



**IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM  
CHAMBER**

Case No: UI-2022-006094

First-tier Tribunal No: PA/  
53591/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

4<sup>th</sup> March 2024

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**SS  
(ANONYMITY ORDER MADE)**

Appellant

**and  
Secretary of State for  
the Home Department**

Respondent

**Representation:**

For the Appellant: Ms A Benfield, instructed by MTC Solicitors<sup>1</sup>  
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

**Heard at Field House on 9 January 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, IK is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify SS. Failure to comply with this order could amount to a contempt of court.**

<sup>1</sup> Solicitors' name amended on 4<sup>th</sup> March 2024 under Rule 42 of The Tribunal Procedure (Upper Tribunal) Rules 2008 HCR

## **DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka born on 22<sup>nd</sup> March 1989. He was granted a student visa to travel to the UK in 2010 and which expired on 30<sup>th</sup> January 2013. His leave however was curtailed to expire on 13<sup>th</sup> October 2012 but a further application for leave as a student was granted and extended to 27<sup>th</sup> July 2014. He was refused leave as a student on 27<sup>th</sup> May 2015 and on 22<sup>nd</sup> May 2015 he made an application for a residence card but that was refused on 22<sup>nd</sup> October 2015. He claimed asylum on 19<sup>th</sup> January 2017 which was refused on 6<sup>th</sup> July 2017. His appeal against that decision was dismissed by the First-tier Tribunal ('FtT') in 2018. He became appeal rights exhausted on 11<sup>th</sup> April 2018. Further submissions made on 22<sup>nd</sup> November 2018 ultimately gave rise to the Secretary of State's decision dated 6<sup>th</sup> July 2021 refusing his protection claim and which generated this appeal.
2. The appellant claimed to fear return to Sri Lanka because of his allegiance to the LTTE of which he advanced his father was a member and who was arrested in 1989 and had not been seen since. The appellant claimed that in 2005 he started delivering packages for the LTTE and on 7<sup>th</sup> January 2010 he was arrested and detained, and physically and sexually abused, but released with a bribe paid by his mother. He remained in hiding until assisted in his departure by an agent on 30<sup>th</sup> October 2010. He claimed his mother was subjected to harassment and had to move. He also relied on sur place activities and submitted documents in support of his claim. The Secretary of State raised numerous credibility issues in his decision of 6<sup>th</sup> July 2021 specifically in relation to the documentary evidence.
3. The appeal was dismissed by FtT Judge Groom on 13<sup>th</sup> June 2022 but permission to appeal was granted on 13<sup>th</sup> July 2022. The judge had applied **Devaseelan v The Secretary of State for the Home Department** [2002] UTIAC 00702 and took account that at the appellant's appeal on 2<sup>nd</sup> January 2018 there was no mention of association or affiliation with TGTE. The judge found it 'implausible that the appellant failed to mention his association with the TGTE in his appeal before Judge Asjad if he had been involved since 2017 and moreover since at least 2011 as he claimed in his oral evidence before Judge Groom. The judge considered the evidence but found these fell significantly short of the threshold in **BA (Demonstrators in Britain - risk on return) Iran CG** [2011] UKUT 36 (IAC) and on his own evidence he was not a leader, speaker or organiser of any TGTE events he had attended and had failed to demonstrate there was media coverage with the exception of one publicised photograph. The Sri Lanka authorities would not be able to identify him and without the red ring around the appellant drawn on the photograph the judge would not have been able to identify the appellant. Further the appellant had left on his own passport in 2010. The judge also found that the appellant's claim to have been deeply involved with the TGTE in the UK since 2017 was inconsistent with his membership card being issued in July 2021. The

judge found the appellant had attended demonstrations in the UK as a method to make a fresh claim for asylum. In relation to the appellant's historic claims of his circumstances in Sri Lanka in relation to the LTTE the judge was not persuaded to depart from the earlier findings made by Judge Asjad in 2018 and did not accept that the appellant continued to be harassed by the authorities after the appellant had left the country. The judge was not persuaded on the strength of the medical evidence (no diagnosis of PTSD and a prescription of only 20 mgs of Fluoxetine and some therapy) that the appellant should be treated as a vulnerable witness.

4. The grounds advanced were that the judge had (i) conducted a flawed assessment of the evidence (ii) failed to apply **KK and RS (sur place activities: risk ) Sri Lanka CG** [2021] UKUT 130 which confirmed that the monitoring of diaspora events, the use of face recognition technology and taking of photographs by the Sri Lankan authorities with a view actively to identifying participants [404], its role in monitoring the internet and social media [410] and the government of Sri Lanka's ('GOSL') extensive intelligence gathering regime [403-405]. There was evidence of links to at least three media outlets with which the judge did not engage. There was no requirement to have a significant role in the TGTE activities to come to the attention of the GOSL. Ground (iii) advanced the judge applied **BA** without properly applying **KK and RS**. Ground (iv) addressed the issue of the appellant's failure to mention his involvement with the TGTE in the UK which was in its infancy at the date of his appeal before Judge Asjad and was not determinative of the issue of credibility. Ground (v) asserted the judge failed to make findings on the evidence of KT who attended the hearing on behalf of the appellant.
5. I repeat these grounds because at the hearing before me because Mr Lindsay requested that I consider that Judge McWilliam preserved the judge's findings as to the appellant's credibility by stating this at [34] of the error of law decision.

