



IAC-TH-LW-V1

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

Appeal Number: AA/02671/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3<sup>rd</sup> August 2015**

**Decision & Reasons Promulgated  
On 21<sup>st</sup> September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**TS  
(ANONYMITY DIRECTION CONTINUED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Jegarajah (Counsel)

For the Respondent: Mr E Tufan (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka. On 4<sup>th</sup> March 2013, the Secretary of State gave reasons for a decision to remove him from the United Kingdom and for refusing his asylum claim. The appellant's appeal against the removal decision was dismissed by a First-tier Tribunal Judge on 17<sup>th</sup> October 2013. That decision was set aside by the Upper Tribunal in a decision promulgated on 3<sup>rd</sup> June 2014. In order to remake the decision, the appeal was listed to be heard at Field House on 3<sup>rd</sup> August 2015.

2. In setting aside the decision of the First-tier Tribunal, certain favourable findings of fact were preserved, as they were not infected by the error of law. Broadly, these concerned events prior to the appellant's claimed return to Sri Lanka in December 2012.

### **The appellant's case in summary**

3. The appellant claimed to be at risk on return as a person of adverse interest to the authorities in Sri Lanka, by reason of his support for the LTTE and his work for the organisation, and also by reason of family connections and the LTTE activities of family members.
4. The appellant claimed to come from [-] in Sri Lanka. He moved to Colombo in 2000 where he spent several years studying, including taking a banking and finance course. He worked as an internal auditor for a company in 2005 and thereafter as a trainee management officer for a building company called [-]. Although never a member, he worked for the LTTE, including work in the 1990s as a branch cashier.
5. After moving to Colombo in 2000, he was unable to remain in hostel accommodation within the university. A friend assisted him but he did not have permission from the police to stay at his friend's premises. Following a police check in January 2001, the appellant was arrested and detained for three days. The university intervened to confirm his student status and he was then provided with accommodation in a hostel.
6. In 2004, during the period of the ceasefire, the appellant renewed links to the LTTE and became a "reporter", having been approached by a person called L whom the appellant knew from his local area. He was expected to provide L with information about locations and premises in Colombo, the information being sent by post. The appellant ceased this role in 2005 after L moved to Batticaloa. The appellant's role included finding accommodation for LTTE members in Colombo who wanted to study and work, which he did on four occasions. Between January and July 2006, the appellant worked for [-], a building company, and assisted the LTTE. The organisation wanted him to work there so that he could study their rules and regulations to assist the LTTE with their own construction organisation.
7. The appellant claimed that he was detained on a second occasion in 2007. Having finished his studies, he remained in Colombo, continuing with private tuition. He was stopped by the police and as he had recently renewed his identity card, he was asked about previous addresses. As he was afraid, he gave the police an incorrect address in Vavuniya, but a search of the records revealed that he was from [-]. The appellant was then arrested and detained for nearly five days. Different officers questioned him as a suspected member of the LTTE and he was beaten. He was released after intervention by his landlady at the time. She had a relative who was a high ranking officer. On the fifth day of detention, the appellant was given his own clothes, taken downstairs to reception where

his landlady met him and he signed a letter confirming his release. No conditions were imposed upon him.

8. Although he had no further problems after his release, the appellant believed that the authorities still suspected that he was a member of the LTTE.
9. The appellant applied for a student visa to study in the United Kingdom, in August 2008 and arrived here the following month, on 19<sup>th</sup> September. He had no problems exiting the airport in Colombo. He studied in the United Kingdom from September 2008 to January 2009 at Northumbria University, without completing his course. He lost contact with his family temporarily but this was resumed in August 2009. He obtained further leave to remain as a student, valid until 31<sup>st</sup> December 2012. He attended a course in London for three months, before ceasing his studies in about June 2010. He then worked part-time to support himself. His mother's sister also provided some support, this relative living in the United Kingdom.
10. Although the Secretary of State disbelieved these aspects of the appellant's case, the First-tier Tribunal Judge made favourable findings in this context and accepted the appellant's claims to have been detained and ill-treated. He noted the appellant's release without conditions being imposed and the absence of any difficulties suffered by the appellant for a period of almost a year before he travelled to the United Kingdom.
11. A salient feature of the appellant's case, however, is that he returned to Sri Lanka on 28<sup>th</sup> December 2012 and was detained and ill-treated by the authorities, before returning to the United Kingdom in January 2013. The Secretary of State drew attention to the absence of any supporting evidence regarding this journey and the First-tier Tribunal Judge came to the conclusion that this aspect had been fabricated. His assessment of risk, therefore, was made in the light of the two periods of detention suffered by the appellant prior to his entry to the United Kingdom with leave as a student in 2008.

