



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/10240/2013
AA/10244/2013
AA/10245/2013
AA/10248/2013

THE IMMIGRATION ACTS

**Heard at North Shields
On 24th September, 2014
Signed 10th October, 2014**

**Determination Sent
On 10th October 2014**

Before

Upper Tribunal Judge Chalkley

Between

**SELVAKUMARI SUBRAMANIYAM
GAMINI DILSHAN DESAPRIYA RATHNAYAKE MUDIYANSELAGE
AKSHAN DILIMINI GAMINI DILSHAN
AKSHAN DILIMINA GAMINI DILSHAN**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss M Rasoul of Counsel, instructed by A and P Solicitors
For the Respondent: Miss Rackstraw, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, her husband and her children are all citizens of Sri Lanka. She and her elder daughter entered the United Kingdom on 26th January, 2011, with a valid grant of entry clearance as the dependent spouse and child of a person with leave to

remain as a Tier 4 Student. Her younger daughter was subsequently born in the United Kingdom.

2. The appellant's husband was granted entry clearance to the United Kingdom as a Tier 4 Student from 12th January, 2011, to 13th March, 2012. On 3rd March, 2012, the appellant's husband applied for further leave to remain as a Tier 4 Student and the appellant and elder daughter applied for leave to remain as his dependants.
3. Those applications were refused by the respondent on 5th April, 2012, when the respondent also made Section 47 removal directions in respect of them. No appeals were lodged against that decision, but instead the family made further applications of the same type on 30th April, 2012. These applications were subsequently refused by the respondent on 20th November, 2012, with no right of appeal.
4. On 20th December, 2012, the applicant made an application for asylum. Her claim was based on the fact that she claimed to fear risk of harm from the Sri Lankan authorities in the event of her return to Sri Lanka because she was perceived by them to be a member of the LTTE.
5. The appellant's asylum claim was refused by the respondent on 6th November, 2013 who made a further decision to remove her to Sri Lanka, having decided that the account of events upon which it was based was untrue. The appellant's appeal against the removal decision was heard on 13th December, 2013 and was dismissed by First-tier Tribunal Judge Duff in a determination promulgated on 8th January, 2014. During the course of that determination, the judge made a series of adverse findings of fact, rejecting as untrue the appellant's account of her experiences in Sri Lanka.
6. First-tier Tribunal Judge Simpson granted the appellant permission to appeal Judge Duff's determination on 20th February, 2014. The appeal came for hearing before First-tier Tribunal Judge J M Holmes, sitting as a Deputy Upper Tribunal Judge, on 8th May, 2014 when the parties agreed the determination contained no reference to:
 - “(i) any of the country guidance decisions issued in relation to Sri Lanka, or
 - (ii) any of the background evidence relating to Sri Lanka relied upon by either party, or
 - (iii) any analysis of the evidence offered in support of the appeal by the appellant's husband, or
 - (iv) any analysis of the risk the appellant says that she and her family face as returnees to Sri Lanka from the United Kingdom, travelling on emergency travel documents which, she says, would give rise to the perception that she and/or her husband were failed asylum seekers and will lead to an enquiry into their pasts and to their being placed on a 'stop list' or a 'watch list'.
7. First-tier Tribunal Judge J M Holmes, sitting as a Deputy Upper Tribunal Judge, was satisfied that the cumulative effect of these omissions was such as to render the determination unsafe, for lack of adequate reasoning and analysis of the evidence placed before the Tribunal and the appropriate course was for him to remit the appeal to the First-tier Tribunal for it to be reheard.

