



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/03919/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 20 December 2013

Determination sent  
On 27 March 2014

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR JAYAKRISHAAN SIVAPALAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Solomon, Counsel, instructed by Ravi Solicitors  
For the Respondent: Mr G Jack, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who was born on 27 September 1982, is a citizen of Sri Lanka. He originally entered this country on 28 October 2008 having been granted a student

visa, valid until 31 October 2010. On 30 November 2010 he applied for leave to remain as a student until 30 November 2011. Then, on 11 March 2013 (by which time he had been present in this country without leave for a substantial period of time) he applied for asylum.

2. This application was refused by the respondent on 10 April 2013 and the refusal letter is dated the same date.
3. The appellant appealed against this decision and his appeal was heard before First-tier Tribunal Judge Britton, sitting at Hatton Cross on 12 July 2013. In a determination signed on 24 July 2013 and promulgated shortly thereafter, Judge Britton dismissed the appeal, on asylum/humanitarian protection grounds and also on human rights grounds. Essentially, the appeal was dismissed because of the judge's adverse credibility findings, which are summarised at paragraph 56 of the determination as follows:

“Having considered the whole of the evidence in the round, I find that the core of the appellant's account of persecution lacked credibility and is a fabrication designed to gain access to the United Kingdom. Given these conclusions, I find that the appellant has not discharged the burden of proof of having a well-founded fear of persecution for a Convention reason and that the appellant's removal would not cause the United Kingdom to be in breach of its obligations under the 1951 Convention.”

4. When considering whether the appellant was entitled to humanitarian protection separately from the asylum appeal, at paragraph 57, the judge found as follows:

“I do not need to repeat the facts. I find that the core of the appellant's account of serious harm on return is incredible and is a fabrication designed to gain entry to the United Kingdom.”

5. The appellant appealed against this decision, and was initially refused permission to appeal by First-tier Tribunal Judge Cheales on 20 July 2013, who, when setting out his reasons for refusing permission to appeal, stated as follows:

“...

2. In his grounds of onward appeal, the appellant asserts that the judge made unsustainable credibility findings. He failed to engage with the evidence given of why the appellant left Sri Lanka and with the medical evidence. He failed to consider whether the findings of the medical expert corroborate the appellant's account of being ill-treated and sustaining scarring as a result. The judge has not given sufficient reasons for rejecting the evidence of payment of a bribe and has failed to give weight to the statement of Mrs S. Prabaharan.
3. The judge found that the appellant's account lacked credibility. He did not find credible the appellant's account of why he left Sri Lanka. He took

into account the doctor's report, but did not find that the contents persuaded him that the appellant had been tortured. The judge gave adequate reasons for finding that if the appellant had been suspected of having been involved with an explosion ... he would not have been released within 9 days on payment of a bribe. As he rejected the appellant's account in its entirety, he was entitled [to] reject the evidence of Mrs Prabakaran who was not present to be cross-examined ... ."

6. The appellant renewed his appeal before the Upper Tribunal and was eventually granted permission to appeal by Upper Tribunal Judge Dawson on 24 September 2013 who set out his reasons in the following terms:

"Although it has to be said that the core account is not without difficulties particularly for the reasons given in the first part of [53], nevertheless, it is arguable that the judge erred with ... regard to the identification details of Miss Prabarahan and the treatment of the evidence of Dr Josse referred to in [51]. Whether these are sufficient to undermine the determination is at least arguable and although not without hesitation, I grant permission. ..."

### The Grounds

7. At paragraph 2 of the grounds, it is asserted baldly that the judge's adverse credibility findings "are not sustainable and that there is with respect to the IJ an obvious and both material flaw/error to the determination".
8. The first ground, which is dealt with at paragraphs 3 and 4, takes issue first of all with the judge's finding at paragraph 51 "that if the appellant had been tortured as stated in his witness statement [he] would have left Sri Lanka at the earliest opportunity, particularly as there was a crackdown on Tamils in 2006". It is asserted that not only did the judge fail to particularise what he meant by a "crackdown" but also this was not supported by the background evidence, and nor was there any evidence from the appellant to support this conclusion. Also, it is submitted that the judge had "demonstrably failed to engage with the appellant's evidence concerning why he left Sri Lanka in 2008 and not earlier".
9. With regard to the adverse credibility findings, it is also argued at paragraph 4 that the judge had "inadequately engaged with the medical evidence" which had been submitted and that this evidence should not have been excluded "on the premises that it is based upon the appellant's testimony".
10. Reliance is placed on the Court of Appeal decision in *R on the application of AM* [2012] EWCA Civ 521.
11. It is submitted that the judge failed adequately to consider whether the medical evidence corroborated the appellant's account of being ill-treated and having sustained scarring as a result of being arrested, detained and ill-treated by the authorities, and that that evidence was clinically corroborative of his core claim, which supported his credibility.