### **The account of the appellant's return to Sri Lanka in December 2012**

12. The appellant claimed that he left the United Kingdom on a flight to Sri Lanka on 28<sup>th</sup> December 2012, with the same passport he used to enter the United Kingdom as a student in 2008. He was stopped by the authorities at Katunayke Airport, after they asked him where he lived in Sri Lanka. His passport and ticket were taken. He was asked if he were an LTTE escapee and a member of the CID asked him questions about his time in Colombo and where he currently lived. The interview lasted for about two hours and he was then questioned further and beaten. The following day, within a compound at the airport, the appellant was again questioned. Three people appeared, a Muslim man, a Sinhalese man and his former contact, L, who was now working for the government. The appellant realised that it was L who had disclosed his previous work with the LTTE. He explained to the Muslim man that he worked for the

organisation to earn money but was not a member. This was all written down and he signed a document.

13. The appellant claimed that he was then taken to a CID office and told that he would be sent to a rehabilitation camp. He was beaten at the office but not mistreated further. He was released on 4<sup>th</sup> January 2013, after his uncle arranged a bribe. Bail was set at Rs150,000 and conditions were imposed. The appellant was required to sign at a police station on the 21<sup>st</sup> day of each month. His brother signed for his release.
14. The appellant stayed at his uncle's friend's house for one night and then returned to PKD. He feared that he would be arrested on 21<sup>st</sup> January when he went to sign on. Arrangements were made with an agent for him to leave Sri Lanka on a French passport and with a French family. He managed to exit without problems and arrived in Paris on 15<sup>th</sup> January 2013. He stayed with another agent there who secured his travel to the United Kingdom with another family. He travelled by car from Paris, showing a French passport at the French border and took a ferry, arriving here on 19<sup>th</sup> January 2013. He then travelled to Portsmouth and on to London where he discussed his problems with a solicitor and claimed asylum. The appellant claimed that the authorities in Sri Lanka have continued to enquire about him, speaking to his brother. The appellant fears that the authorities suspect that he is a member of the LTTE and that he will be arrested on return, sent for rehabilitation and punished.
15. The Secretary of State noted the appellant's claim that his ticket to Sri Lanka was booked online by a friend who was a "ticket agent" and who gave him a printed ticket. The appellant was unable to provide any supporting evidence of the journey, such as the ticket or other details and the Secretary of State disbelieved the claim that the appellant returned to Sri Lanka.
16. The First-tier Tribunal Judge came to a similar conclusion, noting the absence of any documentary evidence, such as confirmation of the appellant's itinerary, in response to the Secretary of State's adverse finding. He came to the view that it would have been easy for the appellant to obtain details from the airline and highly probable that he would have been sent an itinerary by e-mail. He would have been able to show proof of travel and proof of payment. Moreover, the appellant was unable in interview to identify the port at which he boarded the ferry in France on his return journey to the United Kingdom and provided no details of the ferry company.
17. Part of the evidence before the judge was a report from the Medical Foundation regarding scarring on the appellant's body. The report forms an important part of the evidence and the author considered in particular whether one or two of the scars were the result of injuries inflicted in about December 2012 or January 2013, the period of time the appellant claimed was spent in Sri Lanka.

18. The judge expressly took into account part of the report concerning two scars which revealed healing between April and June 2013, consistent with the appellant's account of injuries being inflicted at the end of 2012 or in the very early in 2013.