8. The appeal was listed for rehearing before First-tier Tribunal Judge Holmes on 11 July, 2014, at North Shields and his determination was promulgated on 21st July, 2014.
9. In his determination the judge makes it clear that he was aware that there were deficiencies in the determination of First-tier Tribunal Judge Duff, but he referred to the judge's very helpful and full Record of Proceedings which Judge Duff had typed during the course of the hearing before him. Judge Holmes made references to the evidence recorded by First-tier Tribunal Judge Duff at paragraphs 43, 51 and 65 of his determination.
10. The grounds for permission to appeal are lengthy and I have set them out in the annex to this determination. The first suggests (at paragraph 5) that findings made by First-tier Tribunal Judge Holmes on the basis of a comparison of the evidence heard by First-tier Tribunal Judge Duff with that given to First-tier Tribunal Judge Holmes were unfair to the appellant. It is said that it was unfair because the appellant's Counsel (who was not the Counsel representing the appellant at the previous hearing) did not have a record of the evidence and as a result the appellant's Counsel could not have been expected to put to the appellant matters raised in evidence by the appellant now when they had not been previously mentioned when the appellant earlier gave evidence to First-tier Tribunal Judge Duff.
11. The second challenge is that the judge made his findings on credibility without reference to objective evidence. The grounds suggest that this is of particular significance in the light of the fact that these previous determination was set aside partly because credibility findings had been made in the vacuum.
12. The third challenge refers to paragraph 46 of the determination of Judge Holmes and criticises him for attaching no weight to the appellant's evidence in her statement. There are other challenges which I shall deal with shortly but they are the principal ones.
13. In addressing me, Miss Rasoul suggested that there were two main complaints in the grounds of application, the first being a comparison by Judge Holmes with the evidence heard by him compared with the evidence recorded by Judge Duff when Judge Holmes had not made the Record of Proceedings of Judge Duff available to Counsel. She suggested that it would have been appropriate to have given copies of the Record of Proceedings to Counsel to enable the appellant to comment on them. Miss Rasoul suggested that this error taints the determination because it affects the credibility findings and it was important that the hearing should have been conducted with scrupulous fairness.
14. The second challenge was that the objective evidence was not considered by the judge but, Counsel told me, none had been submitted on behalf of the appellant. At

paragraph 62 Judge found it to be implausible that the appellant's husband engaged the assistance of a "travel agent" to assist in securing the release of the appellant from detention through payment of a bribe. The appellant and her husband had only referred to this man as being an "agent" and the judge erred in failing to appreciate that agents are often used in Sri Lanka to facilitate both release from detention and departure from the country. They do not act as "travel agents" as they do in the United Kingdom. The judge asks why this particular travel agent would be a person to approach for assistance and finds the explanation "He is a Muslim, he is the type of person who does these jobs" a "less than compelling explanation but he does not make any reference to the judge's explanation given in evidence as to why he approached the agent for help, namely "I can't explain to a Sinhalese man, I can't explain to my brothers. I know him very well so I explained to him".

15. The judge further erred at paragraph 50 where he noted that the appellant claimed to have been identified and checked at that checkpoint whereas her husband was not. The judge finds that account not to be true and suggests that if the authorities had cause to detain the appellant for questioning then it would make no sense at all for them to fail to question the husband. What the judge failed to appreciate was that the appellant is a Tamil but that her husband is not.
16. The judge also generally "misportrayed and overstated the appellant's case". He refers to the appellant's "long term mission" and to the "Colombo mission" but none of these words were the appellant's. At no time did she say that she was sent on a "mission" as such, merely that she was sent to Colombo to gather intelligence for the LTTE. The use of such language by the judge as "target" "spy" and "mission" have given the appellant's claimed involvement a heightened sense of importance that she never sought to assert.
17. The judge's finding at paragraph 35 ignores the fact that her evidence was not that she was purporting to pass for a Sinhalese woman or proposing to convince her husband of the fact that she was Sinhalese. The appellant was speculating when she suggested that the property she and her family moved into at Ja-Ela was purchased by the LTTE in advance of her mission. There was no suggestion that the property had actually been purchased for their mission merely that it had been acquired at some stage by the LTTE. The judge should have realised that it was speculation on the part of the appellant that the property had been purchased specifically for the mission.
18. Finally it is suggested that what the judge said at paragraph 32 is misleading. The judge records that the appellant's "claimed Tami ethnicity is not accepted by the respondent" but that is misleading in that the respondent did not expressly state that the Tamil ethnicity is accepted. It was never put to the appellant that she was not of Tamil ethnicity.
19. For the respondent the Presenting Officer took me to paragraph 51 of the judge's determination and asked me to note that the evidence before the judge was that the

appellant was beaten and sexually abused. She did not claim to have been deliberately burned during her questioning or hit with iron bars and she did not then claim that she had sustains any injury in the course of her detention that resulted in any visible scarring to her body. At paragraph 51 the judge merely points out that again when giving evidence to Judge Duff, her undated and unsigned witness statement that she relied upon did not make any such claim either. There was no reason why the judge should not have relied upon the record of evidence recorded by Judge Duff. The reasons Judge Duff's determination could not stand had nothing to do with his Record of Proceedings or the evidence he had recorded.