12. It is also then asserted that the judge at paragraph 52 irrationally rejected the appellant's account of his having been arrested and detained but released on payment of a bribe, because "there is no supporting rationale provided for why the appellant would not have been released on payment of a bribe (if his account was taken at its highest)".
13. Then it is said that when the judge found at paragraph 53 that the appellant had provided "conflicting evidence as to when he passed information to the Singhalese", he had not qualified the term "conflicting", "and thus the appellant is at a loss as to why his evidence was conflicting". It is also said that the assertion that Mrs Prabakaran had failed to provide any contact details was "plainly inaccurate, as she had provided a copy of her national ID card with her statement and that revealed her address".
14. It is said that these adverse credibility findings "tainted [the judge's] assessment of the appellant's risk on return to Sri Lanka", and that the authorities "have maintained a continuous adverse interest in the appellant and has targeted the appellant's family".
15. Effectively, therefore, the thrust of the challenge made in the grounds is to the sustainability of the adverse credibility findings which were made.

### **The Hearing**

16. I heard submissions which were made on behalf of both parties which I recorded contemporaneously. As these submissions are contained within the Record of Proceedings, I shall not repeat below everything which was said to me during the course of the hearing, but shall refer only to such parts of the submissions as are necessary for the purposes of this determination. I have, however, when reaching my decision, had regard to everything which was said as well as to all the documents which are contained within the file.
17. On behalf of the appellant, Mr Solomon submitted that, in a nutshell, the appellant's claim to be at risk was two pronged. First, he was at risk because of his previous record as a LTTE member or supporter, and the issue here was perception; secondly, he was at risk because of his close association with a high profile LTTE suspect who is named in the determination as Mr Ramasamy and his family name is Prabaran. These were the limbs of risk.
18. To flesh out the claim, the appellant was a Sri Lankan Tamil who in 2006 was arrested, detained for about eight days and seriously ill-treated, following a bomb explosion. That was his case, although, in answer to a question from the Tribunal, Mr Solomon accepted that this had been rejected by the judge.
19. It was the appellant's case that as a result of his ill-treatment he received the scarring which is referred to in the report from Dr Josse.

20. In terms of Mr Ramasamy, the appellant's claim (which, again, the Tribunal noted had not been accepted by the judge) is that he and Mr Ramasamy were close friends. The judge did not accept this association was as claimed.
21. The appellant claimed have supplied information to Mr Ramasamy in his capacity as an employee of a telecommunications company. In addition, he allowed members of the LTTE to use his home and that association between the appellant and Mr Ramasamy began in 2005 and continued until the appellant's departure in 2008.
22. It was Mr Ramasamy who assisted in the appellant's release following his detention in 2006. The judge had not accepted that the appellant had been detained in 2006 either.
23. In 2009, Mr Ramasamy was arrested by the authorities and detained for two years, until 2011.
24. In support of the claim that Mr Ramasamy was a high profile suspect, the judge had had before him numerous national and international news articles regarding the case which Mr Ramasamy subsequently brought against the Sri Lankan government for the lengthy detention and ill-treatment which he suffered, such as from the Independent newspaper in the UK and Amnesty International.
25. Following Mr Ramasamy's arrest in 2009, the authorities went to the appellant's home in search of him (again, this was not accepted by the judge). Following Mr Ramasamy's release in 2011, the authorities again, it is said, went in search of the appellant and the appellant's father was arrested.
26. In February 2012, Mr Ramasamy was abducted by men in a white van and that led to the various news articles regarding him referred to above. He was abducted two days before his case in Sri Lanka was about to be heard.
27. It was the appellant's case that following that abduction his parents received threats and his father was placed on reporting restrictions. The Tribunal noted at this stage of the proceedings that the appellant had left Sri Lanka in 2008.
28. Having summarised the appellant's case as set out above, Mr Solomon submitted that this had been necessary in order to put his challenges to the determination in context. The argument the appellant puts forward is that he would be seen as a threat to the unitary state of Sri Lanka and therefore falls within the UNHCR categories of those with more elaborate links with the LTTE.
29. Turning to the grounds of challenge, first there was a fundamental error in the way the judge approached the supporting evidence. As set out in the grounds, he does not identify what the "conflicting" evidence was and his assertion that Mrs Prabakaran had not provided contact details was not correct. He was wrong to discount the corroborative evidence of Mrs Prabakaran, as he did at paragraph 53.