### **Evidence adduced by the appellant since the First-tier Tribunal hearing**

19. Following the grant of permission to appeal, the appellant adduced further evidence in the form a supplementary bundle consisting of witness statements and country evidence. Included were an article by a British journalist, [-], discussing an interview with the appellant which took place in [-] for [-] news and a photocopy of a letter of complaint "from the wife", apparently lodged with the Human Rights Commission of Sri Lanka on 2<sup>nd</sup> January 2013. He also provided two further witness statements. In one, dated 15<sup>th</sup> January 2014, he claimed that several attempts were made to obtain confirmation of his journey to Sri Lanka. He was advised not to contact Sri Lankan Airlines directly as this would alert the authorities and might place his family at risk. He tried to obtain confirmation through friends but he had been unable to do so. In a statement prepared on 1<sup>st</sup> August 2015, the appellant drew attention to the arrest of Ms BP, a leader of the LTTE Women's Sea Tiger Wing, on her return to Sri Lanka in March 2015. Ms BP is the wife of Mr R, mentioned in the appellant's asylum interview in answer to question 123. Attached to the witness statement was a copy of a news item from The Nation in which Mr R is mentioned in his real name, Mr SJ. The appellant claimed that he knew Ms BP as they both went to the same school in Sri Lanka and came from the same area, PKD. The appellant's uncle, P, put him in contact with Mr R, as did his friend L.

### **The Hearing**

20. At the outset, Mr Tufan handed up a copy of the most recent country information and guidance on Sri Lanka, dealing with Tamil separatism, published on 28<sup>th</sup> August 2014 and copies of the decisions in GJ and Others [2013] UKUT 00319 and JL (medical reports - credibility) China [2013] UKUT 145.
21. The appellant gave evidence. I was satisfied that he and the interpreter understood each other in Tamil and they confirmed to me that this was the case.
22. The appellant adopted the witness statement he made on 1<sup>st</sup> August 2015. He had referred to Mr R in the asylum interview, in answer to question 123. Mr R was the LTTE representative from France who mentioned an LTTE building company. The appellant also mentioned Mr R in the First-tier Tribunal hearing.
23. In the supplementary bundle was a [-] (news) article following the interview with [-]. The appellant was the subject of the article and he had

used the name Yathavan to conceal his true identity. He did not want to give [-] his real name because the Sri Lankan authorities would see the article and his family would be in danger, as the appellant himself would be. He decided to give the interview because the Prime Minister, David Cameron, was due to visit Sri Lanka at that time. [-] (news) broadcast a programme and Tamil groups demonstrated here, in the United Kingdom. They requested the Prime Minister not to go to Sri Lanka for a Commonwealth conference. The appellant was one of those affected and he was invited to give an interview.

24. In cross-examination, the appellant maintained his claim that he returned to Sri Lanka on 28<sup>th</sup> December 2012, returning here on 19<sup>th</sup> January 2013.
25. Mr Tufan asked whether he had any evidence that he travelled to Sri Lanka in December 2012. The appellant replied that he did. While he was there, his wife complained to the Human Rights Commission and in his asylum interview, the appellant said that he would try to get evidence of this. At the First-tier Tribunal hearing, he was able to produce a document recording his wife's complaint. A copy appeared in the supplementary bundle.
26. The appellant said that unfortunately he was unable to obtain evidence in the form of a ticket or booking confirmation but had never expected that he would need such evidence. He booked his ticket through a friend's "known person". Initially he was confident that he could obtain evidence of the journey and in the asylum interview said that he would try to do so. He approached his friend two or three times but his friend avoided him. The person who obtained the ticket was a friend of his friend.
27. Mr Tufan drew attention to the answers given to questions 206 and 208 in interview, where the appellant claimed that he booked online and that his friend, a "ticket agent" booked it. It appeared that the appellant was now claiming that the booking was made by a friend of a friend. The appellant said that his friend's friend booked the ticket but he had described this person to the Home Office in interview as his friend. The ticket was paid for by cash and the appellant was given the ticket, a printed document. The appellant was told that the ticket was booked online. Mr Tufan asked whether payment was made by credit card and the appellant replied that this may have been so but he did not know. The person who paid for the ticket was scared that he might lose his business and now avoided the appellant.
28. In answer to question 214, the appellant suggested that the booking may have taken place on 25<sup>th</sup> December 2012. He could not now recall precisely whether this was the date but he did say in interview that the booking was made about a week before he travelled and so it might have been 25<sup>th</sup> December. He met the agent in Tooting. He mentioned his friend and the agent came to the friend's house.