20. It has been suggested that Counsel should have been shown a copy of the Record of Proceedings and it was unfair because she did not know what had been recorded by Judge Duff. However, the appellant knew very well what evidence she had given to Judge Duff and the fact that she was not able to give a consistent account to Judge Holmes is an indication that it was not credible. The judge was entitled to do what he had done.
21. The Presenting Officer then referred me to paragraph 43 of Judge Holmes's determination. There he refers to the "target" that was said to have been two brothers which each held the rank of corporal. It is the fact that they each held the rank of corporal which was the evidence given to Judge Duff. Judge Holmes has not relied on an adverse finding made by Judge Duff and that of course would have been entirely wrong because Judge Duff's determination could not stand.
22. Miss Rackstraw asked me to note that there was no complaint at all of there being any error in the Record of Proceedings of First-tier Tribunal Judge Duff.
23. The findings that were made by Judge Holmes at paragraphs 46 and 47 were findings which he was entitled to make on the evidence before him. At paragraph 62 the judge does refer to the agent as a "travel agent" but it is quite clear that the very experienced Immigration Judge was not confusing the agent with being what one might describe as being a "travel agent" in the United Kingdom. He very clearly knew that this agent was used to help with the applications for entry clearance. The judge had been entitled, she suggested, not to accept the appellant's explanation for having approached this person.
24. Criticism is made of the judge for making findings without reference to objective background material but of course, as Counsel has confirmed, none had been served. However, the judge clearly does refer to background evidence served by the respondent at paragraph 22. However, there was clearly nothing about the appellant or her background which suggested any reason why the LTTE should approach her to undertake an intelligence gathering job on their behalf. The criticism levelled at the judge for what is said at paragraph 46 of the determination does not identify any error on his part. It was reasonable of the judge in the circumstances to find as he did. In relation to the challenge at paragraph 14, one could reasonably expect someone who had chosen to entrust their life and security to an agent to give an

explanation as to why they had chosen this particular agent but none was given at all. What the judge said was in the circumstances reasonable.

25. Addressing me in closing, Miss Rasoul asked me to find errors of law and to remit the appeal for hearing afresh by another Tribunal. I reserved my determination.
26. Dealing first with the issue of Judge Holmes comparing his record of the appellant's evidence before him with the record of evidence recorded by Judge Duff when the appellant had earlier given evidence to him, I have concluded that there is no material error of law on the part of Judge Holmes. He was perfectly entitled to look at what the appellant had earlier said in giving evidence to a judge. The appellant suffered no unfairness, because she was very well aware of what she had said earlier. Judge Homes was entitled to conclude that because the appellant has not given a consistent account, she was not a credible witness.
27. The fact that Counsel was not present on the earlier occasion when Judge Duff recorded the appellant's evidence does not mean that Judge Holmes is precluded from taking into account what the appellant had earlier said. No criticism was made of Judge Duff's determination which has any bearing on his Record of Proceedings and none of the issues which cumulatively rendered Judge Duff's determination unsafe involved the evidence he recorded given by the appellant. It was not, for example, suggested that he had wrongly recorded the evidence he heard. I have concluded, therefore, that there was no error on the part of Judge Holmes by making reference to the evidence record by First-tier Tribunal Judge Duff.
28. It is suggested that the judge's findings on credibility were made without reference to any objective evidence. According to Miss Rasoul there was no evidence filed on behalf of the appellant. The judge records at paragraph 22 the fact that he was supplied with a map of the Colombo region, identifying the areas the appellant referred to in her evidence as places where she had lived and an extract of the Country of Origin Information Report on 2002. The judge was hampered by the fact that those representing the appellant had not prepared a properly paginated and indexed bundle of documentary evidence, but they were quite content (as apparently was Counsel) for the appeal to proceed without the submission of any further background evidence. It is suggested that Counsel's skeleton argument (consisting of some fifteen pages) made reference to a Human Rights Watch Report that the judge failed to take into account. Criticism is made of his finding at paragraph 34. At paragraphs 33, 45 and 35 the judge said this:

“33. The appellant denies that her knowledge any other member of her extended family has any LTTE connection, involvement, or membership. It is however her case that at about the age of 19 (when she had said she was living in Killinochchi) she was approached by a stranger in the street and asked to join the LTTE. She says that a number of such approaches were made to her, which she rejected, although ultimately she took someone she believed to be a member of the LTTE to the family home, where an agreement was reached with her father that she should join, although it was a condition of the agreement that she would not be used as a fighter or a suicide bomber.

