention is without merit.

On the other hand, I do not accept the contention on behalf of the respondent that Judge Coutts failed to take the earlier appeal decision as his starting point. He plainly did, having made detailed reference to it, expressly stating at [48] that that decision was his starting point, and citing *Devaseelan* (*Secretary of State for the Home Department v D (Tamil)* [2002] UKIAT 00702). At [49] he made specific reference to the fact that in the previous appeal the appellant had been found not to be credible in relation to his arrest, detention and ill-treatment by the Sri Lankan Army. He made the same observation earlier, at [23].

In addition, I do not accept the suggestion in the grounds to the effect that Judge Coutts somehow misrepresented the previous findings in terms of scarring. It is plain from [53] that what Judge Coutts was saying was nothing

other than that the fact of the scarring was accepted in the previous appeal. He did not suggest that the causation of the scarring had been established.

However, I am satisfied Judge Coutts fell into error when at [55] he said that he had no reason to doubt the appellant's (repeated) claim to have been arrested, detained and ill-treated by the Sri Lankan Army in 2007 because of suspected involvement with the LTTE, and so forth. Quite apart from the fact that there was a previous comprehensive judicial assessment of his claim which, on the face of it, should have given Judge Coutts's reason to doubt the appellant's repeat of his earlier claim, Judge Coutts's reasons for accepting it are, with respect, very tenuous indeed. His reasons were that the claim is supported by psychiatric reports, background evidence and inherent plausibility with reference to the country situation and his family involvement with the LTTE.

However, there was psychiatric evidence before Judge Montgomery in the form of a letter from his GP stating that the appellant suffered from PTSD. Admittedly, as Mr Solomon pointed out, the psychiatric evidence before Judge Montgomery was criticised by her on the basis that it does not appear to have been confirmed by a consultant psychiatrist, and the reports from Dr Dhumad and Dr Lawrence that were before Judge Coutts are both from consultant psychiatrists. Dr Lawrence's report is dated 7 June 2017 and Dr Dhumad's report is dated 9 September 2019. In summary, they both say that the appellant is suffering from depression and PTSD and they both express the view that he is not feigning his symptoms.

However, the psychiatric evidence alone could not rationally undermine the comprehensive adverse credibility assessment undertaken by Judge Montgomery, the two consultants' reports being largely dependent on the appellant's reporting of his symptoms.

The background evidence to which Judge Coutts refers was background evidence that was before Judge Montgomery in terms of the types of ill-treatment experienced by those subjected to human rights abuses by the Sri Lankan authorities. The other factors to which Judge Coutts referred were similarly part of the information that was before Judge Montgomery, for example where the appellant came from and his family's involvement with the LTTE. Those could hardly be said to be additional factors which could serve to undermine the previous assessment of the appellant's credibility.

Accordingly, I am satisfied that Judge Coutts's decision is flawed in its application of the *Devaseelan* principles.

If, however, Judge Coutts was entitled to conclude that the appellant would in any event be at risk on account of his diaspora activities and membership of the TGTE, his decision, perhaps, need not be set aside because the appellant will have established that he would be at risk on return. However, again, I am satisfied that in this respect also Judge Coutts's decision is marred by error of law.

There is no analysis at all on the part of Judge Coutts of the appellant's diaspora activities. I do not accept that the recital of the appellant's case in this respect at [35]–[36] is a sufficient basis from which to conclude that contextually Judge Coutts's reasons are legally adequate. It was necessary for Judge Coutts to explain why, in the context of current country guidance and other authority, he concluded that he would be at risk because of those activities and his membership of the TGTE.

In the circumstances, Judge Coutts's decision must be set aside.

I have considered whether there is sufficient information before me from which to make my own assessment of the issue of risk on return on account of the appellant's membership of the TGTE and his *sur place* activities. However, I have concluded that it would not be appropriate to make the detailed factual findings necessary and to consider current country guidance, and other relevant authority, in the absence of submissions from the parties.

Finally, I have considered whether it is appropriate to remit the appeal to the First-tier Tribunal for a fresh hearing. Whilst there is a fact-finding exercise that needs to be undertaken, I do not consider that the extent of it is such as to make it appropriate for the appeal to be remitted. In coming to that view, I have taken into account the Senior President's Practice Statement at paragraph 7.2. Accordingly, the decision will be re-made in the Upper Tribunal at a future hearing. To that end, the parties are to have careful regard to the directions set out below.

DIRECTIONS

(1) Any further evidence relied on by either party is to be filed and served no later than seven days before the next hearing.

(2) In respect of any person whom it is proposed to call to give oral evidence, there must be a witness statement drawn in sufficient detail to stand as evidence-in-chief such that there is no need for any further examination-in-chief. Any such witness statement must be filed and served no later than seven days before the next hearing.

(3) All further evidence relied on by either party must be contained within a supplementary, paginated and indexed bundle and must be filed and served no later than seven days before the next hearing.

(4) No interpreter will be provided by the Tribunal for the next hearing unless specifically requested on behalf of the appellant with reasons being given for that request.

(5) At the next hearing the parties must be in a position to make submissions as to what findings of fact made by Judge Coutts can be preserved.

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

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

Upper Tribunal Judge Kopieczek 20/01/20