29. The appellant said that he had asked his friend to come to court to give evidence. He was present here with a student visa but thought that coming to court would create a problem for him and so he avoided it. His friend was not the ticket agent. The appellant was unable to contact the agent. Mr Tufan asked whether the appellant was able to find out where the shop or business was. The appellant replied that he had no opportunity to come to London to find it as he lives in Durham. He spoke to his friend but his friend was not helping him and he tried to contact the agent but the agent would not answer.
30. The appellant had not contacted Sri Lankan Airlines to ask for a copy of the ticket because the company was established by the Government. If he asked for details, they might contact his family and cause them problems. The Government of Sri Lanka did not know his whereabouts at present but if he tried to get the evidence in this way, he would be putting his family in trouble. Mr Tufan said that copies of tickets might be required by e-mail from anywhere in the world and it would not be necessary for the appellant to reveal his location. Why had he not asked the airline for a copy of the ticket? The appellant replied that if he sent an e-mail he would have to give his name and passport number and they would find him out. Mr Tufan asked whether the appellant had tried to make contact by e-mail without giving his passport number. The appellant said that because of the fear he was in he had not tried to do this at all.
31. So far as events in Sri Lanka and Logan are concerned, Mr Tufan said that country evidence indicated that Tamils made up 10% of the population of Colombo. The information the appellant claimed that he provided to L was public knowledge. What use would the information have been to the LTTE? The appellant replied that some things were public information but he gave specific details including the times a person might gain entry to five star hotels and what particulars had to be given in order to stay there. He was able to provide the questions a person wishing to stay in the hotels would be asked. He was studying in Colombo and had an opportunity to visit hotels with his college friends. He had to visit several times, asking questions and collecting the information that was needed.
32. Mr Tufan asked the appellant when he last saw L, in the light of his claim in interview that he stopped doing this work when L went elsewhere. The appellant replied that it was in about 2005. He did not provide information to L after that. He sent the information by letter. He met L at the very beginning but did not remember when he last saw him. He met him several times between 2003 and 2005.
33. Mr Tufan asked whether it was his case that he met L by chance, a few days after his arrival in Sri Lanka in December 2012, having not seen him for seven or eight years. The appellant replied that this was so. After L joined the Sri Lankan authorities, he disclosed his network to them.