*'In respect ground 4, while the judge was entitled to find that the appellant was not a member of the TGTE in 2017 (the implication being that membership was recent), and as the judge found at 57 he has attended demonstrations not because he believed in the cause of the TGTE but 'as a method to make a fresh claim', the judge did not make clear findings about the extent of the appellant's sur place activities and his involvement with the TGTE and what this amounted to in so far as KK and RS is concerned. The judge found that if the appellant was as deeply involved with the TGTE since 2017 as he claimed he would have mentioned it in his earlier appeal. This was a reasonable finding contrary to what is claimed in the grounds, but it was incumbent on the judge to consider the appellant's membership of/activities for the TGTE at the time of the hearing before her and whether, notwithstanding his motivation, this would put him at risk in line notwithstanding his motivation.'*

6. As I pointed out at the hearing, despite Judge McWilliam's observations on the entitlement of the judge to make findings that the appellant was not a member of the TGTE in 2017 (and indeed he was not as his membership card commences in 2021), Judge McWilliam also found in this paragraph that the judge did not make clear findings about the extent of the appellant's sur place activities and his involvement with the TGTE. Although there was no specific finding that this ground was or was not made out, Judge McWilliam clearly did not consider that the judge had properly assessed the appellant's sur place activities overall and this would impinge on the credibility findings. I find therefore that no part of the FtT decision was preserved. To buttress my view, at [36] Judge McWilliam specifically stated that 'I set aside the decision of the judge to dismiss his appeal' and she made no specific direction that any findings should be preserved. That, however, does not mean that my approach should depart from applying **Devaseelan** in relation to the decision of Judge Asjad.

### **Documentation**

7. I was provided with a consolidated bundle by the appellant's representatives which is a matter of record having been uploaded to the CE file and which included the appellant's two witness statements dated 16<sup>th</sup> September 2021 and 20<sup>th</sup> December 2023, social media and photographic material and two letters from Mr Sockalingam Yogalingam, who is entitled the Deputy Minister for the Prime Minister's Office in the TGTE dated 16<sup>th</sup> September 2021 and 1<sup>st</sup> June 2023. I also had access to the Secretary of State's bundle of evidence which included the decision under appeal.
8. Mr Yogalingam attended the hearing before me to give evidence on behalf of the appellant.

### **The hearing and submissions**

9. The appellant attended the hearing and gave oral testimony evidence through a Tamil interpreter (who was physically remote and secured at short notice). The appellant confirmed that he understood the interpreter and adopted his two witness statements. I will refer to his evidence as relevant in the course of my conclusions. I was not made aware of any application to treat the appellant as a vulnerable witness and in view of the sparse medical history I am not persuaded that his evidence should be considered in the light of being a vulnerable witness.
10. Dr Yogalingam also attended to give evidence on behalf of the appellant.
11. The appellant explained that the witness who previously attended on his behalf could not attend because he had 'corona'. Although no medical evidence was supplied the prevalence of covid and the time of year makes that believable.

12. Mr Lindsay submitted that he relied on the asylum decision dated the 6th July 2021 and that he was bound to accept that if the appellant was genuinely committed as claimed that he may be entitled to asylum on **HJ (Iran)** principles. If the appellant was not genuinely of the belief he claimed, then his sur place activity was not such as to place him in jeopardy on return. Mr Lindsey also accepted that the appellant was going to be interviewed prior to his return but I was invited to find that the appellant was not a credible witness and his previous asylum claim was found to be a fabrication in its entirety. The Sri Lankan authorities would see the appellant's claim in that light. The evidence indicated that the appellant had shown he would say anything if it supported his claim. The only evidence of sur place activities was motivated by what is said by the appellant to be a genuine belief. I was invited to bear in mind the other credibility findings. Nothing the appellant had said should be accepted as true. Mr Lindsey submitted that there was no risk the appellant would have been identified by the GOSL. It was necessary to consider the frequency of his attendance at TGTE events and posts on social media.
13. In relation to Mr Yogalingam's evidence on raising funds he merely stated that a booklet of raffle tickets was given to each attendee (of which the appellant was one) at a sports event and they had the option to sell raffle tickets. The height was that he would have been able to sell raffle tickets.
14. It was unclear on what basis the Sri Lankan authorities may become aware of problematic activities at any interview for a travel document. The appellant was reasonably able to say to the Sri Lankan authorities that he never had held genuine beliefs, that he had made a false claim for asylum on 2 occasions, had no intention to pursue such activities and his previous activities were low level and not due to any support of Tamil separatism. Nothing in the country guidance confirmed that would be a real risk on return. The height of the risk the appellant may face was being placed on a watch list and monitored on return and all that would disclose was that there was nothing to cause concern to the Sri Lankan authorities; thus the appellant did not qualify for international protection.
15. The extent of the sur place activities was limited. The appellant's supplementary statement stated that he was a member from *around 2017* and his oral evidence that he had been a member since 2017 was an inconsistency. The appellant would surely know when he joined. It was his evidence at the present hearing that he was not aware that his sur place activities would be important to his asylum claim. That should be roundly rejected. The appellant had been represented throughout and would be aware of the importance of his TGTE association. That undermined his credibility. It was not accepted that he had attended some 40 events.
16. Mr Yogalingam, in his oral evidence, had only identified 3 separate events and all of those had taken place in recent months and none had overt political connotations. Mr Yogalingam's letter of June 2023 identified a larger number of events but it was not accepted that he had seen the photographs of the appellant at all these events as there were not the

supporting photos in the bundle. He did not personally recall the appellant and did not say he had met him in person at these events and he could only say that the appellant was able to sell some raffle tickets and it was unclear how the GOSL would become aware of that. The appellant could say at interview that he had never held such views. The height of the risk would be that he may be placed on a watch list.