34. The appellant denies knowledge of why she should be singled out for such an approach (none having been made to anyone else she knew, or to any member of her extended family). She claimed to believe that the LTTE would have monitored her before making any approach to her – but she was unable to explain what that monitoring would have consisted of, or, more importantly, would reveal that would have given the LTTE a reason to believe their approaches to her would be welcomed. If her belief as to monitoring were correct, then it follows that any accurate LTTE enquiries into her background and family would have revealed that she was a member of a family with no LTTE connections, who had only recently moved into the area. One might have thought that this would have given the LTTE cause for concern about the family's true loyalties, and good reason to seek its recruits elsewhere. It certainly begs the question as to why they would persist in trying to recruit someone from a family with no LTTE connections, knew to the area, who was unwilling to volunteer when first approached, and whose family loyalties might therefore reasonably be inferred to be opposed to the LTTE.
35. The appellant's account is that she was not recruited to fight, but to gather intelligence, and that for that purpose the LTTE trained her to be entirely fluent in Sinhalese. She does not say in terms that her appearance is such, and her fluency is such, that she could at the completion of her training pass for a Sinhalese woman, although if she were to be a truly effective spy for the LTTE within the Sinhalese community I would have expected that would be a necessary qualification.”
29. The fact that the LTTE were recruiting during the ceasefire does not, with respect, mean that what the judge said was wrong. He was entitled to suggest as he did that it begs the question why the LTTE should persist in trying to recruit someone from a family with no LTTE connections, new to the area, who was unwilling to volunteer when first approached, and whose family loyalties might therefore reasonably be inferred to be opposed to the LTTE.
30. So far as the next challenge is concerned, I have concluded that there are no errors in what the judge said at paragraph 46 of the determination. It again takes out of context what the judge has said. At paragraph 45, 46 and 47 he said this:
- “45. The appellant claims to have fallen in love with the ‘target’, to have become pregnant by him, and to have married him in December 2008. She offers no explanation of what her family made of all of this, having been persuaded to relocate to Ja-Ela in order that she might spy upon the ‘target’, only to find him becoming a member of their family. Having fallen pregnant during 2008, the appellant claims to have decided to cease her involvement in the LTTE. She claims to have done this by the simple expedient of throwing away the SIM card that she had been provided with for the mobile telephone that she had been equipped with in order to permit her to contact the individual within the LTTE to whom she was meant to pass on information she was meant to be gathering.
46. The appellant does not claim to have believed at any time that the LTTE had been destroyed so completely that there was no risk of any member of that organisation trying to contact her. It does not appear to have occurred to her that if her story were true, officers of the LTTE knew perfectly well where she and her family, and the ‘target’ were living in Ja-Ela, and had the ability to trace them even if they had moved on. On the appellant's account, however, only did she never hear from the LTTE again but it is plain that she did not expect to do so.

47. At interview the appellant sought to explain the lack of further contact from the LTTE not on the basis of their military difficulties, but on the basis that she and her husband had moved to Gampaha after their marriage in 2008. The only reason she gave for that move under cross-examination was, however, the need for herself, her husband and her baby to have a home of their own. Gampaha is no great distance from Ja-Ela and she does not suggest they changed their names or that her husband changed the nature, or name, of his construction business. Moreover on her own account the family appeared to have remained in the LTTE house provided to them in Ja-Ela and one might infer that she continued to have regular contact with them. Thus on her own account no effective protections were taken against her being traced by officers of the LTTE. What the judge said was perfectly reasonable in the circumstances.

31. The next challenge at paragraph 14 criticises what the judge said at paragraph 62 of the determination and the criticism, again, takes the judge's findings out of context. The judge said this:

"62. The appellant says that she was released from detention after seven days without charge after her husband paid a bribe on 12lac Rupees. He denies bribing anyone directly but he says that once the appellant was detained he returned to Colombo unaware of where she was held or how long she was held for. He claims to have decided that the only person he could ask for assistance was the travel agent that he had used to help him with applications for entry clearance to the UK – whereupon he claims to have been given a price, and then later told where and when to go and collect her. Asked why he thought this travel agent would be the person to approach for assistance, his reply was 'He is a Muslim, he is the type of person who does these type of jobs' – which is in my judgement a less than compelling explanation. No further details were forthcoming, save that he claimed to trust the agent as a result of dealing with him over the application for entry clearance. However, he shied away from explaining what if anything the agent had been required to do in order that entry clearance to the UK would be granted that would lead the appellant to conclude that he would have the contacts or the expertise to bribe the army to release anyone who on his case he knew had correctly been identified as an LTTE spy in Colombo. He also denied knowledge of how this travel agent could identify where his wife was held or who needed to be bribed to secure her release, and negotiate and pay all the necessary bribes to secure that, all in such a short space of time."

32. The judge did not err in referring to this man as a "travel agent". He knew precisely what the appellant and her husband had meant. This was the agent who had actually obtained the appellant's husband's visa for the UK. The appellant's husband had not entered the United Kingdom illegally but with a valid visa of the sort usually obtained by travel agents.

33. I am afraid I do not accept that the judge's findings are materially flawed as a combined result of erroneously recording the appellant's evidence and failing to consider the realities of the situation in Sri Lanka with reference to objective evidence. The challenge has, to a large part, simply taken out of context what the judge has said.

34. The next challenge is paragraph 50 of the judge's determination, where he did not believe the appellant's account that she was detained at a checkpoint, even though her husband who was with her was simply told to go. If the authorities genuinely

believed that the appellant was an LTTE agent then it is reasonable that they would not only have questioned the appellant, but would question anyone travelling with her whether he was a Tamil or not and particularly so if it appeared that he was her husband. It is simply not credible that if the appellant was of interest, anyone with her would not have at least been questioned.

35. The next criticism of the determination is that the judge has generally misportrayed and overstated the appellant's case. I do not believe that he has. Her job was effectively to be a spy for the LTTE and in May 2006 claims to have been instructed to go to Colombo in order to gain the trust of a particular man. The fact that the judge refers to this particular man as being a "target" does not, with respect, misportray or overstate the appellant's case. The fact that the judge refers to the "long term mission" and to the "Colombo mission," does not misportray or overstate the appellant's case. The Colombo mission refers to the task which she was given to befriend a particular man with a view to obtaining information from him about the activities of the Sri Lankan army. There is simply no merit in the suggestion that this in some way misportrays or overstates the appellant's case.
36. The criticism in the grounds of what the judge said at paragraph 35 also, I believe, fails to identify any error on a point of law; the judge was entitled to say what he did at paragraph 35. I was not addressed on the challenge at paragraph 17b by Counsel but having carefully read what the judge said at paragraph 44 I am satisfied that again no error of law is identified. Had the person she was supposed to befriend simply ignored her there was no alternative plan.
37. The challenge at paragraph 17c does not misportray the appellant's evidence. Her evidence was that a house was being made available for her to enable her to pursue her mission. The evidence of the appellant was that it had been purchased by the LTTE in advance of her mission because it was next door to the place where the person she was supposed to befriend lived. Again, I find no error of law on the part of the judge.
38. The last challenge at paragraph 19 suggests that the judge misleads by suggesting that the appellants' claimed ethnicity is not accepted by the respondent. With very great respect, he did not mislead. The appellant's claimed ethnicity was not accepted by the respondent. The Reasons for Refusal Letter was silent. That does not mean that her ethnicity was accepted.
39. For all of these reasons I have concluded that the determination of First-tier Tribunal Judge Holmes does not contain an error on a point of law. I do not set aside the decision but order that it shall stand.

The appendix above referred to

IN THE FIRST TIER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

BETWEEN:

MS SELVAKUMARI SUBRAMANIAM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

GROUNDS FOR PERMISSION TO APPEAL

1. The appellant seeks to appeal against the determination of First Tier Tribunal Judge Holmes (herein referred to as "the FTTJ") promulgated on 21st July 2014, in which he dismissed her appeal on grounds of asylum and humanitarian protection.
2. The appellant is making this application for permission to appeal in time. The determination was sent by recorded delivery on 24th July 2014 and so the deadline for appealing is 4th August, allowing two working days for deemed receipt plus five working days.
3. It is submitted on behalf of the appellant that there are material errors of law in the FTTJ's determination for the reasons detailed below. There are multiple errors within the determination, in respect of his recording of the appellant's evidence and in his approach to the evidence, which cumulatively render the FTTJ's conclusions in respect of the credibility to be materially unsafe.
4. The FTTJ has materially erred by making multiple references and comparisons to the evidence that was given in the previous FTT hearing, before FTTJ Duff. The determination of FTTJ Duff had been set aside in full and as such the evidence that was given that hearing should not have been referred to or relied upon for the purposes of this hearing. References to the contents of the Record of Proceedings from the hearing before FTTJ Duff were made at paragraphs 43 51, and 65. In particular, the FTTJ has attached significant weight to the fact that the appellant has now sought to rely upon a medical report in respect of certain injuries that she states she sustained from treatment whilst in detention, and draws an adverse inference from the fact that *"this was not a claim made in the course of her oral evidence before Judge Duff [ROP]"*. Similarly, he attaches adverse weight to the fact that in evidence the appellant states that strangers had come to the family home looking for her, when no such claim was made *"in the oral evidence given to Judge Duff [ROP]"*.

5. It is submitted that such findings are materially unfair to the appellant. The appellant's counsel (who was not the counsel representing the appellant at the previous hearing) did not have a record of the evidence from this hearing. No record of proceedings (to which the FTTJ makes multiple references throughout the determination) was made available to the appellant's counsel. The appellant's counsel cannot have been expected to put to the appellant why these issues were being raised in evidence now when it had not previously been mentioned before FTTJ Duff, as she herself did not have a copy of the record of proceedings from that hearing. Whilst in the AIR there is no mention of the appellant's scars it is also the case that she was not asked whether she sustained any injuries from the torture and beatings that she sustained in detention, or whether she had any scarring from this mistreatment.
6. If the FTTJ had wanted to make reference to the evidence before FTTJ Duff then an agreed copy of his record of proceedings should have been made available to all parties. The previous determination of FTTJ Duff was set aside in its entirety and the FTTJ's continued references throughout to this determination was materially unfair to the appellant. It further renders the decision unsafe as it is unclear the extent to which the FTTJ's own findings on credibility have been shaped by the record of proceedings before FTTJ Duff. This record of proceedings was not agreed by the parties, and the appellant was not given an opportunity to re-read this record of proceedings and comment on any potential inaccuracies, and as such this further renders the determination to be unsafe.
7. Secondly, it is submitted that the FTTJ made his findings on credibility without reference to the objective background evidence. This is of particular significance in light of the fact that the previous FTT determination was set aside in large part due to the fact that the credibility findings had been made in a vacuum and without any reference to the objective background evidence.
8. At paragraph 34 he finds the appellant's explanation of having been recruited by the LTTE to be implausible. He states, "*it certainly begs the question of why they would persist in trying to recruit someone from an LTTE family with no LTTE connections, new to the area, and who was unwilling to volunteer when first approached*". He has failed to give any consideration to the background evidence, which indicates that there was heavy recruitment of teenagers and young adults by the LTTE during the cease-fire, in Killinochi. The FTTJ was referred, in the appellant's skeleton argument, to the Human Rights Watch report, "Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka", dated November 2004, which states:

"Throughout the cease-fire, the LTTE has sought new recruits for its forces. The LTTE may be trying to strengthen its hand during the peace talks, prepare for its control of the North and East in the event of a final peace agreement, or be militarily prepared in the event the peace talks collapse—or for all of these reasons. Sri Lankan government sources and local nongovernmental organizations believe that the LTTE has recruited several thousand new cadres during this period, though hard figures are elusive." [p3]

9. It is certainly not implausible or unsurprising that the appellant was recruited to join the LTTE at this time, having regard to the background evidence, and the fact that she herself was unable to explain why she had been recruited is immaterial. Furthermore, the FTTJ has incorrectly asserted that she did not know anyone else who had been recruited to the LTTE [para 34]. Her evidence was [as can be seen from para 14 of her statement] that no one else in her family had joined the LTTE, not that she did not know of anyone else who had been recruited. Similarly, at no point did the appellant say that "an agreement was reached with her father"[See AIR Q58 and para 13 of A's statement]. In fact, the appellant's oral evidence [as per Counsel's record of proceedings], in response to the question "What was your parents' view about joining? *they did not like it*". It is submitted that the Judge's misrecording of the appellant's evidence regarding her recruitment, combined with the lack of reference to the objective evidence, make his findings on this aspect of her claim materially unsafe.

10. At paragraph 46 of the determination the FTTJ states:

"the Appellant does not claim to have believed at the time that the LTTE had been destroyed so completely that there was no risk of any member of that organisation trying to contact her. It does not appear to have occurred to her that if her story was true, officers of the LTTE knew perfectly well where she and her family, and the "target" were living in Ja-Ela, and had the ability to trace them even if they moved on."

11. There are material errors in this finding. The FTTJ has attached no weight to the appellant's evidence in her statement, where she says (para 23) *"The reason that the LTTE did not come after me in September 2008 and target me for ceasing contact with them, was because the LTTE were trapped in the North and could not get to Colombo at that time"*. The appellant was not asked any questions in oral evidence as to whether she believed the LTTE were going to come looking for her. However, it is clear from her statement that she did not believe they were going to come looking for her, due to their significantly depleted strength at that time. The fact, as the FTTJ states, that the appellant did not then expect to hear from the LTTE again, and did not move to Gampaha for the purpose of hiding from the LTTE, is consistent with her explanation.

12. The FTTJ further states, *"At interview the Appellant sought to explain the lack of further contact from the LTTE on the basis of their military difficulties, but on the basis she and her husband had moved to Gampaha after their marriage in 2008"* [paragraph 47]. This is not correct. In interview the appellant does not argue that the lack of contact from the LTTE was because of the fact they moved to Gampaha. The Tribunal is respectfully referred to the line of questioning at AIR Q140-143. The A does not seek to argue that she did not have any further contact with the LTTE due to the fact that she moved to Gampaha. In respect of leaving Ja-Ela she was asked the question, "How long did you remain living at the address provided by Ruavan after you left just before September 2008?", and she replied "I moved from that place to Gampaha after my marriage".

13. The FTTJ has made this finding without any reference to the appellant's actual evidence but also without any reference to the objective background

evidence. the Home Office's Country of Origin report on Sri Lanka dated March 2012, which states:

"3.24 The same source added: □—In the period January - May 2009 the Government of Sri Lanka captured the last remaining LTTE strongholds in Northern Sri Lanka and in May 2009 announced that it had captured all land previously held by the LTTE. All senior LTTE leaders, including Prabhakaran, had been killed in the final stages of the battle. □—Towards the end of the fighting, high numbers of civilians are believed to have been killed and injured as a result of the heavy fighting. There was no independent access to the conflict zone and international concern has been raised about the conduct of hostilities by both sides in the final months of the conflict."

"...3.26 The International Crisis Group (ICG) War Crimes in Sri Lanka, Asia Report N°191, dated 17 May 2010, observed: □—By January 2009, the Sri Lankan government had effectively defeated the LTTE. The Tamil fighters were cornered in a small portion of the Northern Province known as the Vanni [The Vanni consists of all or part of five administrative districts designated by the government – Kilinochchi and Mullaitivu Districts in whole, and Vavuniya, Mannar and Jaffna Districts in part] and were surrounded by more numerous and better armed Sri Lankan government forces. Also in the area were over 300,000 civilians, most of whom had been repeatedly displaced from previously LTTE-held areas. The LTTE by this stage were running short of arms and supplies. Many of their cadres believed the situation was hopeless, and the Tamil civilian population was increasingly resentful of such policies as forced recruitment and the near-complete ban on leaving the Vanni."

14. At paragraph 62 the FTTJ finds it to be implausible that the appellant's husband engaged the assistance of a "travel agent" to assist in securing the release of his wife from detention through payment of a bribe. He firstly errs in referring to this person as a "travel agent", when in fact the appellant and her husband only ever referred to him as an "agent". He has also erred in failing to appreciate that agents in Sri Lanka are widely used to assist in facilitating both release from detention and departure from the country, and that they do not serve the same purpose as "travel agents" here in the UK. The FTTJ states that when asked why this "travel agent" would be the person to approach for assistance, he finds the explanation, "He is a Muslim, he is the type of person who does these jobs", "a less than compelling explanation". He reaches this conclusion without any reference to the husband's explanation, given in evidence [as recorded in Counsel's record of proceedings] as to why he approached the agent for help: "I can't explain to a Sinhalese man, I can't explain to my brothers. I know him very well. So I explained to him". It is submitted that the FTTJ's findings on this issue are materially flawed, again due to the combined erroneous recording of the appellant's evidence and failure to consider the realities of the situation in Sri Lanka with reference to objective evidence.
15. At paragraph 50 of the determination the FTTJ finds that the appellant's account that she was identified and detained at the checkpoint, whereas her husband was not similarly questioned or detained, to be implausible. He states "That account strikes me as highly unlikely to be true. If the authorities had reasonable cause to detain the Appellant for questioning then it would

make no sense to fail to question her husband". The FTTJ errs in his finding in that he is purely speculating as to how he believes the Sri Lankan army should behave, and trying to rationalise their actions. He does not give any consideration to the fact that the appellant's husband may not have been questioned or detained due to the fact that he was neither Tamil nor suspected of having previously been a member of the LTTE. His assumption that the authorities should have also subjected him to questioning are pure speculation and unsubstantiated by any objective background evidence.

16. It is further submitted that the FTTJ has generally mis-portrayed and overstated the appellant's case, and as such his findings that her claim is generally implausible and not credible are materially unsafe. Throughout the determination he refers to the *"long term mission"* and *"the Colombo mission"* and he states that the appellant's objective was to gain intelligence from a specific *"target"* – namely her husband. None of these words were the appellant's own, either in her AIR, her statement or in oral evidence. They were the words of the Presenting Officer used in closing submissions. The appellant has never sought to argue that she was an LTTE member who held any particular high rank, or had a role of any importance. She does not state that she was sent on a "mission" as such. Her claim was that she was sent to Colombo to gather intelligence for the LTTE. The use of language such as "target", "spy" and "mission" has given her claimed involvement a heightened sense of importance which she has never sought to assert, and which has then be used against her on the grounds that such a claim is implausible.
17. It is further submitted that there are also a number of aspects of the evidence which have been omitted or misrecorded by the FTTJ, which further contribute towards his misperception or overstatement of the appellant's claim:
 - a. At paragraph 35 The FTTJ states *"She does not say in terms that her appearance is such, and her fluency is such, that she could at completion of her training pass for a Sinhalese woman, although if she were to be truly effective spy for the LTTE within the Sinhalese community I would have expected that it would be a necessary qualification"*. At no point was her evidence that she was purporting to pass for a Sinhalese woman or purporting to convince her husband of the fact that she was Sinhalese. Clearly the appellant was never purporting claim that she was pretending to be Sinhalese, as she moved to Ja-Ela with her Tamil family. The FTTJ is simply imposing his own views in respect of the nature of the appellant's claim and what he believes to be the necessary requirements for an LTTE "spy".
 - b. At paragraph 44 the FTTJ states, when considering the plausibility of the appellant's account, *"there was no back up plan for if he either ignored her, or if he did no more than simply smile back"*. He again fails to appreciate that the appellant was sent to Colombo to undertake general intelligence gathering and not solely for this one specific "mission". Counsel's note of evidence states that during the course of the hearing the appellant was directly asked by the FTTJ *"what if this man does not like you?"*, to which she responded, *"I would have done my job anyway. I would have monitored checkpoints and given information."* He fails to give any weight to the fact that whilst she was instructed to get "friendly" with her husband, for the purpose of obtaining information from him, she was also undertaking general

intelligence gathering in Colombo. Getting "friendly" with her neighbour (her future husband) was just one means through which she was able to do this.

- c. At paragraphs 40 to 41 of the determination the FTTJ records that the appellant was claiming that the property that her and her family moved into Ja-Ela was "*purchased by the LTTE in advance of her mission*" and "*that the house in question was purchased and provided to her family because it was next door to the property in which her "target" lives*". The FTTJ then proceeds to state that it is therefore the appellant's case that the LTTE had invested "*significant financial resources*" in the appellant. This is a misportrayal of the appellant's evidence and it was not the appellant's case that there had been significant financial resources invested in her, above and beyond those resources invested in other intelligence-gathering members of the LTTE. The FTTJ has failed to record that in re-examination the appellant was asked "*do you know when the house was purchased*", and she replied "*That I don't know*". It was clear from the evidence that the appellant was purely speculating and did not know for certain that the house had been specifically purchased for her and her family by the LTTE. The only point on which she was clear was that the property belonged to the LTTE and her family was allowed to live in this property.
18. It is submitted that cumulatively these multiple errors in the FTTJ's recording of the appellant's claim are significant. They show a lack of accurate understanding of the appellant's claim and render the FTTJ's findings in respect of the overall plausibility and credibility of her claim to be wholly unsafe.
19. Finally, the FTTJ states, at para 32, that "*her claimed Tamil ethnicity is not accepted by the respondent*". This is misleading. Whilst the respondent does not expressly state that the appellant's Tamil ethnicity is accepted, she does not at any point in the RFRL state that the appellant's ethnicity is not accepted or is any way disputed. This was not the appellant's case and at no point was it put to the appellant that she was not of Tamil ethnicity. It is submitted that the FTTJ has erred in misstating the respondent's case and assuming that the appellant's ethnicity was a live issue between the parties. In addition, it is unfair of the FTTJ to take issue with the appellant's identity as a Tamil when this has never been put to her – either by the respondent or the FTTJ during the course of the hearing. It is accepted that this error in and of itself may not be sufficient to constitute a material error of law but in the context of the previous multiple errors it further undermines the determination as a whole.

The appellant submits that the above grounds identify real and substantial errors in the FTTJ's findings and in his approach to the evidence, which render the determination as a whole to be unsafe. These grounds do not simply constitute a disagreement with the FTTJ's findings. The above grounds are strongly arguable and permission is respectfully sought.

AMANDA WALKER
MANSFIELD CHAMBERS
3RD AUGUST 2014