34. So far as the Medical Foundation report was concerned, there was no updated document. The appellant was not on any medication, and had not been on any since the report was prepared in 2013.
35. In response to a question from Mr Tufan, the appellant denied that some of the scars described in the report were caused by injuries inflicted by a third party at his request. He said that he had never had scars inflicted deliberately, by proxy. He was detained at the airport when he returned to Sri Lanka and mistreated. He was released on payment of a bribe. The intention was clearly to extract money from him. Mr Tufan asked why, in that case, the authorities would have any further interest in him. The appellant replied that extracting money would not be the authorities' only intention.
36. In re-examination, the appellant said that the original receipt recording the Human Rights Commission complaint, which appeared in copy form at page 33 of the supplementary bundle, was made available at the First-tier Tribunal hearing.
37. Mr Tufan submitted that although the earlier detentions were accepted by the First-tier Tribunal Judge, each had lasted for only a few days and the appellant was released without conditions. He was not a person of interest now. He was interviewed substantively on 23<sup>rd</sup> February 2013, soon after his claimed return to the United Kingdom and knew that the journey to Sri Lanka was in issue. Notwithstanding this, he had failed to provide supporting evidence of the journey. His oral evidence, regarding a friend contacting a booking agent, was not entirely consistent with the account given in interview. Neither the friend nor the agent had provided a statement. The appellant's explanation, that his student friend was not willing to help as he feared that he would get into trouble, was not sustainable.
38. Any ticket booked online would enable details to be sent, with ease. All that was required was an e-mail to the airline and the appellant could have made an attempt to obtain the information without giving his passport details.
39. So far as the appellant's claim that he passed intelligence to L is concerned, Mr Tufan submitted that the information would have been known to almost everyone in Colombo. The opening times of hotels and similar details were not likely to be valuable intelligence and a five star hotel would have been open 24 hours a day, in all probability. L might simply be a figment of the appellant's imagination. In any event, the claim that he changed sides and turned up at the airport and was able to identify the appellant seven or eight years after they last met was not a credible one.
40. The author of the medical report described the scars as largely consistent or highly consistent with the appellant's account of the injuries giving rise to them. This assessment revealed that there might be many causes



other than those given by the appellant. The medical evidence was not determinative of the cause of the scars. The report showed that the scar described as S35 is in an unusual position and may have been inflicted at the appellant's request, by proxy. The appellant was not on medication at the time the report was prepared, nor was he currently. There was a suggestion that he suffered from PTSD (Ms Jegarajah confirmed that the case against removal was not advanced on the basis of the appellant's ill-health). The report depended heavily on the appellant's account and so the analysis made by the Upper Tribunal in JL fell to be applied.

41. The Secretary of State's current country guidance was prepared in the light of GJ. There was no indication of diaspora activities by the appellant. He studied in Colombo for several years and although detained in the past, he was released without conditions being imposed. He was not a person known to the authorities and his name would not appear on a "stop" list. This was so even if he did, in fact, return to Sri Lanka in 2012. He was clearly not of the calibre to threaten the unitary state and would not be at risk.
42. Ms Jegarajah said that the case did not turn entirely on whether the appellant returned in 2012 or not. The two earlier detentions were based on concerns about his identity and the activities he undertook for the LTTE. Although he was ill-treated, the current risk did not flow from those detentions. Rather, the risk arose because of the family connections he had and the nature of his work for the LTTE, as disclosed by the appellant in the substantive asylum interview.
43. The appellant described his work in the intelligence group and as an auditor in a company with substantial links to the LTTE. The most recent witness statement included mention of Mr R, this man's name also appearing in the Record of Proceedings before the First-tier Tribunal and in answer to question 123 in the asylum interview, in the context of the appellant's work for [-]. Mr R was in France and assisted the LTTE with establishing the company. That part of the appellant's account was accepted as credible. So far as current risk was concerned, the news item showed that Mr R's wife had been arrested on return to Sri Lanka in March 2015.
44. The appellant worked for the LTTE during three periods of time, including with his paternal uncle, P. The appellant's witness statement made on 11<sup>th</sup> August 2014 included mention of this aspect. P was the equivalent of an attorney-general in LTTE held territory. The appellant's cousin, who gave evidence before the First-tier Tribunal, confirmed that the appellant is P's nephew.
45. The appellant continued his work for the LTTE, as a cashier and an informer. He was clearly seen by the organisation as a loyalist and the CID and the SIS would see him in this light, on return to Sri Lanka. Logan too was a prominent member of the intelligence wing.