30. The Tribunal observed at this point that it appeared from paragraph 53 that the judge had not been satisfied that Mrs Prabakaran was in fact Mr Ramasamy's wife because no contact details had been provided. This was relevant to the issue of credibility, because it was necessary to know whether or not a woman who was genuinely Mr Ramasamy's wife in fact supported the appellant's claim. In response to this observation, Mr Solomon submitted that a written statement was probative of not only the appellant's detention in 2006 but also the association between Mr Ramasamy and the appellant and the subsequent interest of the authorities in the appellant. She was in Sri Lanka and had given this statement.
31. The Tribunal noted that the judge had not been satisfied that this was genuinely a statement from Mr Ramasamy's wife, and had observed that it could have been written by anyone, to which Mr Solomon replied that the reasons given for rejecting her evidence was that no contact details had been given, which was wrong, because enclosed in the further evidence was a national identity card for this witness, plus a translation, which was before the judge, which gives her name (albeit not her married name) and an address. If the judge had looked at the national identity card and had said that he had looked at it but was not satisfied because the name and address were different, then that finding could not be challenged, but he did not do this. As the sole reason for rejecting the statement was a lack of contact details, it followed that his reasons for rejecting the corroborative evidence were inadequate.
32. This flaw went even deeper than that, because in addition to the witness statement from Mr Ramasamy's wife, the appellant relied on a witness statement from his own mother, which was not dealt with in the determination.
33. At this stage, the Tribunal noted that this argument had not been contained within the grounds and Mr Jack, on behalf of the respondent, submitted that the appellant should not be allowed to make this argument. It was not an obvious point and an application would have had to have been made in writing and served to amend the grounds. The Tribunal heard argument on this point.
34. Mr Solomon's submission essentially was that the judge had simply not dealt with this. At paragraph 31 he had referred to the witness statement of the appellant's mother but had failed to engage with that part of her evidence.
35. In answer to an observation from the Tribunal, that a judge did not have to deal with every aspect of every witness's evidence, Mr Solomon replied that that witness's evidence was probative.
36. Mr Solomon then reiterated the complaint made in the grounds that the judge had not properly considered the medical evidence. The medical evidence was consistent with the account given by the appellant and the judge had not given adequate reasons for discounting this evidence. If the judge discounted this evidence because he did not believe the appellant, that was not a sufficient reason.

37. It had never been put to the appellant in cross-examination that his injuries were caused other than by being inflicted, and so the judge's approach to the supporting evidence fatally flawed the determination.
38. The appellant also relied on the other matters raised in the grounds. The point relating to the "crackdown" on Tamils referred to at paragraph 5 was that this assertion that there had been such a crackdown was not supported by any evidence, but was a major factor in his credibility findings.
39. Mr Solomon then turned to paragraph 52 of the determination, and referred the Tribunal to the submission made at paragraph 8 of the grounds, which was that the judge's finding that the appellant would not have been released on payment of a bribe was irrational and/or inadequately reasoned. This was a rather bald statement of fact which was not supported by background material.
40. Mr Solomon's final point was his first one, which was that the judge had not said what the conflicting evidence was that he had in mind. In answer to a question from the Tribunal, Mr Solomon accepted that the issue of conflicts had been raised, but this had been dealt with by the appellant in cross-examination. Although there had been reference to alleged conflicts in the earlier part of the determination, the judge did not engage with this in his findings. So in conclusion, the judge's reasons for rejecting the appellant's detailed claims were not adequately reasoned.
41. On behalf of the respondent, Mr Jack relied from the start on the decision of the Presidential Tribunal in *Shizad (Sufficiency of reasons: set aside)* [2013] UKUT 85, which was to the effect that a judge did not have to set out every single point in his determination.
42. Starting with the determination, at paragraph 14, and following, the judge outlined the appellant's case. He went through the evidence and the appellant's claim, and it is clear that he did take account of all the background evidence. Then at paragraph 17, he makes reference to the refusal letter and to the fact that the appellant could not say why Mr Ramasamy's abduction was relevant to this appellant. At paragraph 19, with regard to that abduction, it is noted that none of the media documents provided suggested that Mr Ramasamy had been abducted by the Sri Lankan authorities. Also highlighted was the fact that the "alternative reports on the abduction of Mr Ramasamy" suggested that the police suspected he had been abducted by a Tamil extortion gang and that a ransom had been demanded.
43. The judge continued to discuss the respondent's case, as set out in the refusal letter and then later on starts dealing with the evidence.
44. At paragraph 30, he deals with Mrs Prabakaran's witness statement, and at paragraph 34 he records that it was the appellant's claim that his parents were in contact with Mrs Prabakaran. As observed by the Tribunal at this time, the judge also referred to the appellant's explanation as to why he did not now have her telephone number. The appellant had said that it was his parents who contacted her but he had deleted their telephone number when he came to this country.