17. In terms of the photographs and attendance at the events and the drawings there was no evidence this was posted online and **XX (PJAK - sur place activities - Facebook) Iran CG** [2022] UKUT 23 (IAC) which has wider effect than merely Iran, applied. There were barriers to monitoring Facebook and access to material depended on the private or public settings. Automatic collection of data from Facebook was limited. When social media evidence was limited to production of printed photographs, without full disclosure in electronic format and there was production of only a small part of a Facebook or social media account, for example, photocopied photographs, that may be of very limited evidential value. That is because it is easy for printouts to be manipulated and where, as in this case, evidence purporting to show over 7000 followers, there was in fact nothing to show that this was the case. It was important to consider all the evidence in the light of **Tanveer Ahmed**. Even if the appellant had genuinely held a TikTok account he accepted he could delete it and should consider whether it should be disclosed. Given his significant history of dishonesty the appellant could delete it, and I was referred to head note [9] of **XX**, in relation to what could be done on mitigation and the closure of accounts. In all likelihood the appellant could say he had no media account. I was invited to find the appellant's assertion of genuine belief was not credible and that he could delete his accounts.
18. Turning to the extent of the sur place activity, there were some printouts which appear from two newspapers in Sri Lanka which could, Mr Lindsey accepted, be located online but there was no idea of the article itself without translation and there was nothing to suggest that the articles were in any way political or to do with the TGTE or separatism. Blood donation events could simply just be that and the banner referred to in the picture in the newspaper article did not appear to be related to the TGTE. I might take judicial notice of such a matter although this was the appellant's unsupported assertion that it was linked to the TGTE. I was invited to consider that this should not lead the Sri Lankan authorities to perceive the appellants as being involved with the Tamil cause.
19. The attendance at TGTE events was low level and in terms of the newspaper articles we did not know what they were saying and the social media evidence could not be confirmed as having been posted online. It was crucial to note that **KK and RS** identified that attendance at events was a risk factor but not determinative of risk. It was accepted that the appellant had attended 3 TGTE events and one cricket match. The attendance was at a low level such that it was insufficient to show that the appellant was reasonably likely to be at risk from the Sri Lankan authorities. The appellant fell into the category of those who had clearly

undertaken activity to support a false asylum claim those who are not committed were not reasonably likely to be at risk. The height of the risk to this appellant as identified at [18] and [19] of **KK and RS** was that he may appear on a watch list. He may fall into the second category at paragraph 19 but monitoring will not place this opponent at risk because he has made a false claim. As such I was invited to dismiss the appeal.

20. Miss Benfield relied on her written submissions. She submitted that although Mr Lindsey placed heavy reliance on the previous negative credibility findings in the previous determination such that the appellant should now be disbelieved wholesale, that was an incorrect approach, **Chiver (Asylum; Discrimination; Employment; Persecution) (Romania)** [1994] UKIAT 10758. Some elements of the claim may well be credible even if his claim overall was disbelieved. It was important to look at the totality of the evidence and come to the view on the merits as it stands. Even if it were right to look at his account with caution when considered with the other evidence, the appellant's claim met the relevant threshold. Ms Benfield referred to her skeleton argument which identified the events from 2017 onwards; it was not just three key events which should be considered. Mr Yogalingam had given evidence and it was important not to ignore his letters. I was referred to various pieces of evidence from the bundle which identified the appellant's attendance variously at, for example, Black July, Heroes day meetings, sports meetings and a demonstration outside Downing Street.
21. There was a reliable body of evidence identified and detailed in the appellant's statements with which the appellant's account was consistent. There was nothing to the point that he had started membership or activity with the TGTE in 2017 and it was recorded in the FtT decision that he had commenced activity from "at least 2017" [51]. In his witness statement the appellant states that he joined in 2017. There was simply no inconsistency and looking at the evidence nothing indicated a fabricated account as the respondent suggested. It was not consistent with the ample evidence of the appellant's actual activities.
22. There was no relevance in relation to the motivation for his activities and I was referred to [494] of **KK and RS**. It is the government's perception and what they would make of the activities; as the Tribunal found in **KK and RS**, the Sri Lanka government would have little or no inclination to inquire into the motivation of the appellant. The Secretary of State's position on this was flawed because the Tribunal in **KK and RS** found that it is not the motivation and opportunism of the appellant but his presence and activities in the UK and how they are perceived by the GOSL.
23. The appellant was clear and compelling in his evidence that he championed the rights of the Tamil people and nothing undermined this. The Tribunal could properly conclude that he was motivated by the cause of Tamil Eelam and that was demonstrated by for example his social media presence. **XX** was looking at a very different context and also looking at Facebook which is not the position here. As the Tribunal found in **KK and**

**RS** there was a rigorous approach to monitoring by the Sri Lankan government to try and identify those protesting. In the case of **XX** the risk could not be mitigated by closure of an account and there was a parallel here. The appellant had now been active for many years (seven) in the UK and as we know the information gathered in relation to the appellant by the Sri Lankan government would be entered already onto government systems and be in the 'institutional memory'. To suggest there would be none simply did not carry weight.

24. It was found in **KK and RS** that the logical time for gathering information would also be at the TTD (travel document) interview and the question would evidently be asked whether he had been involved in activities; it would be absurd to suggest that the appellant could merely state he had been involved since 2017 but only to support a false asylum claim in order to avoid the risk of persecution.
25. The only proper conclusion is that he was already likely to have a profile owing to social media, because he had been visible at TGTE events, photographed alongside members of leadership personnel including Mr Yogalingam. The appellant could be seen in photographs in uniform bearing at TGTE logo and this suggested he would be considered to have a significant role and is likely to be detained on arrival on a travel document and would be detained for questioning. Even if he passed through immigration checks he would likely be picked up because of his profile and that again arose a risk of persecution. There was no evidence to suggest his beliefs were not genuinely held and he stated in oral evidence that he would express his commitment should he return to Sri Lanka. Sri Lanka . I was specifically referred to the logo on the banner held in the photograph of the appellant in the press article distributed in Sri Lanka which could be referenced to the TGTE logo on the appellants TGTE membership card. Miss Benfield also submitted that the sports meetings we're not merely a cricket match but opportunities to distribute propaganda and networking amongst the Tamil diaspora. That was clear from the evidence given in **KK and RS** at [385] and from the evidence of Dr Smith recorded in **KK and RS** at [41] and [62].