46. The country evidence, as assessed by the Upper Tribunal in GJ, showed that the picture changed after the defeat of the LTTE in 2009. Prominent members were either killed or frequently changed sides to work for the Government. As noted in GJ, arrests by the authorities are intelligence-based now. That was precisely why the appellant was not identified in 2007 as a result of his LTTE work but was when he returned in 2012. The country evidence supported his case.
47. It was clear that the appellant believed that the rehabilitation process was under way in 2012 and that it was safe to return. That made sense to him at the time. Having been arrested and questioned, the authorities unsurprisingly asked whether he was an escapee from the LTTE, as he came from [-]. They enquired first about his place of origin, indicated that they knew there was an office on his grandmother's land and then L appeared and identified him and all was disclosed. He signed a statement and was then released on 4<sup>th</sup> January 2013, on condition that he sign on monthly thereafter. He returned to PDK to avoid signing in Colombo and then left altogether on 15<sup>th</sup> January. The account the appellant gave in the substantive asylum interview was detailed and credible.
48. Further evidence of the family connections was given in interview, regarding the role his elder brother played in the LTTE and his death in combat. The appellant said in interview that he would try to obtain the document confirming his release on bail. If he were lying, he might have simply obtained a false document with ease but he had not done so.
49. In summary, the appellant had substantial links with the LTTE, through his uncle and brother. He lost contact with his family and was concerned about them. If his account were fabricated, why did he not provide his real name in the [-] (news) interview and make up a *sur place* case? The appellant gave the interview because he genuinely did not want the Prime Minister to endorse Sri Lanka as the host for the Commonwealth summit.
50. It was clear from the Secretary of State's refusal letter that the absence of evidence showing return to Sri Lanka in 2012 was given substantial weight. However, the medical evidence shed light on this aspect too. The appellant was examined by Dr Coyne on four occasions, in April and June 2013. Dr Coyne had read the interview records and the Secretary of State's refusal letter and so knew the case against the appellant and was aware of the particular presenting factor, the mismatch between the appellant's claim that he returned to Sri Lanka and the Secretary of State's case that he did not. The report complied with guidance given in KV even though it predated that case. Most of the scars on the appellant's body were consistent or highly consistent with his account of the injuries that caused them and they came from different sources. The conclusion that some of the scars were caused following whipping with electric cables in about December 2012 came after Dr Coyne had considered other causes. The faint scars on the appellant's trunk were consistent with a healing process in place since about December 2012. Other scars were,

concluded Dr Coyne, the result of whipping or kicking or beating with a hard implement.

51. Dr Coyne also concluded that the appellant suffered from PTSD. This was important. The appellant's case was not that his ill-health engaged Article 3 or Article 8 but the PTSD or mental presentation was consistent with his account of events. It was not possible to generate self-inflicted PTSD. Dr Coyne considered other causes of distress including separation from the appellant's wife and family, his poor student record and so on. Overall, the medical report was strong supporting evidence. So far as his friend and the ticket agent were concerned, the appellant did not realise that he would need to retain travel documents when he left in 2012 and the witnesses were clearly reluctant to give evidence.
52. Turning to the COIS guidance, this was detailed, and again, supported the appellant's case. Since 2009, some 300,000 people had been screened by the authorities and intelligence was gathered from them. This was consistent with the appellant's account of events in 2012 as intelligence was now available and likely to lead to his identification. There was a consolidation by the authorities after 2009 and a constant review of intelligence. It appeared that there was an increase in arrests in about April 2014. The Human Rights Watch Report in the appellant's first bundle, at paragraph 2.3.5, was reliable evidence of returnees being arrested on arrival, and supported the appellant's case. So too did the British High Commission response to the COIS regarding returnees being questioned on arrival by the CID, the SIS and the TID. The appellant would be questioned, not least about any overseas activities. His family members had been questioned, again consistent with the country evidence.

### **Findings and Conclusions**

53. In this appeal, the burden of proof lies with the appellant and the standard of proof is that of a reasonable degree of likelihood. The appellant claims to be at real risk of persecution on return to Sri Lanka, as a person of adverse interest to the authorities there. If he is not a refugee, he may be entitled to humanitarian protection under the rules. In this context, he must show that he is at real risk of suffering serious harm on return. He also claims to be at real risk of ill-treatment, in breach of Article 3 of the Human Rights Convention. His case is not advanced on the basis of ill-health, including post-traumatic stress disorder ("PTSD"), nor does he claim that his removal would be disproportionate and in breach of Article 8 of the Human Rights Convention, in the light of family or private life ties established in the United Kingdom.
54. As noted at the outset in this decision, the First-tier Tribunal Judge accepted the appellant's account of events in Sri Lanka prior to 2012 and his claim to have been detained for brief periods of time, and ill-treated, on two occasions. Disbelieved, however, was the claim that the appellant returned to Sri Lanka in December 2012 and suffered ill-treatment during

a third period of detention, on the face of it recent evidence of adverse interest in him on the part of the Sri Lankan authorities. I turn first to this important feature of the case.