45. At paragraph 53, the judge dealt with Mrs Prabakaran's witness statement. He noted that she had not given contact details and therefore it was difficult to verify whether her statement was genuine. That statement was actually correct, because if one referred to Mrs Prabakaran's witness statement (contained within the appellant's bundle submitted under cover of a letter of 6 July 2013) at paragraph 12, she says that "I don't want to disclose my contact details" and on that page there are no contact details. On the next page is a translation of what was said to be an original identity card. Although the appellant's representatives sought to rely on this identity card as proof that contact details were actually given, the name is not the same, and the address which appears is "153 Canal Bank Street". No evidence had been produced to show either that the identity card belonged to this witness or that she was Mr Ramasamy's wife. Further, no evidence had been produced to show that the author still lived at 153 Canal Bank Street. There was nothing to link the two.
46. Also, with regard to the judge's finding that there had been a lack of contact details, the appellant's mother's witness statement (at page 13 of the appellant's bundle) says at paragraph 18 that Mr Ramasamy's wife and family had since moved from Canal Road. So even on the basis of the evidence put forward on behalf of the appellant himself, the address at Canal Bank Street would not be a contact address for this witness. Accordingly, there was no error in the judge's assessment of that piece of evidence or the weight he placed on it.
47. In the determination, from paragraph 32 through to 35, the judge dealt with the discrepancies in the evidence. The discrepancies were also set out in the refusal letter.
48. It should be noted also that at the end of paragraph 49, the judge stated that "I consider all the evidence as a whole". This Tribunal had no reason to doubt that this was correct and he did as he said he would.
49. Effectively, the judge had decided that very little weight could be placed on untested evidence and on the appellant's mother's evidence which was likely to be self-serving.
50. The two issues remaining concerned first, the medical report and secondly, the crackdown on Tamils referred to by the judge. With regard to the medical evidence, the judge highlighted that the doctor had not been conclusive in his opinion and that he had not given any alternative explanation as to how the injuries might have been caused. It was not necessary (and nor was it laid down by this Tribunal in *RR (Challenging evidence) Sri Lanka* [2010] UKUT 274, for an applicant to be cross-examined as to various alternative possibilities, especially in circumstances where his case had not been accepted from the beginning. In this case there were any number of ways in which the injuries could have been caused and as made clear by the Court of Appeal at paragraph 21 of *SS (Sri Lanka)* [2012] EWCA Civ 155, the treatment of medical evidence was a matter for the judge. If the medical evidence had been more detailed and higher on the Istanbul Protocol, more reasons might have been necessary, but in this case where the judge had not accepted the appellant's account



and this evidence went no further than saying that it was consistent with that account. The judge considered the evidence in the round, and his reasoning for rejecting the appellant's case was sufficiently reasoned.

51. With regard to the judge's finding at paragraph 52 that had the appellant been suspected of being involved in the explosion he would not have been released, even on the payment of a bribe, it was important to stress that this finding was in the alternative, because the judge actually stated that "even if the appellant was detained, which I do not accept" before making this finding. As the judge had given adequate reasons for the findings he had made, this was not a material error. Although this phraseology was unfortunate, the finding itself was not necessarily perverse, but in any event it was not material.
52. With regard to the judge's use of the term "crackdown on Tamils" at paragraph 51, one can see from paragraph 33 that it had been put to the appellant in cross-examination that in 2006/7 violence was increasing in Sri Lanka, so there clearly had been reference before the judge as to this increasing violence. Unfortunately, Presenting Officers do not tend to produce full country information reports, but at paragraph 3.23 of the COI of 7 March 2012, there is reference to large scale violence occurring in April 2006. Tribunals see many Sri Lankan cases and it is not unreasonable for a judge to take judicial notice of this. It is accordingly quite clear what the judge was referring to, and he was entitled to do so.
53. In reply, Mr Solomon submitted, referring to the last point first, which was the reference to the COI of 7 March 2012, that all that had been put to the appellant was that in 2006/07 violence was increasing. In answer to a question from the Tribunal as to whether or not Mr Solomon would accept there was increasing violence in 2006, he replied that the COI did not refer to a "crackdown on Tamils" in 2006 in terms.
54. With regard to the identity card of the lady who was said by the appellant to be Mr Ramasamy's wife, that card had been copied now. It was from 1991 which was why it was in her maiden name, not her married name. The reasoning which is given now on behalf of the respondent was not given by the judge. The judge did not engage with the issue of the identity card.