## **Conclusions**

26. The principles of **Devaseelan** in relation to a previous determination were set out in **AA (Somalia) v SSHD** [2007] EWCA Civ 1040 at [53]. Carnwath LJ (as he then was) extracted some key tenets as follows:

*'In Devaseelan itself it was the Secretary of State who was seeking to rely on the previous decision. ...I extract what seem to me the most relevant points for present purposes (including the AIT's emphasis):*

*(1) The first Adjudicator's determination should always be the starting-point. ....*



*(4) Facts personal to the Appellant that were not brought to the attention of the first Adjudicator, although they were relevant to the issues before him, should be treated by the second Adjudicator with the greatest circumspection. ...*

*(6) If before the second Adjudicator the Appellant relies on facts that are not materially different from those put to the first Adjudicator, and proposes to support the claim by what is in essence the same evidence as that available to the Appellant at that time, the second Adjudicator should regard the issues as settled by the first Adjudicator's determination and make his findings in line with that determination rather than allowing the matter to be relitigated...*

*(7) The force of the reasoning underlying guidelines (4) and (6) is greatly reduced if there is some very good reason why the Appellant's failure to adduce relevant evidence before the first Adjudicator should not be, as it were, held against him... "*

27. I have read the decision of Judge Asjad carefully and appreciate that it is the starting point, particularly on credibility. Judge Asjad rejected the appellant's credibility for reasons set out which included that the appellant was inconsistent about the roles that his father had in the LTTE [12], the day the appellant was taken from his home [13], what happened on his release [14] and how he managed to leave Sri Lanka [15], whether he had come to the adverse attention of the authorities after he escaped [16] and whether he spoke to his mother in the period whilst he was living with the agent [17]. Further it was incredible that the appellant did not keep the only document in support of his claim, a letter from the Red Cross dated 1995 confirming the organisation was unable to locate his father [18]. The appellant was inconsistent about whether he had ever worked in Sri Lanka [19].
28. Additionally, for the first time before the hearing commenced before Judge Asjad the appellant produced undated photographs of what he claimed were injuries sustained whilst in detention but was inconsistent on this evidence under cross examination and he had the opportunity, following advice from a solicitor, to seek a medical report but declined to do so, [20]. Although the appellant had mentioned sexual torture in his screening interview the judge could not reconcile the explicit description of sexual acts given in oral evidence with a complete lack of evidence prior to the date of the hearing including in his witness statement. His explanation of reliving 'bad memories' was rejected by the judge on the basis that in the six years of living in the UK the appellant had never raised it, never sought medical advice and despite having made various applications for leave to remain.
29. The appellant's mother's evidence was also rejected as it was prepared in English by the appellant's legal representatives and there was no indication that she had understood it. The judge also rejected the letter from the lawyer which was served at the hearing. There was no indication previously, despite other information, that the mother had instructed a

lawyer. Again, the lawyer's letter was only produced 5 days before the hearing. The list from the Bar Association of Sri Lanka did not contain the email address of the lawyer and the address and the phone number on the list differed from that on the letter heading.

30. The appellant's claim was found to have been 'fabricated for the sole purpose of remaining in the UK' and he was not in need of protection at all. The judge then stated:

*'since coming to the UK, the appellant has not undertaken any political activities and that he was never a member of the LTTE even whilst in Sri Lanka.'*

The judge then proceeded to apply **GJ and others (post civil war: returnees) Sri Lanka CG** [2013] UKUT 00319 IAC and stated at [28]

*'as noted, the onus is on the appellant to demonstrate that his involvement with LTTE was of such a profile and nature as to equate to a significant role. I do not find on the evidence before me, that if the appellant's account is accepted he had a significant role within the LTTE.'*

31. The backdrop is thus that there were significant adverse credibility findings made against the appellant in December 2017. I have considered the appellant's subsequent evidence in the light of these findings. I have looked at the evidence including the documentation as a whole or in the round (which is the same thing) and in the light of the former credibility findings, **Tanveer Ahmed v. Secretary of State for the Home Department** [2002] UKIAT00439. That said even if the documents before Judge Asjad were unreliable, the Appellant's account in relation to his current sur place activities could be genuine and I observe that the findings of Judge Asjad did not focus on any sur place activity merely the lack of it. Since that decision a new country guidance decision, **KK and RS**, has been promulgated which updates **GJ** from 2013, and addresses the risk on return of those engaged in TGTE sur place activities in the UK (and elsewhere). The respondent's refusal letter of 6<sup>th</sup> July 2023 referred to minimal evidence in relation to sur place activity such as one newspaper report and photographs in which the appellant was unidentifiable.

32. I am considering the evidence as at the date of the hearing before me. The material parts of the headnote in **KK and RS**, the updated country guidance, are set out as follows and although I have retained much of the headnote for nuance and context, I have underlined key sections and those particularly relevant to this appeal:

*'In broad terms, GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC) still accurately reflects the situation facing returnees to Sri Lanka. However, in material respects, it is appropriate to clarify and supplement the existing guidance, with particular reference to sur place activities.*

*The country guidance is restated as follows:*

(1) The current Government of Sri Lanka (“GoSL”) is an authoritarian regime whose core focus is to prevent any potential resurgence of a separatist movement within Sri Lanka which has as its ultimate goal the establishment of Tamil Eelam.

(2) GoSL draws no material distinction between, on the one hand, the avowedly violent means of the LTTE in furtherance of Tamil Eelam, and non-violent political advocacy for that result on the other. It is the underlying aim which is crucial to GoSL’s perception. To this extent, GoSL’s interpretation of separatism is not limited to the pursuance thereof by violent means alone; it encompasses the political sphere as well.

(3) Whilst there is limited space for pro-Tamil political organisations to operate within Sri Lanka, there is no tolerance of the expression of avowedly separatist or perceived separatist beliefs.

(4) GoSL views the Tamil diaspora with a generally adverse mindset, but does not regard the entire cohort as either holding separatist views or being politically active in any meaningful way.

(5) Sur place activities on behalf of an organisation proscribed under the 2012 UN Regulations is a relatively significant risk factor in the assessment of an individual’s profile, although its existence or absence is not determinative of risk. Proscription will entail a higher degree of adverse interest in an organisation and, by extension, in individuals known or perceived to be associated with it. In respect of organisations which have never been proscribed and the organisation that remains de-proscribed, it is reasonably likely that there will, depending on whether the organisation in question has, or is perceived to have, a separatist agenda, be an adverse interest on the part of GoSL, albeit not at the level applicable to proscribed groups.

(6) The Transnational Government of Tamil Eelam (“TGTE”) is an avowedly separatist organisation which is currently proscribed. It is viewed by GoSL with a significant degree of hostility and is perceived as a “front” for the LTTE. Global Tamil Forum (“GTF”) and British Tamil Forum (“BTF”) are also currently proscribed and whilst only the former is perceived as a “front” for the LTTE, GoSL now views both with a significant degree of hostility.

(7) ...

(8) GoSL continues to operate an extensive intelligence-gathering regime in the United Kingdom which utilises information acquired through the infiltration of diaspora organisations, the photographing and videoing of demonstrations, and the monitoring of the Internet and unencrypted social media. At the initial stage of monitoring and information gathering, it is reasonably likely that the Sri Lankan authorities will wish to gather more rather than less information on organisations in which there is an adverse interest and individuals connected thereto. Information gathering has, so far as possible, kept pace with developments in communication technology.

(9) Interviews at the Sri Lankan High Commission in London (“SLHC”) continue to take place for those requiring a Temporary Travel Document (“TTD”).

(10) Prior to the return of an individual traveling on a TTD, GoSL is reasonably likely to have obtained information on the following matters:

- i. whether the individual is associated in any way with a particular diaspora organisation;
- ii. whether they have attended meetings and/or demonstrations and if so, at least approximately how frequently this has occurred;

- iii. the nature of involvement in these events, such as, for example, whether they played a prominent part or have been holding flags or banners displaying the LTTE emblem;
- iv. any organisational and/or promotional roles (formal or otherwise) undertaken on behalf of a diaspora organisation;
- v. attendance at commemorative events such as Heroes Day;
- vi. meaningful fundraising on behalf of or the provision of such funding to an organisation;
- vii. authorship of, or appearance in, articles, whether published in print or online;
- viii. any presence on social media;
- ix. any political lobbying on behalf of an organisation;
- x. the signing of petitions perceived as being anti-government.

(11) Those in possession of a valid passport are not interviewed at the SLHC. The absence of an interview at SLHC does not, however, discount the ability of GoSL to obtain information on the matters set out in (10), above, in respect of an individual with a valid passport using other methods employed as part of its intelligence-gathering regime, as described in (8). When considering the case of an individual in possession of a valid passport, a judge must assess the range of matters listed in (10), above, and the extent of the authorities' knowledge reasonably likely to exist in the context of a more restricted information-gathering apparatus. This may have a bearing on, for example, the question of whether it is reasonably likely that attendance at one or two demonstrations or minimal fundraising activities will have come to the attention of the authorities at all.

(12) Whichever form of documentation is in place, it will be for the judge in any given case to determine what activities the individual has actually undertaken and make clear findings on what the authorities are reasonably likely to have become aware of prior to return.

(13) GoSL operates a general electronic database which stores all relevant information held on an individual, whether this has been obtained from the United Kingdom or from within Sri Lanka itself. This database is accessible at the SLHC, BIA and anywhere else within Sri Lanka. Its contents will in general determine the immediate or short-term consequences for a returnee.

(14) A stop list and watch list are still in use. These are derived from the general electronic database.

(15) Those being returned on a TTD will be questioned on arrival at BIA. Additional questioning over and above the confirmation of identity is only reasonably likely to occur where the individual is already on either the stop list or the watch list.

(16) ...

(17) Returnees who have no entry on the general database, or whose entry is not such as to have placed them on either the stop list or the watch list, will in general be able to pass through the airport unhindered and return to the home area without being subject to any further action by the authorities (subject to an application of the HJ (Iran) principle).

(18) ...

(19) Returnees who appear on the watch list will fall into one of two sub-categories: (i) those who, because of their existing profile, are deemed to be of sufficiently strong adverse interest to warrant detention once the individual has travelled back to their home area or some other place of resettlement; and (ii) those who are of interest, not at a level sufficient to justify detention at that point in time, but will be monitored by the authorities in their home area or wherever else they may be able to resettle.

(20) In respect of those falling within sub-category (i), the question of whether an individual has, or is perceived to have, undertaken a “significant role” in Tamil separatism remains the appropriate touchstone. In making this evaluative judgment, GoSL will seek to identify those whom it perceives as constituting a threat to the integrity of the Sri Lankan state by reason of their committed activism in furtherance of the establishment of Tamil Eelam.

(21) The term “significant role” does not require an individual to show that they have held a formal position in an organisation, are a member of such, or that their activities have been “high profile” or “prominent”. The assessment of their profile will always be fact-specific, but will be informed by an indicator-based approach, taking into account the following non-exhaustive factors, none of which will in general be determinative:

- i. the nature of any diaspora organisation on behalf of which an individual has been active. That an organisation has been proscribed under the 2012 UN Regulations will be relatively significant in terms of the level of adverse interest reasonably likely to be attributed to an individual associated with it;
- ii. the type of activities undertaken;
- iii. the extent of any activities;
- iv. the duration of any activities;
- v. any relevant history in Sri Lanka;
- vi. any relevant familial connections.

(22) The monitoring undertaken by the authorities in respect of returnees in sub-category (ii) in (19), above, will not, in general, amount to persecution or ill-treatment contrary to Article 3 ECHR.

(23) It is not reasonably likely that a returnee subject to monitoring will be sent for “rehabilitation”.

(24) ...

(25) ...

(26) ...

(27) There is a reasonable likelihood that those detained by the Sri Lankan authorities will be subjected to persecutory treatment within the meaning of the Refugee Convention and ill-treatment contrary to Article 3 ECHR.

(28) Internal relocation is not an option within Sri Lanka for a person at risk from the authorities.

(29) In appropriate cases, consideration must be given to whether the exclusion clauses under Article 1F of the Refugee Convention are applicable.

33. Mr Lindsay criticised the appellant's evidence to this Tribunal on the basis that in his most recent witness statement the appellant stated that he joined the TGTE in or around 2017 whereas in his oral evidence he was sure it was 2017. I do not consider this to found substantial criticism of the appellant's evidence. There is a difference between activity, to which the appellant must have been referring, and specifically being a member with formal joining; his Tamil Eelam National membership card is current and dates from July 2021 with an expiry dated of July 2026. There is clearly evidence of his activity prior to the card's validity (ie his actual membership).
34. The appellant at the hearing professed an intention to fight for his 'peoples' rights' and that he did this through social media with drawings; it is not clear to what extent these have been posted from the snapshots taken and in the bundle. However, there are clear and identifiable photographs of the appellant at protests, demonstrations and meetings in high profile locations. The appellant also pointed to the online papers Malai Murasu and EElanadu.net in which he was photographed amongst a group giving a blood donation. When asked what the connection with the TGTE was, he pointed to the banner which contains the TGTE logo. I accept that this may not immediately come to the attention of the Sri Lankan authorities but it is online and this was demonstrated by access to the photographs at court. Even if the appellant could delete the social media accounts on which he had drawings I am not persuaded that online existing photographs of him holding a TGTE emblem could be deleted.
35. The key question is what the Sri Lankan authorities will make of this appellant and what their perception of him will be. I need to assess whether the appellant will be perceived by the GOSL as having a 'significant role' in Tamil separatism. Putting aside for one moment issues relating to credibility and motivation, it is not disputed that the appellant is Tamil and has been involved with the TGTE in the UK a proscribed organisation. The attitude to that organisation is identified clearly above without need for further explanation.
36. It is evident that the activity on behalf of the appellant has taken place since the decision of Judge Asjad who in effect found that the appellant had undertaken no political activity. He now has.
37. The documentary evidence included photographs of the appellant attending Heroes Day on 27<sup>th</sup> November 2017, attending Black July commemorative event on 23<sup>rd</sup> July 2021 (according to Mr Yogalingam's evidence the appellant attended a Black July Protest outside the Sri Lankan High Commission), attending a Sports Event commemorating Thileepan on 5<sup>th</sup> September 2021, at a protest against Gotabaya Rajapaksa at COP26 on 1<sup>st</sup> November 2021, a protest on Sri Lanka's Independence Day on 4<sup>th</sup> February 2022 demanding an investigation into Tamil genocide, at Black July Remembrance Day on 23<sup>rd</sup> July 2022, at a Sports Event commemorating Thileepan on 4<sup>th</sup> September 2022, at Heroes Day on 27<sup>th</sup> July 2022, at a protest on Sri Lanka's Independence Day on 4<sup>th</sup> February

2023, at a Downing Street protest on Sri Lankan Independence Day on 18<sup>th</sup> March 2023, at the Black July commemorative event on 23<sup>rd</sup> July 2023 together with Mr Yogalingam, at a TGTE Sports Event dated September 2023 and at Heroes Day on 27<sup>th</sup> November 2023. I calculated from the photographs overtime the appellant demonstrated he had attended at least 15 events over a period of six years from 2017 to 2023. Albeit there is limited evidence of activity in 2017, in subsequent years the appellant's involvement has developed.

38. These photographs do show the appellant as identifiable and depict him being clearly linked with the TGTE and as noted in the headnote above the nature of the organisation and its aims are those to which the GOSL is particularly sensitive. Whatever the motive, the photographs show the appellant attending high profile TGTE events and activities from 2017 on a regular basis. As stated at [493] of **KK and RS** *'the longer that relevant participation has been pursued, the greater the possibility that GoSL may consider the individual to be committed to Tamil separatism.'*
39. Additionally, on 23<sup>rd</sup> July 2023 the appellant is clearly photographed with Mr Yogalingam. I find that it is likely that the appellant had come to the attention of the authorities on his own account by this date. Nonetheless his close physical proximity to Mr Yogalingam at the Black July event in July 2023 raises the likelihood even further that the appellant's presence at the TGTE event will have been identified by the GOSL and raises the likelihood of the impression that the appellant knows and is familiar with a high profile figure of the TGTE such as Mr Yogalingam and see [410] of **KK and RS**. There can be no doubt that Mr Yogalingam who gave evidence in relation to the TGTE in **KK and RS** is directly associated with Tamil separatism because of his role as president of the TGTE.
40. Thus, it is not merely the appellant's written and oral evidence that he was attending and associated with the TGTE since 2017 but the objective record in the form of photographs, the date of which can be pinpointed. The photographs exist, from 2017 and the adverse credibility findings made against the appellant do not undermine this record.
41. With regards the social media images I acknowledge Mr Lindsay's submission that the appellant, following **XX** should not merely provide extracts but the appellant did offer access to his account which Mr Lindsay declined owing to an inability to distinguish between private and public settings and that such an offer should have been made before the hearing. That is no doubt correct. What can be said of the social media extracts is that they do not undermine the photographic evidence or the appellant's assertion that he has been active on social media. I also accept that there have been posts on social media such as Tiktok and Instagram, and although the uncertainty about whether he has 'posted' publicly or privately may not have brought him to the attention of the GOSL, if asked whether he has used social media to disseminate separatist information, the correct answer based on the social media evidence whether public or private posts, would be in the affirmative. It was the case of the Secretary

of State that the appellant would not be expected to lie and should then go on to confirm that this was not genuine activity and he had no such genuine beliefs and had merely made false asylum claims.

42. As stated at [394] of **KK and RS**

*'In terms of the evaluative assessment of an individual's profile as it is reasonably likely to be perceived by GoSL, we agree with the appellants' submission that motivation is not relevant. The reason for this lies within the previous sentence: the critical question is what the authorities will make of the activities in respect of which they have obtained information. They will have little or no inclination to enquire into an individual's good faith or lack thereof. We acknowledge that there must exist the possibility of opportunistic "hangers on" making out a claim for international protection. Unattractive as this may seem, it cannot act as a valid basis for rejecting a risk.'*

43. This I accept is not someone who has been found to have past links to the LTTE but the appellant now has shown separately from his own written statements and oral evidence that he has more than mere 'links' to an organisation the GOSL considers to be a 'front' for the LTTE, as described in **KK and RS** at [497]. As set out in **KK and RS** he does not need a formal or high profile role in that organisation [455]. The appellant has attended public demonstrations, now has actual membership of the TGTE, attended commemorative events such as Heroes Day and has social media activity whether public or private. I think it likely on the evidence that he may have come to the GOSL attention owing to their surveillance methods. Further, if asked during interview as to his activities he would factually answer that he has been engaged in this activity for the TGTE and similarly if asked about social media that he has posted. It is possible that owing to the sensitivities of the GOSL and its extensive surveillance including infiltration and photographing of events that he would already have entered the institutionalised memory.

44. At [405] it was stated that

*'All three experts have stated that GoSL continues to operate an extensive intelligence-gathering regime which attempts to cover "all forms of communication" and utilises information acquired through the infiltration of diaspora organisations, the photographing and videoing of demonstrations, and the monitoring of the Internet and unencrypted social media. We find that at the initial stage of monitoring and information gathering, it is reasonably likely that the Sri Lankan authorities will wish to gather more rather than less information...'*

45. Further **KK and RS** held at [406]- [407]:

*406. We accept that the dissemination of information through technological means has increased since GJ, a fact which all three*



*experts stated has been met with increased monitoring efforts by the authorities. In the context of the evidence as a whole, we also accept that there is greater capacity in place so that relevant information gathering has, so far as possible, kept pace with developments in communication technology.*

*407. The evidence before us is insufficient to show that GoSL will have access to any databases held by organisations comprising specific details of their members and/or supporters. However, given the variety of methods that are available, this will not of itself prevent the authorities from being able to obtain relevant information on individuals.*

46. In relation to the information the GOSL might have obtained prior to the appellant's removal/return the appellant fulfils more than half of the indicators set out in [10] of the headnote of **KK and RS**. The photographs identify him in a reflective jacket indicating that he has undertaken some form of stewardship role and Mr Yogalingam gave oral evidence that someone in the appellant's *role* was likely to have been given raffle tickets to sell. Although that does not necessarily signify fund raising it does suggest that the appellant had more than a mere 'attender' role as indeed observed by Mr Yogalingam.
47. The appellant has been pictured in articles in the public domain involved in diaspora activity. Although not translated, articles in Tamil which have been circulated were included in the bundle depicting a photograph of the appellant at a blood donation event in Leicester, prominently displaying a banner which contained a visible logo of the TGTE. That article and photograph as demonstrated at the hearing by Ms Benfield were available in the archives of online newspapers, Malai Murasu and EElanadu.net, and searchable and locatable.
48. On an assessment in accordance with **BA (Demonstrators in Britain - risk on return) Iran CG** [2011] UKUT 36 (IAC), I find that the theme of the demonstrations with which he is involved is evidently a challenge to the GOSL, his role could be described as more stewarding/organising, albeit not in any form of speaking role, he has participated in demonstrations and various protests on a regular basis and those outside the Sri Lankan High Commission and Downing Street may well have attracted photography, and thus identification on behalf of the GOSL.
49. Even if he had not come to the GOSL attention, his responses at an interview which is most likely to take place, as to whether he believed in the cause or not, would I find flag to the authorities someone who has fulfilled a number of the 'indicators' identified in **KK and RS** and suggest to the GOSL a 'significant role' for a separatist and proscribed organisation. If asked the appellant could legitimately respond that he had posted, even on a private setting, what would indubitably considered by the authorities as images against the GOSL.

50. **Danian v SSHD** [1999] EWCA Civ 3000 and **YB (Eritrea) v SSHD** [2008] EWCA Civ 360 held 'good faith' in sur place activities was irrelevant to the question of entitlement to protection.
51. Although the appellant was found to have no genuine political beliefs in 2017, it is apparent that he is Tamil and has engaged subsequently in pro separatist activity. Even if he were lying before as to his TGTE sympathies I find that it is likely owing to the exposure to the separatist Tamil movement and TGTE activities and personnel that he has developed political sympathies with the TGTE.
52. Not least Mr Yogalingam submitted two letters dated 1<sup>st</sup> June 2021 and 1<sup>st</sup> June 2023 vouching for the appellant's genuine activities and genuine involvement and Mr Yogalingam also attended the hearing and gave evidence on behalf of the appellant. He confirmed that he required photographic evidence of any individual's activity prior to vouching for them. Mr Yogalingam's evidence at [576] of **KK and RS** was found to be candid, without exaggeration and reliable in relation to the role of the TGTE and the appellant's activities in that case. I accept that he makes efforts to verify individuals attendance at events prior to giving references on their behalf. I give weight to Mr Yogalingam's evidence that the appellant was consistently and actively involved in the TGTE over time and was a volunteer and from the photographic evidence of the appellant presented to Mr Yogalingam at the hearing he identified that pages 14, 15, 16 and 17 (all of one event) were taken at Downing Street.
53. Although the TGTE may have 3000-4000 members, the volunteers were fewer in number and would be more likely owing to their high visibility vests (and which the appellant can be seen wearing at Maaveerar day (Heroes Day) on 23<sup>rd</sup> November 2023) to be spotted by those conducting surveillance. It is also correct contrary to the assertion that the appellant had no role in organising, that there is a photograph of him in a type of uniform on 10<sup>th</sup> September 2022 at the Thilepan Remembrance Day. It would be most surprising if the appellant was given a uniform without having any role as an organiser and that was consistent with the evidence in the letter of Mr Yogalingam, who in turn denied that what was written in his letter was that which the appellant had asked him to write. He also gave evidence that he needed proof before writing such letters of support which I accept for the reasons given above. Mr Yogalingam wrote in June 2023 that the appellant's activities go 'far beyond mere attendance in these events' and that he contributed to campaigning. I give weight to Mr Yogalingam's evidence overall.
54. I do bear in mind the standard of proof in asylum claims. The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This has been expressed as a "reasonable chance", "a serious possibility" or "substantial grounds for thinking" in the various authorities. That basis of probability not only applies to the history of the

matter and to the situation at the date of decision, but also to the question of persecution in the future if the appellant were to be returned.

55. With the caveat that the Court of Appeal's refusal to grant permission to appeal in **KK and RS (Sri Lanka)** [2022] EWCA Civ 119 was just that, a decision on whether to grant permission to appeal in relation to an error of law, this short decision encapsulates some judicial thinking on 'motivation'. At [16] onwards Underhill LJ recites that target paragraph 494 of **KK and RS** in the Upper Tribunal and expands on the approach to motivation as follows:

*[16] However, even if it is reasonable to assume that in many or most cases questions would be asked [by the GoSL] about sur place activities, and that someone who had in fact been participating in them but doing so insincerely would say that that was the case (since it would be in their interests to do so), it does not follow that they would be believed: indeed it might be thought that the interviewer would be distinctly sceptical.*

56. And further at [20]

*'Third, at (c) the skeleton argument identifies some passages in parts of the Tribunal's findings addressing different issues to the effect that GoSL applies at least a degree of "qualitative assessment" to information about involvement in separatist activity. That is no doubt the case: indeed for that very reason the Tribunal rejected the appellants' contention that any but the most trivial involvement in sur place activities would meet the necessary threshold of risk. I do not regard those findings as inconsistent with a finding that GoSL would have no inclination to inquire into the sincerity of a person participating in sur place activities. It must be recalled that the question only arises where a person is known to have taken part in activities which, by reference to the other factors specified by the Tribunal (including the nature, extent and duration of those activities), show them playing a significant role in separatist activity in the sense glossed by the Tribunal at paragraph 475. If a person's activities pass that threshold, it is not difficult to see that the GoSL might not wish to take the trouble of trying to ascertain how sincere they were; and in any event that was a conclusion which the Tribunal was unarguably entitled to reach.'*

And at [22]

*'It is in my view unarguably clear, in particular from the third sentence [of 494], that the essential point being made is that if GoSL has information about a person's involvement in sur place activities which cross the necessary threshold it will have no inclination to seek to go behind that information and enquire into whether there involvement was really sincere. The Tribunal was not*

*saying that GoSL would in no circumstances have regard to information that such participation was insincere when it was otherwise aware of it. One example canvassed in argument before us was a case where the person in question was in fact an informer or agent who was taking part in separatist activities, to GoSL's knowledge, in order to obtain information about others or to maintain their cover. Plainly the Tribunal did not mean to say that such a person would be a risk of persecution on return because of their participation in those activities. That is an extreme case, but there could no doubt be other cases where GoSL would become aware, without itself initiating enquiries, that a person's involvement was insincere. Paragraph 494 to my mind quite clearly does not mean that evidence that that was the case would be irrelevant. That is in my view apparent on a fair reading of the decision.'*

57. Overall and taking all factors into consideration, I find the appellant's involvement in the TGTE has crossed the necessary threshold to cause interest from the Sri Lankan authorities such that it is likely that the GOSL will not go behind that information. It is difficult to predict the attitude of the GOSL when faced with the activities the appellant would, in truth, be able to say he had undertaken. Even if the authorities did seek to go behind that that presentation, and the appellant stated, as the Secretary of State considers he should tell the truth that his belief is not genuine, and that his activities were in support of a false asylum claim, I find there is a distinct real likelihood or risk, bearing in mind the 'fulfilled threshold criteria' that the GOSL would consider him to be lying. That denial might generate its own particular problems and I note that the asylum decision before Judge Asjad was not in fact anonymised despite having granted anonymity. It would be open to the appellant to produce the decision to bolster the case that he was lying but that also might cause more difficulties. The adverse credibility findings made against the appellant might be identified by the GOSL and I find there is a real risk that the GOSL would simply deduce that he was once again lying and trying to exculpate himself to avoid monitoring repercussions after removal, bearing in mind the extent and nature of the activities in which he has been found to be engaged. Should the appellant decide to delete his accounts and deny any involvement or genuine belief, and the authorities do have a record of him, that would far from mitigate any difficulties.
58. Taking all factors into account I find the appellant, on the lower standard of proof engaged in asylum claims, has shown that he would be at risk on return to Sri Lanka because of his activities here in the United Kingdom.
59. However, I have gone on to consider factors in relation to **HJ (Iran)** [2010] UKSC 31 albeit that **KK and RS** only requires that consideration is given where appropriate and I have already found the appellant at risk aside from the **HJ (Iran)** analysis. Notwithstanding, the appellant expressed a view that he would wish to engage in activities should he return to Sri Lanka and that statement is consistent with what he has done

over the course of several years whilst in the UK. If that is the case he would also likely be at risk on return to Sri Lanka for any pro separatist activities undertaken particularly if monitored.

**Notice of Decision**

The appeal is allowed on asylum and human rights grounds (Article 3).

**Helen Rimington**

Judge of the Upper Tribunal Rimington  
Immigration and Asylum Chamber

2<sup>nd</sup> February 2024