55. As Ms Jegarajah accepted, there is no doubt that the claimed return in 2012 has been in issue from the outset. The appellant was questioned in detail in the substantive asylum interview but, taking into account the lack of any supporting documentary evidence of his travel, the Secretary of State disbelieved the account he gave. The substantive interview took place shortly after the appellant's claimed return. The First-tier Tribunal hearing was held several months later, in September 2013 but the appellant had no supporting evidence in the form of a ticket or confirmation of his booking. That remains the case. In careful and effective cross-examination, Mr Tufan pressed the appellant on the reasons why no evidence was available, including statements from his friend or the "ticket agent". The explanation which emerged, that the appellant paid cash for the ticket, which was handed to him, and that his friend and the agent are not willing to make a statement or appear to confirm his account, may reasonably be regarded as very thin. Even if he were afraid to give his passport number, for example, there is still no evidence of an attempt being made to approach the airline without such details being provided. Assessed in the light of the simple claim that the appellant left the United Kingdom for Sri Lanka in December 2012 and returned in early January 2013, the net result is that notwithstanding the importance of the issue, the appellant has provided no supporting evidence.
56. However, the overall assessment requires consideration of the other evidence bearing on his claim. There is, first, a copy receipt from the Human Rights Commission recording a complaint on 2<sup>nd</sup> January 2013. The appellant said that the original was available to the First-tier Tribunal (although it is not present in the court file). The copy document has, I find, very little weight as supporting evidence. The name of the complainant bears some similarity to that given by the appellant as his wife's name but the complete name does not appear. There is no obvious correlation between the address shown in Vavuniya, and the appellant's last address in [-]. There is no detail at all regarding the nature of the complaint and nothing to show that it bears directly on the appellant's circumstances.
57. Of far greater weight is the medical report, prepared by Dr Coyne. It was produced after four meetings with the appellant, is thorough and has been carefully prepared. Ms Jegarajah correctly observed that Dr Coyne was aware of an important presenting factor, having read the Secretary of State's refusal letter and a proper focus is maintained in the report on the appellant's claim that injuries were inflicted upon him in late December 2012 or early January 2013. Dr Coyne's conclusion was that some of his scars, assessed in the light of the healing process, bore out the appellant's claim that injuries were inflicted at this time. Mr Tufan is, of course, right in pointing out that the assessment of those scars as being "consistent" or "highly consistent" with the appellant's account of the infliction of the

injuries giving rise to them admits of other, perhaps many other possible causes. Nonetheless, although the possibility that injuries were inflicted by a third party at the appellant's request cannot be excluded, the report does support his case that the scars on his body reflect injuries inflicted at precisely the time he says he was abroad, as well as injuries inflicted longer ago.