## **Discussion**

55. It is important, when considering an appeal founded essentially on a challenge to a judge's findings of fact, including findings with regard to medical evidence, to have in mind the observations of the President of this Tribunal in *Shizad* and also the guidance given by the Court of Appeal in *SS (Sri Lanka)*. The head note to *Shizad* is as follows:

*"(1) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if decisions as a whole make sense, having regard to the material accepted by the judge.*

- (2) *Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant country guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.*"

56. With regard to the consideration of medical evidence, at paragraph 21 of the judgment of Stanley Burnton LJ in *SS (Sri Lanka)* (with which the other members of the court agreed) it was stated as follows:

"Generally speaking, the weight, if any, to be given to expert (or indeed any) evidence is a matter for the trial judge ... . A judge's decision not to accept expert evidence does not involve an error of law on his part, provided he approaches that evidence with appropriate care and gives good reasons for his decision. Ultimately, therefore, there are only two issues as to the Senior Immigration Judge's treatment of the medical evidence: did he address that evidence with appropriate care and did he give good reasons for his conclusion? Those two questions are inter-related. It is difficult to conceive of a case in which a judge gives adequate reasons for his conclusions on expert evidence yet he is held to have exercised insufficient care. His reasons demonstrate his care."

57. Turning now to the present case, and the judge's treatment of the medical evidence, the judge's findings with regard to this evidence are set out at paragraph 51 as follows:

"... I am not satisfied that the injuries stated in Dr Josse's report were a result of torture or ill-treatment of any kind. The doctor has to accept the factual account given by the appellant. He does not cross-examine the appellant. The doctor is not conclusive in his opinion and takes into consideration the surrounding facts. I am satisfied on the evidence before me that the appellant was never ill-treated, if he was ever detained, which I do not accept."

58. In other words, the judge did not reject the findings which the doctor was able to make, which was that the appellant had certain injuries, which were consistent with the appellant's account, but took note, as he was entitled to do, of the fact that the doctor did not say more than that. Having considered all the evidence in the round including the medical evidence (as is clear from the last sentence of paragraph 49) the judge was still unable to accept that the account given by the appellant had been true. In my judgement, the judge's treatment of the medical evidence is consistent with the guidance given both by this Tribunal in *Shizad* and by the Court of Appeal in *SS (Sri Lanka)*. Contrary to the submissions made by Mr Solomon, the judge did not "discount" the medical evidence; he considered it together with all the other evidence in the case, in the round, but notwithstanding this evidence, for the reasons which he gave, did not consider it to be sufficiently compelling as to lead him to accept the appellant's credibility having considered the evidence as a whole.

59. I turn now to consider what, if made out, would be a major plank in this appellant's case, which is the assertion (made at paragraph 9 of the grounds and supported in oral argument) that the judge's finding at paragraph 53 that "the appellant gave conflicting evidence as to when he said he passed information to Mr Ramasamy" was inadequately reasoned because the judge did not identify what this "conflicting" evidence was. Indeed, paragraph 9 of the grounds (settled by Mr Paramjorthy, Counsel then instructed on behalf of the appellant) goes so far as to assert that "the appellant is at a loss as to why his evidence was conflicting".

60. In my judgement, this statement is disingenuous at best. It is entirely clear from the determination what the conflict was said to be, and the appellant could not possibly be at a loss as to what this conflict is, because it was put to him in cross-examination and this part of the cross-examination is referred to at paragraph 32 of the determination as follows:

"He was referred to the inconsistency in his evidence and in his asylum interview (Q48) where he said in relation to Mr Ramasamy, that he had asked for information during 2007. In his screening interview (Q4.1) he said it was in 2006."

61. Although at paragraph 32 the judge records the appellant's answer in cross-examination (that "he knew about the questions in 2006 but he did not start giving information until 2007") it is nonetheless clear precisely what the conflict was said to be, and that this must have been what the judge had in mind when he referred at paragraph 53 to the conflicting evidence on this point which had been given by the appellant. The judge was not obliged to accept the explanation for this apparent inconsistency which had been given by the appellant, particularly in light of all the other evidence in this case which he considered.

62. With regard to the statement from Mrs Prabakaran, it is correct that she did refuse to give her contact details in her witness statement, and it is also the case that the name on her national identity card was not the same as the name on the witness statement (because it was not her married name). The most that Mr Solomon could say on behalf of the appellant with regard to this latter point was that if the judge had said that he had looked at the card but had not been satisfied that it was good evidence of this witness's identity because the name and address were different, that finding could not be challenged, but as he had not done so, he had not given adequate reasons. In my judgement, based on the evidence which was before him, the judge was entirely justified in reaching the conclusions he did with regard to Mrs Prabakaran's identity, which is that he could not be satisfied that the writer of the witness statement was who she claimed to be.

63. Mr Solomon in argument advanced the proposition that the judge made a material error by not dealing specifically with the evidence of the appellant's mother which was corroborative of Mrs Prabakaran's witness statement. Not only was this argument not advanced in the grounds (and no application has been made to amend the grounds) but in any event, as has always been made clear within this Tribunal, a

judge is not required to set out specifically his findings on every piece of evidence submitted. What he is required to do is to consider the evidence in the round and to give adequate reasons for his findings. There is no reason to doubt that the judge did indeed, as he says at paragraph 49, consider the evidence “as a whole” and, even if this argument had been advanced in the grounds, it would still have been rejected for this reason.

64. Mr Solomon’s argument that the judge’s finding that there had been a “crackdown” on Tamils in 2006 was unsupported by any evidence is also, in my judgement, an insufficient basis upon which this appeal could be allowed. It is clear from the country information available on Sri Lanka, which is well-known to those dealing with appeals from applicants coming from that country (which would include Counsel and judges) that in 2006/07, there was evidence of increasing violence. This was even put to the appellant in cross-examination. Although, as Mr Solomon stated in argument, the COI may not refer in terms to a “crackdown” on Tamils in 2006, nothing turns specifically on this expression. It is clear that what the judge was saying at paragraph 51 was that if the appellant had been telling the truth, and he had been tortured as he said he was in his witness statement, then he would have left Sri Lanka at the first opportunity, especially in 2006, when the situation in Sri Lanka was particularly dangerous for Tamils. It seems clear from the background material that this was a period of increased tension, which would have increased the risk someone in the position the appellant claimed he was would in have faced; it is not material, in my judgement, whether this was referred to as “a period of increased tension” or “a crackdown on Tamils”.
65. With regard to the judge’s finding, at paragraph 52, that even had the appellant been detained “if he was suspected of being involved in an explosion he would not have been released, even on the payment of a bribe, and certainly after 8 days”, as the Tribunal observed during the course of the hearing, this bald statement is neither adequately reasoned nor (taking judicial notice of the abundance of evidence which has been placed before differently constituted Tribunals on many occasions) does it accord with reality. It cannot be said that even people who have been detained on suspicion of serious offences have not on occasion been able to obtain their release from custody in Sri Lanka on payment of a bribe, and had this finding been material, I would have agreed that the determination would have had to be set aside and the decision remade. However, in my judgement, this finding, regrettable though it is, was not material, because it is clear that in any event, on the basis of the evidence which was considered, the judge did not consider that the appellant had been detained as claimed.
66. A decision on the weight to be given to individual pieces of evidence is, as the higher courts have consistently reminded this Tribunal, a matter to be determined in any individual case by the judge who has heard the evidence. It is only if the findings which are made cannot be supported by the evidence, or are so inadequately reasoned that it is not apparent that the judge has given proper consideration to that evidence, that such findings can be set aside. In my judgement, looking at the determination as a whole, it cannot be said that the judge made

findings which were not open to him or that one cannot see, from his determination, what his reason were.

67. Accordingly, this appeal must be dismissed.

**Decision**

**There being no material error of law in the determination of the First-tier Tribunal, this appeal by the appellant is dismissed.**

Signed:

Dated: 14 March 2014

Upper Tribunal Judge Craig