58. A second important feature of the medical report is the diagnosis of PTSD. The appellant was not prescribed medicines when it was prepared and he is not currently on medication. He has made no claim that his PTSD is so severe that he cannot be returned to Sri Lanka as a result. Dr Coyne noted when she prepared her report that the symptoms of PTSD were improving. What is important, however, is the clear diagnosis. Dr Coyne considered other causes of his symptoms, related to slow progress in his studies and separation from his wife and family, but concluded that the ill-treatment he claimed to have suffered was the cause. The diagnosis of PTSD presents a formidable challenge to a rival theory that the injuries giving rise to the scars were inflicted at the appellant's request, as there is no evidence before me, nor am I aware of any evidence, that PTSD may be self-inflicted.
59. A third important piece of supporting evidence is the record taken at the substantive asylum interview. The account given by the appellant is extremely detailed, beginning with the journey to Sri Lanka in December 2012. He was, at least, able to give the time of departure, the name of the airline, the terminal at which he left (Terminal 4 at Heathrow), even though he was unable to remember the flight number. When asked to describe events in Sri Lanka, claimed to have occurred only a few weeks beforehand, the appellant gave long and detailed answers to the questions put to him. The detail extended to the return journey to the United Kingdom, after his release on bail on condition that he report on the 21<sup>st</sup> day of each month.
60. The degree of detail offered by the appellant, regarding those who were questioning him and the developing nature of the interrogation, would be extraordinary in an entirely fabricated account. As it is, putting the detail to one side, the appellant's account of arrest on return is consistent with country evidence which includes material contained in the COIS guidance published in August 2014. Paragraph 2.3.5 refers to a Human Rights Watch report in which it is stated that Tamils living abroad have been arrested immediately on or soon after return to Sri Lanka, since the end of the armed conflict.
61. The account of arrest and detention following return in December 2012 is also consistent with the Upper Tribunal's assessment of country evidence in GJ and Others, as showing that there is a constant review of intelligence, and that the Sri Lankans approach is now intelligence-led.
62. Overall, drawing these threads together, I conclude that notwithstanding the absence of documentary evidence of travel or a witness statement

from the appellant's friend or the ticket agent, his claim that he returned to Sri Lanka in December 2012 and was detained and ill-treated following his arrival is reasonably likely to be true. As such, the adverse attention he suffered at the hands of the Sri Lankan authorities is relatively recent evidence that he is perceived to be a threat to the unitary state. That such a perception on the part of the Sri Lankan authorities gives rise to a real risk was confirmed by the Court of Appeal in MP and Another [2014] EWCA Civ 829.

63. In reaching this conclusion, I have also taken into account the other evidence before me. The interview with [-], the [-] journalist, has weight. The detail in [-] article is, I find, sufficient to identify the appellant as the person interviewed and it is clear that he was anxious to avoid giving his real name as he feared for his family in Sri Lanka. Again, if the account of relatively recent ill-treatment were fabricated, the appellant might well have simply given his name. In any event, the interview is reliable evidence that the appellant was not simply making claims about the ill-treatment of Tamils in Sri Lanka on an opportunistic basis. I have also taken into account the appellant's identification of his brother, who died in 1992, as a member of the LTTE and, although it has rather less weight, the mention of his uncle P. The account of the presence of L during the third period of detention, as a person working for the authorities, is, at first sight, surprising in view of the passage of time since the appellant last met him. On the other hand, the country evidence does show that much of the recent intelligence gathered by the Sri Lankan state has come from former LTTE members, some in senior positions, through the rehabilitation process.
64. The article attached to the recent witness statement, from The Nation, recording the arrest on return of a former leader of the LTTE Women's Sea Tiger Wing, apparently the wife of Mr R, the person mentioned by the appellant in the substantive interview, has no substantial weight. There is little in the article to link the name of the person whose alias was S with Mr R, although his wife is described as having left Sri Lanka for France in 2005.
65. Nonetheless, having found that the account of the third period of detention and ill-treatment, following the appellant's return to Sri Lanka in 2012, is reasonably likely to be true, and weighing that account with the earlier detentions, which of themselves would be insufficient to show a risk on return now, my overall conclusion is that the appellant has made out his grounds of appeal in relation to the Refugee Convention and Article 3 of the Human Rights Convention.
66. The decision of the First-tier Tribunal having been set aside, it is remade as follows: the appeal is allowed.

## **Notice of Decision**

67. The decision of the First-tier Tribunal has been set aside. It is remade as follows: appeal allowed on asylum grounds and in relation to Article 3 of the Human Rights Convention.

**ANONYMITY**

The anonymity direction made in these proceedings is continued.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

**TO THE RESPONDENT**  
**FEE AWARD**

As no fee is payable in this appeal, no fee award may be made.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell