



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

Appeal Number: AA/09989/2011

THE IMMIGRATION ACTS

**Heard at Field House
On 8 October 2014
and 11 November 2014**

**Decision and Reasons Promulgated
On 11 December 2014**

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

**VITHYAVARUN PATKUNALINGAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Mallick

For the Respondent: Mr T Melvin

DECISION AND REASONS

1. The appellant is a national of Sri Lanka who was born on 23 July 1987. He applied for a Tier 4 Student visa on 22 November 2010 and was issued with it on 17 January 2011. He came from Sri Lanka to the UK on a direct flight on 6 February 2011. He made an asylum claim on 14 July 2011 but this was refused on 19 August 2011 and a decision was made to remove him. He appealed to the First-tier Tribunal but his appeal was dismissed. Since then

there has been a lengthy history concerning these appeal proceedings. Finally a consent order in the Court of Appeal of 7 January 2014 ordered that the appeal be allowed to the extent that the matter be remitted to the Upper Tribunal for reconsideration in respect of the appellant's appeal against the refusal of asylum and humanitarian protection in the light of the findings of the Upper Tribunal in the country guidance determination in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)**.

2. The conclusion leading to the consent order as was cited in that order is that the parties agreed that the Upper Tribunal misdirected itself in law in relying on **TP (Credibility) Zimbabwe [2004] UKAIT 00159** to determine the credibility of the appellant and furthermore the UT did not give sufficient reasons for its findings on credibility.
3. The appeal therefore came before me for a fresh hearing. The hearing on 8 October was adjourned part-heard to 11 November for oral submissions to be made.

The Written Evidence

4. There are a large number of documents before me but the essential documents comprise:- the respondent's refusal bundle; the appellant's "review" bundle and objective bundle; skeleton arguments from both parties and written submissions; a bundle comprising letters from the ICPPG and Transnational Government of Tamil Eelam; letters relating to the medical situation of the appellant's daughter and the Court of Appeal case of **MP & Anor v Secretary of State for the Home Department [2014] EWCA Civ 829**.
5. The appellant has made various statements. These statements are in addition to the information that he gave in answer to questions put to him at an interview in 2011. His statements are dated 22 September 2011, 13 November 2012 and 2 October 2014. He also gave oral evidence before me in Tamil through an interpreter. The appellant was cross-examined by Mr Melvin on behalf of the respondent. The appellant married in Sri Lanka and his wife now lives with him in the UK. She arrived after him and is a dependant on his application for asylum. The appellant's wife has made a witness statement that is dated 15 November 2012. She also gave oral evidence before me in Tamil. The appellant and his wife have a daughter together who was born on 15 October 2012. She is therefore now a little over 2 years old.
6. In his statement of 22 September 2011 the appellant gave details of his family including details in relation to his parents who were then living in Kallady in Sri Lanka. He gave information also about his younger brother and sister who were living at his parents' address as well as details of an older brother whose (then) current whereabouts he did not know.

7. Summarising the appellant's evidence, he wrote in his first statement that in 2002 his brother joined the LTTE and left home staying in an LTTE camp until he then left for Vanni in 2006. The appellant himself assisted his brother and his friends and other LTTE members from 2003 to 2009. He helped them in Batticaloa from 2003 to 2006. He then moved to Vanni in April 2008 and assisted them there, "... because the LTTE were not publicly active after 2006". He assisted by finding accommodation and food for members of the organisation whenever they came to the army controlled area. He also collected envelopes given by them and handed them over to members coming from other areas. Sometimes he was asked to keep parcels safe and to give them to their friends when they returned. He did not know what the parcels contained. Later on the LTTE split into two groups. The appellant's brother stayed with the main group rather than with Karuna's Group which angered the Karuna Group's people. They started to harass the appellant and others in 2008. They wrote to the appellant requesting that he attend their office for enquiry, but the appellant was scared and terrified to go to see them because others who had done so were either forcefully asked to join them and were then taken with them or some of them ended up dead.
8. In March 2008 the mobile passport office of Sri Lanka came to Batticaloa. Because of the severe harassment by Karuna's Group and their associates the appellant decided to apply for a passport in case he had to leave Sri Lanka to escape them. On 29 March 2008 he went to the mobile unit and applied for his passport which was then posted to him in May 2008. When it arrived the appellant's father signed for it on his behalf.
9. On 9 April 2008 a number of Karuna Group members visited the appellant's home and asked for him but he was not there. They questioned the appellant's father and threatened to kill the appellant if they caught him. They assaulted the appellant's father who warned the appellant not to come home but to go and stay in his aunt's house. His father came to his aunt's house with some of his clothes and told the appellant that they were going to travel to Vavuniya. Having arrived there they stayed in a lodge for the night and he then went to Omanthia the following day. His brother met him there and took him to Nedunkeni and arranged with a friend of his brother's for the appellant to stay. He was able to move freely and independently as at that point he was in an LTTE controlled area. Whilst there he attended courses and classes given by the LTTE on how to treat the wounded and help the aged. He was not a member of any fighting unit. Nevertheless there were a small number of people who were against LTTE and they were members of PLOTE or EPRLF. Those people later identified people who were working for the LTTE.
10. In May 2009 the war was coming to an end and people began to move back to the army controlled area and surrendered to the army. The appellant did so on 10 May 2009. He was then detained at Veppankulam Camp. The

authorities became aware of the appellant's brother's involvement with the LTTE and how the appellant himself was helping that organisation. He was detained at the camp between 10 May 2009 until 25 December 2009. He became aware of the practice of officials accepting bribes from a relative of a detainee and then releasing them.

11. The appellant gave details of how he was tortured at the camp in his statement of 22 September 2011. The authorities called it "inquiries" but they bullied and tortured him. He was asked to sign blank papers which he at first refused to do. He was then asked to sign a confession that he was an LTTE member and when he refused to do so he was branded with a hot iron and with his continuing refusal to sign they branded him more. He realised that they were not going to leave him alone until he signed so he did so. They told him that if he did not behave that would be the end of him. After that incident he was only very seldom taken for "inquiry". During his detention his torture also included hanging him upside down and immersing his head in water. He was beaten with iron pipes and almost suffocated. During one of his sessions his shoulder was dislocated and he still has problems with that shoulder as a result.
12. The appellant became "slightly friendly" with a Muslim officer who told the appellant that people were leaving the camp by paying a bribe. The officer contacted the appellant's father. The officer came after a few days and told the appellant that on Christmas Day there would be drinks and good food for the guards and if arrangements were made for that day to organise the appellant's release "it would be easy to keep some of the guards who were not party to this by making them drunk". Although the majority of Sri Lankans are not Christians it does not prevent others from celebrating Christmas also.
13. On 25 December the appellant was led through a back door and taken in a van to Madawachi. From there his father took him to Colombo where he stayed the night with a Catholic priest. The next day he was taken to Negombo and introduced to a man who became his agent. That agent tried to send him to India but was unable to do so. He tried to send him to other countries but failed and then said that there was only one way he could get the appellant out of the country which was by obtaining a student visa to the United Kingdom and arrangements were then made.
14. When he was in Batticaloa the appellant became friendly with a person who became his wife and arrangements were made for them to marry before he left. They married on 30 January 2011 and the appellant then returned to Negombo. The agent was influential at the airport. The appellant followed his instructions and did not have any trouble with immigration at the airport. His wife phoned him after his arrival in the UK and said that she had been visited by members of the Karuna Group and the CID who were asking for him. She was harassed to the point that she even contemplated

suicide. The appellant spoke with his father and arrangements were made for the appellant's wife to come to the UK as his dependent. She arrived on 20 May 2011.

15. In his statement of 13 November 2012 the appellant expanded upon some of the matters made in his earlier statement. He has not seen his elder brother since December 2008 and does not know if he is still alive. He confirms that his younger brother and sister have never been involved in politics or the LTTE. He had not been able to contact his parents for the last six months so did not know if the family still had a home in Batticaloa to where they had moved in December 2006. His father always supported the LTTE "as far as I can remember".
16. In a later statement the appellant states that he fears that if he returns to Sri Lanka they will know who he is and will kill him or torture him again. He signed a statement there and even though he signed it under torture they would use that to torture him again. He fears for the safety of his wife and daughter.
17. In the appellant's latest statement dated 2 October 2014 he says that he continues to fear returning to Sri Lanka for all the reasons given previously, but also as a result of what he has been doing in the UK since his arrival here. He no longer telephones his parents because the CID continue to visit the family home looking for the appellant and he fears that his calls may be monitored which has led to his decision that he should stop calling until circumstances improved. The last time he knows the CID visited was towards the end of last year. They continue to look for him because of the outstanding warrant they have in his name. His wife has also cut off contact with her family for the same reason.
18. As to his activities in the UK the appellant states that what he suffered in Sri Lanka has not lessened his motivation but has spurred him on to seek Tamil freedom more than before. He has continued his political views and become even more politically aware. He has participated in protests in central London since 2011 and pictures of him at a protest have been published in a Sri Lankan newspaper. He attended meetings and demonstrations organised by the British Tamil Forum (BTF). Initially he was not a member because he could not afford the fee. The appellant used to go with a friend who kept him updated with details of the organisation's activities. The appellant is now a full member of BTF. He volunteered to assist in the event organised for the remembrance of the dead on 18 May. More than 1,000 people attended at the demonstration in Trafalgar Square and his role was "to speak to people to explain the significance of that date, 18 May, and also to try and recruit new members for the BTF". He also participates in events and activities organised by other groups and organisations such as one seeking to boycott Sri Lankan goods. He is still being treated by the Medical Foundation and has been

invited to be interviewed by the UN in connection with what happened to him in Sri Lanka. He has agreed to be interviewed.

19. The appellant continued that he has settled here as part of a family and being in the UK and safe is something that has helped him a great deal in coming to terms with what happened to him in Sri Lanka. He has not fully recovered and the thought of being forced to return to Sri Lanka makes things very difficult for him.
20. The statement from the appellant's wife is dated 15 November 2012. She confirms that she has no immediate family other than her husband and daughter. She is an only child and after her mother passed away in 2005 from a heart attack she lived alone at the family home. She worked for a Swiss NGO in Batticaloa which arrived there after the tsunami to help the children affected by it. The witness worked as a teacher and carer of those children. She met the appellant at her mother's first cousin's house. She has four daughters and one son. The son's name is Uthayakanthan and he fled Sri Lanka to go to Saudi Arabia in early 2008 because Karuna's men were looking for him. On 9 April 2008 the appellant called her to say that he had problems and that he was leaving for Vanni, although he did not tell her what the problems were. She was upset and worried for him and she only spoke to him twice when he was in Vanni. The next time she spoke to him was when he was in Negombo on 1 January 2010. She had no idea what had happened to him before he called her on New Year's Day. He told her that he was living in Negombo and that he could not come back to the Batticaloa area because of his problems. He said also that he could not stay in Sri Lanka and that he was planning on leaving to go to a foreign safe country.
21. In January 2011 the appellant told her that he had managed to obtain a visa to go abroad and that he was leaving Sri Lanka. She was very upset about this and ultimately they agreed to marry. He could not come to Batticaloa but told her that she should go to Ampara and they would marry there. The whole marriage was carried out in secret but people came to know about it. She maintained a relationship with her in-laws and went to see them four or five times and they also visited her, but not very often.
22. About two weeks after the appellant came to the UK Karuna's men came looking for the appellant. When they did not find him they warned the witness that they knew he was there and that when he came home he had to see them. They returned and when they did not find him she was threatened. They feigned to hit her and verbally abused her. As a result of this she was very scared to stay where she was and used to stay with neighbours at night. People began to distance themselves from her because they knew that Karuna's men had visited her at home and these people did not want to get into trouble. She told the appellant about this and he said that he would try to help her. There was a third visit from these men and

before they arrived she left through the back door and went to a neighbour's house. A message was left with a neighbour that the witness should go and see them. Arrangements were then made for her to leave the country. She stayed with friends a little distance away from her home whilst those arrangements were made. She already had a passport because when she was working for the NGO she had a chance to go to India with them and needed a passport for that purpose.

23. It was only once the witness came to the UK that she found out what had happened to her husband in Sri Lanka. He still suffers from his shoulder injury and chest pains. She knew that he had trouble in sleeping and would often get up in the middle of the night and stay awake, although there has been an improvement. She did not claim asylum herself in the UK because she had no difficulties other than were caused by reason of her relationship to her husband.

The Oral Evidence

24. In oral evidence before me the appellant confirmed the contents of his statements to be true, and he was then cross-examined by Mr Melvin. He was asked if he had any evidence that the Sri Lankan authorities are looking for him, to which he responded that his father had told him that there was an arrest warrant and that is why the CID had continued to come to the house and search it. His father told him about this at the end of last year. Since then the appellant has had no communication with his father because it could be risky for his parents' lives if he did get in touch with them. The CID told his father that they would harass him if the appellant did not return.
25. In 2008 the Karuna Group sent letters telling the appellant to come and see them and told the appellant's father that if the appellant did not do so, when they did meet up with him they would shoot him. The appellant said that they first threatened to kidnap his father in 2011. When asked why there was any change between 2011 and 2013 which led to the appellant stopping communicating with his parents he said that they were tapping the telephone. He knows that his father has been taken "for enquiry" and he believes that he has been kidnapped. The appellant was told by his mother that his father had been taken for questioning. Mr Melvin made the point that the appellant did not mention that in his most recent statement. The appellant then denied that he was making up evidence about the kidnap. He has never said that his father was kidnapped, only that he has been taken away for questioning, but he believes that he has been kidnapped.
26. When it was pointed out that the statement did not even say that his father had been taken for questioning the appellant responded that he had clearly told everything to his lawyer. His father did not say if he had seen the

arrest warrant, but if they are looking for someone they must have had one, otherwise there would be no reason for them to come. He did not know if his family had instructed a lawyer to act on their behalf. He confirmed that in 2013 his younger brother and sister were still living with his parents.

27. The appellant continued to respond in cross-examination to say that he was released from custody by paying a bribe. He confirmed that it was only he who escaped on 25 December and that there was a team of people who arranged for him to leave. Asked to describe how he got outside the camp perimeter the appellant said that he was instructed to open the back door. The door was left unlocked for him. He then had to pass out through an iron gate which had a fence around the camp on either side of it. There were no guards on the gate at the time.
28. The appellant then went on to confirm that he used his own passport when leaving Sri Lanka and that for travelling purposes before he left he used a Muslim person's ID card provided by the agent. When he went to college in the UK there were lots of Sri Lankans and students from other countries. He did not ask about asylum as he was worried that others would come to know of his problems and if the Sinhalese came to know there would be problems for him. He did not know who to get advice from but eventually at his church he was told that he should seek a lawyer's advice.
29. The appellant then gave details of what he has been doing in this country in relation to the British Tamil Forum. He said that he was working as a volunteer. He explains to people the reasons for demonstrating; he puts up banners and holds placards. He was not able to say if he was named in any literature. He did speak at demonstrations with a megaphone. An article appeared with his photo in it in the Tamil Guardian, although his name did not appear or say what role he had. He accepted that he only became a member some three weeks before the demonstration but he had worked with the organisation since 2011. He could not join them earlier because he was unable to pay the membership fee which at the time was £100. In 2014 it was reduced to £20. He did not have evidence from senior members that would confirm what activities he undertook for them. He went on to say that he is due to give evidence as a person affected by what went on in Sri Lanka and this was in relation to the investigation of war crimes. As for injuries he was not taking any medication now. He described how his daughter has problems walking and there is an appointment next year to go to the hospital.
30. In re-examination the appellant said that his parents' phone might be tapped and so that is why he stopped phoning. During 2012 his mother clearly explained and he also heard news that phones were being tapped and he was worried about this. When he talked to his mother she said that they had taken his father for questioning and if he, the appellant, did not give himself up then they would detain his father. Asked to explain what

he meant by his father being taken by the authorities as if he had been kidnapped he responded that they had taken his father away and therefore the appellant thought of this as being kidnapped. He thought that they would not question him at home because they would be able to “attack him” once he had been detained. He confirmed that he has been receiving counselling from the Medical Foundation since 2011 and last attended on 6 October 2014.

31. I then heard evidence from the appellant’s wife who explained that she and her husband decided to marry ahead of him coming to the UK because she would have been living alone in Sri Lanka and people would be talking badly about her as they knew that she had been with him. She said also that her daughter had an appointment in May 2014 regarding her leg problem and she has another appointment in May next year. With regard to the British Tamil Forum she knows that her husband is working with them but does not know what he is doing for them.
32. As mentioned previously I have before me the respondent’s written submissions. I noted down Mr Melvin’s verbal submissions and have taken them into account. The skeleton arguments on behalf of the appellant were relied on by Ms Mallick and she made verbal submissions also which, again, I have taken into account in arriving at my conclusions.

The Burden and Standard of Proof

33. The burden of proof is on the appellant to establish that substantial grounds have been shown that there is a real risk or a reasonable degree of likelihood of him suffering persecution in Sri Lanka for one of the reasons set out in the Refugee Convention which, on his case, is that of actual or imputed political opinion. I have considered also whether the appellant may be entitled to a grant of humanitarian protection pursuant to paragraph 339C of HC 395 (as amended). In relation to the asylum, humanitarian protection and Articles 2, 3 and 8 of the ECHR claims I have considered the circumstances at the date of the hearing.

My Findings

34. There are some parts of the appellant’s evidence that I accept and some parts that I do not. Generally speaking he has been consistent about the background facts relating to his family. I find that his parents still live in Sri Lanka in their own home with the appellant’s younger brother and sister. The appellant has also been consistent in his evidence at interview and subsequently that his brother was fighting with the LTTE, and that the appellant does not know what has become of him because there has been no contact between them for many years.
35. From the evidence given, both oral and written, I find that the appellant became enmeshed in the civil war along with most if not all of his

countrymen and women of Tamil ethnicity. He was a student through much of the relevant time and was more interested in studying for his O level exams which he took in 2003, and later his A levels that he failed in 2006 but which he re-sat in 2007, than helping the LTTE. The activities that he undertook for the LTTE were of the sort that were carried out by tens of thousands of other Tamils during the civil war by those who were not directly involved as fighters. "My brother and the LTTE members asked me to help them" (Q. 53). He was a school prefect and as such said that he had to make speeches. He was asked about his role in the organisation of the Pongu Tamil and Heroes Day celebrations in 2005 and 2006 and what specifically the speeches were about that he delivered to the students. I found that his answer namely that "we are all Tamil people and we have an organisation for us -- we shouldn't give up our rights" even as a summary are not the words of a political activist with firmly held beliefs in the LTTE or Tamil cause.

36. In marked contrast to his description of the speeches that he gave was the detailed one given of his own movements throughout the period of the remainder of his stay in Sri Lanka, even to the point of giving specific dates on which they took place. The appellant in his statement of 2 October 2014 wrote that since being in the UK he has continued his political views and has become even more politically aware. However, I do not find that he was politically involved or held strong political beliefs in Sri Lanka and neither do I find that he is involved in any serious way with the British Tamil Forum given his description of his activities in the UK. He has exaggerated his importance to the movement. I accept that he has been working as a volunteer as no doubt many hundreds, if not thousands, of others have also.
37. In the documentation before me there is said to be one photograph in which the appellant features that appeared in the "Tamil Guardian" in May 2013 but whether it is the appellant I could not tell and he has not been named in the publication. There are a small number of photographs in the bundle that appear to show the appellant at a gathering, that the appellant says was a protest. In two of those photographs he is holding a flag of some sort. I take all of this into account when considering what, if any, danger he may face on return to Sri Lanka.
38. On my finding it is very unlikely that the appellant would have a political profile which makes him of adverse interest of the Sri Lankan authorities. He was primarily a student in Sri Lanka who helped the LTTE for a period of the civil war. He had no strongly held political beliefs and since his arrival in the United Kingdom has been present at one or more protests but as a fact he has no current deeply held political beliefs either.
39. It is known that in May 2009 the civil war was coming to an end. The appellant maintains that he moved back to the army controlled area with thousands of other Tamils as hostilities ceased. This fits with the

background information and it is likely, I find, that along with all other young men he was detained for screening and investigation as to his participation in the LTTE movement. It is credible that because he moved into the army controlled area without a family and was therefore on his own that he was picked out for particular attention.

40. I find that the appellant was tortured during the period that he was detained. Although the respondent at paragraph 22 of the refusal letter seeks to suggest that, as is set out in paragraph 21, the appellant inflicted wounds on himself in order to create scars to support his story, I am unimpressed with that argument. There has never been any good evidence to show that the practice has been widespread and it has not been supported in subsequent cases where that matter has been raised. It is also the case that the appellant has been diagnosed with post-traumatic stress disorder in the reports that I have before me and it is difficult to see why he would suffer in that way if the wounds were self-inflicted. Furthermore, I cannot believe that the Medical Foundation, with all its experience, would be spending time counselling the appellant unless his problems were worthy of that organisation's continuing attention, even though I have not heard from them.
41. I have heard what the appellant has to say about how he escaped on Christmas Day 2009 from the interrogation camp some months after he was detained there. However, I do not believe that events unfolded in the manner asserted. The Muslim CID officer who allegedly helped him was from Ampara which is not far from Batticaloa where the appellant lived. This led to a form of friendship. The officer told him that he could not help because he might or would lose his job. Despite that concern, according to the appellant, and presumably because of the bribe paid and the friendship, he agreed to organise the appellant's escape on Christmas Day. Both at interview and before me the appellant's description of how he escaped seemed to me unlikely. His cell door and the gate, or one of the gates, to the camp was left open which then enabled the appellant to walk out to a van, which van was driven by the Muslim officer. Although accepting that money could have been his motivation, it seems to me a very unlikely risk that the officer would take by behaving in this way. He may have gained money but risked losing his job and being punished, one surmises, whether bribes were paid to others or not. As the respondent points out, additionally, given that Christians make up only 8% of the predominantly Buddhist and Hindu Sri Lankan population, it is implausible that the majority of the camp staff would be drunk because it was Christmas Day or alternatively that a number of prison guards were part of the plot to secure the release of the appellant.
42. More likely, I find, is that the appellant was of no lasting concern to the authorities. He was detained and tortured but revealed nothing that was of particular interest and he was released. It would of course support the

appellant's case to have been released in the manner that he asserts because this provided the reason for the issue of the arrest warrant that he mentions for the first time in his statement of 2 October 2014. However, the appellant has not provided any written evidence that the Sri Lankan authorities are looking for him, although he maintains that his father told him that there was an arrest warrant, which is why the CID continued to come to the house.

43. The appellant says that he is not communicating with his parents anymore because it would put them in danger, although it is difficult to see why that should be the case when he is in the United Kingdom and his parents are in Sri Lanka. If their phone is being tapped then the authorities would know that to be the position. The explanation given by the appellant that his parents would be in danger if he contacts them of course provides the reason why the appellant would be unable to ask his father anything about the arrest warrant or obtain a copy of it. I do not accept that I have been told the truth on the matter.
44. In oral evidence the appellant referred to his father being "kidnapped" by the authorities but then admitted that he does not know what has happened to his father. The only explanation he could give for no mention being made in his latest statement about his father being taken for "inquiry" or having been kidnapped was that he had told everything to his lawyer, the implication being, presumably, that the lawyer should have set this out in the statement but failed to do so. As the appellant himself gave evidence that he agreed the contents of his statement and signed it after it had been explained to him in a language that he understood, I do not believe that he would have allowed something as important as his father being taken for "inquiry" or having been kidnapped to be omitted from that statement.
45. At this point I refer to the evidence given by the appellant's wife. I find that on most matters of importance she is not able to help provide corroborative evidence. Indeed, according to her, the appellant kept a lot from her, including what happened to him in prison. She has done her best to be supportive of him and she knows little about his work with the British Tamil Forum.
46. The marriage took place when the appellant had been trying to leave Sri Lanka for a considerable time, on his evidence, and when he was in the hands of the agent and under his control. The appellant's wife was very concerned and upset when she found out that the appellant was about to leave Sri Lanka without marrying her. They then agreed to marry. It may have been easier to organise the wedding at short notice in Ampara than in Batticaloa. The elaborate description by the appellant as to how the arrangements were made and how the wedding itself took place may have been as much to protect the agent as the appellant says it was to protect him. The appellant had been staying with the agent and his family for a

long time in Colombo and it is reasonable to suppose that the agent needed to ensure that the appellant did not become the subject of interest at any road block that might be encountered on the way to the venue at a time when the agent was accompanying him.

47. In paragraph 36 of the appellant's wife's written statement of 15 November 2012 her evidence is that she had no difficulties herself "other what is related to my husband". The alleged visits by Karuna's men to her following the marriage provides the reason for arrangements being made for her to leave Sri Lanka and shows that the appellant, in 2011 at least, was still of interest to the authorities. According to the appellant's wife there were three visits in total. On the second visit she was threatened and the men feigned to hit her and verbally abused her warning that if the appellant did not report they would take her in. She explained in her statement that she used to stay with neighbours at night but people then started to distance themselves from her and so she returned home. The men returned a third time but she managed to escape.
48. It seems to me that anyone who was threatened with being taken in would not have stayed at home on their own but would have done what the appellant's wife eventually said that she did which was to stay with friends "a little distance away from home". While accepting that she did not want to or she felt unable to stay at any one place for long, if she worried that the men were likely to carry out their threat she would surely have been less vulnerable anywhere than in her own home. Either, therefore she was not that concerned about Karuna's men coming after her in spite of their threat otherwise she would have moved elsewhere, or what she says happened to her is an invention. I am not persuaded to the relevant standard that she was visited and threatened by Karuna's men in the manner described or at all. Had the threat been real she would have moved away from her home before the third visit.
49. I take into account that the appellant did not claim asylum until approximately five months after he arrived in the United Kingdom. He began studying and only stopped doing so shortly before claiming asylum. That I find is inconsistent with his claim to have travelled to the United Kingdom specifically to seek protection. His explanation for not revealing that he was looking for asylum to others at college does not ring true, and nor does his claim that he did not know who to get advice from. In oral evidence he said that there were other Tamils and Sinhalese also at college and he thought there would be problems him if the Sinhalese came to know about him and they would be a danger to him. He is not uneducated and is clearly not unintelligent and I find that I have not been told the truth by him on the point. There was undoubtedly advice available had he wished to obtain it.

50. The much more likely explanation for not claiming asylum soon after he arrived in the UK is that this was a deliberate move by him to delay doing so until after his wife's arrival here. In cross-examination the appellant denied that this was what happened. However, if he claimed asylum at an earlier date and before arrangements had been made for his wife to come it is reasonable to suppose that she would have been refused a visa, or at least entry to the United Kingdom, as a student dependant. Although it is perfectly understandable that he would wish to have his wife join him and would therefore wish to avoid such a situation arising, it would have been easy enough for him to admit that this was his intention rather than give the reasons that he did for not claiming asylum earlier, which reasons I reject, as explained above.
51. I observe also that the appellant appears to have made no enquiries about the situation of his family during 2014. It seems unlikely that there would not be other family members or friends of whom he could make enquiries. If he was truly concerned that his father has been kidnapped, it is reasonable to suppose that he would be very anxious to know what has happened to him. Although again it may be a matter of funding, or rather lack of it, there is no evidence either that the appellant has approached a lawyer in Sri Lanka to make enquiries about his family or to establish whether there is an outstanding warrant against the appellant. These are not the actions of a genuine asylum seeker.
52. There is also a point at paragraph 5 of the latest statement of the appellant dated 2 October 2014 where the appellant says that his wife has also cut off contact with her family because of the fear of monitoring by the authorities. However, the appellant's wife has always maintained that she has no immediate family left in Sri Lanka. She was not asked about this at the hearing so I feel unable to attach any significant weight to the statement.
53. I have taken into account in my overall consideration of this appeal the other documents produced, the most relevant of which would appear to be those allegedly from the TVMP in 2008 demanding that the appellant come to see them and making threats when he did not. These letters are certainly capable of corroborating the appellant's evidence to some extent but although they appear to have been written on some form of headed notepaper - only a photocopy was produced - the contents are handwritten and would be very easy to manufacture. Without better knowledge of their provenance I find that I am unable to give them any significant weight.

My Deliberations

54. The case of **KV (scarring - medical evidence) Sri Lanka [2014] UKUT 00230 (IAC)** deals with a number of issues concerning medical evidence and in particular the issue of whether doctors and/or decision makers, when assessing claimants who have scarring which they attribute to torture, need

to consider the possibility that they have deliberately had their scarring inflicted by a third party acting with their consent. In this case the medical report from Zacharias Costa is dated 14 August 2011 and is referred to in the Reasons for Refusal Letter that is dated 18 August 2011. In that refusal letter the matter of the possibility of "SIBP" (self-infliction of injuries by proxy, meaning injuries caused by a third party at a person's invitation,) was raised (para 21). At paragraph 22 of the RFRL the point is made that Dr Costa fails to explain how the size, position, form and characteristics of the scars do not in his opinion appear to have been caused by accident or indeed to have been self-inflicted. Another criticism of the report is that no attempt has been made to date the scarring. **KV** found that whilst the medical literature continues to consider that scarring cannot be dated beyond six months from when it was inflicted, there is some medical basis for considering in relation to certain types of cases that its age can be determined up to two years.

55. It would have been helpful for further medical evidence to have been provided which dealt with such matters as it may have made my task easier in establishing not only the cause of the scarring but also more certainly how and by whom the injuries were inflicted, and also the age of the scars. I understand well that the matter of funding may have been an issue preventing such a report being obtained, but lack of such an amending or further report is regrettable.
56. There is also the psychological report from Georgia Costa that is dated 14 August 2011. Included is her professional opinion that removal from the UK and return to Sri Lanka would have a significant deleterious effect on the appellant's mental state and he is likely to become even more depressed and retraumatised. She states that it is highly likely that the appellant would be at greatly increased risk of suicide as a result of the retraumatisation and the loss of hope for the future.
57. That report is now more than three years old. There is no updating report. I have not seen any submission from the appellant in his interview, statements or at the hearing relating to suicidal ideation and if this were truly a matter of concern I would surely have heard about it. I have not and therefore I reject any suggestion that the appellant has ever or would now be at risk of taking his own life. He has given evidence that he has been receiving treatment from the Medical Foundation since 2011. Additionally there is no report from the Medical Foundation which might have shed some light on matters of concern such as suicidal ideation.
58. The leading country guidance case in relation to Sri Lanka is **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**. I have also read and had regard to the later case of **MP and NT [2014] EWCA Civ 829** where certain aspects of **GJ** were challenged.

59. The headnote in **GJ and Others** states as follows:-

- “(1) This determination replaces all existing country guidance on Sri Lanka.
- (2) The focus of the Sri Lankan government’s concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.
- (3) The government’s present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the ‘violation of territorial integrity’ of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
- (4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.
- (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.
- (6) There are no detention facilities at the airport. Only those whose names appear on a ‘stop’ list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.
- (7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
 - (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.
 - (b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record,

or who are associated with publications critical of the Sri Lankan government.

- (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.
 - (d) A person whose name appears on a computerised 'stop' list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a 'stop' list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.
- (8) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.
- (9) The authorities maintain a computerised intelligence-led 'watch' list. A person whose name appears on a "watch" list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.
- (10) Consideration must always be given to whether, in the light of an individual's activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee

Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the 'Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka', published by UNHCR on 21 December 2012."

60. The risk factors identified which have or may have relevance in this appeal are:-

- (a) Whether the appellant is or would be perceived to be a Tamil activist in the diaspora who was working for Tamil separatism and to destabilise the unitary Sri Lankan state, bearing in mind the Sri Lankan state's focus on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
- (b) Whether if the appellant is detained by the Sri Lankan security forces he is at real risk of ill-treatment or harm requiring international protection.
- (c) Whether his name is on a "stop list" such that he risks being detained at the airport? If not, are the Sri Lankan authorities interested in or may they become interested in him after arrival in his home area where his arrival would be verified by the CID or police within a few days

61. I am unable to conclude that the activities of this appellant in the United Kingdom either constitute, or would be perceived to be, a threat to the integrity of Sri Lanka. This appellant does not have a significant role in relation to post-conflict Tamil separatism. Although he has given evidence that he has taken part in lots of activities between 2011 and 2014, the details given were scant and on any view he did not and does not take part in organising demonstrations, although I accept that he has been present at one or more of them. It is perhaps a measure of his lack of commitment as well as lack of funds that he says that he did not apply for membership of the British Tamils Forum until April 2014, some three years after he arrived in the United Kingdom. As was set out in paragraph 336 of **GJ and Others** the Upper Tribunal found:

"We do not consider that attendance at demonstrations in the diaspora alone is sufficient to create a real risk or a reasonable degree of likelihood that a person will attract adverse attention on return to Sri Lanka."

And at paragraph 351:

“Attendance at one, or even several demonstrations in the diaspora is not of itself evidence that a person is a committed Tamil activist seeking to promote Tamil separatism within Sri Lanka.”

62. As was said in paragraph 24 of **MP and NT** the issue here is not that of the politically indifferent who seek to bolster an asylum claim by opportunist participation in sur place demonstrations in the hope of being photographed and perceived as suspicious (as to which, see, for example, **KS (Burma) v Secretary of State for the Home Department** [2013] EWCA Civ 67), the concern is with genuine diaspora demonstrators who may be put at risk on return as a result of surveillance and video recording or photography.

At paragraph 25 of **MP and NT**:-

“There was evidence before the UT of such intelligence gathering by the Sri Lankan authorities and that it has reached a level of sophistication. However, it did not take the form of a cogent correlation between mere participation in such demonstrations and persecution on return. Nor, for that matter, do the UNHCR Guidelines put it so low. The reference to LTTE ‘propaganda activists and those with, or perceived as having had, links to the Sri Lankan diaspora that provided funding and other support to the LTTE’ seems to assume a higher level than mere participation in one or more demonstrations. No doubt it can form a part of the picture but I do not consider that it was legally erroneous of the UT to conclude that it needs more to qualify as a risk category or operative risk factor ...”

63. Not nearly enough good evidence has been put before me to allow a finding that the appellant’s name would appear on a computerised “stop” list. Such a list would comprise those against whom there is an extant court order or arrest warrant. For reasons that I have already given there is no evidence to which I can give weight that leads me to suppose that there is such a court order or arrest warrant in existence.
64. I have already found that the appellant participated in low-level activities for the LTTE. As **GJ and Others** found in post-conflict Sri Lanka, an individual’s past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.
65. It is possible that the appellant would appear on a watch list. He has taken part in one or more demonstrations at which several thousand other Tamils demonstrated also. It is a matter of conjecture as to whether he would therefore appear on such a list. As a fact I do not find that he has deep-rooted political beliefs indicating that he is an activist working to destabilise the Sri Lankan state, or that he hopes to revive the internal armed conflict. On the assumption that the computerised intelligence led watch list leads to

the same finding he is not reasonably likely to be detained by the security forces on return.

66. I pause here to make the point that the appellant at interview when asked about his brother's role in the LTTE responded that he was a fighter and he heard that he was a Colonel (questions 27 and 28). I do not accept that he was a Colonel as there is nothing else to suggest this, and even the form of the appellant's reply to the question was such that he appeared unsure about it.
67. On the evidence that I accept therefore the appellant is not related to a (former) high-ranking LTTE member and nor does he have other connections, familial or otherwise, that might indicate to the authorities in Sri Lanka that he either is or would be seen as a threat to the integrity of the state. Although the appellant claims that he was released upon payment of a bribe and escaped, I have not accepted that he escaped, and particularly not in the manner claimed. I have accepted that he was tortured at the end of the war at a time when the authorities were seeking to establish the part that Tamils may have taken in the civil war. I have also taken into account that past behaviour is often a good indicator of what may occur in the future.
68. The appellant could have signed a confession letter as he claimed, but viewed overall his credibility is damaged by matters set out earlier in this determination such as I find that he did not do so. It is more likely, because of my findings as to his lack of credibility on certain matters that having been tortured the information revealed was not such as led to any real further interest in him and he was released, or remained detained, until an opportunity arose to extract a bribe from a family member which led to his release at a later date.
69. It is for these reasons that I am not satisfied that even applying the lower standard of proof that this appellant risks persecution from the Sri Lankan authorities if returned to Sri Lanka.

Human Rights

70. With regard to other matters the appellant is married and has a young daughter. Her medical problems are not such as require urgent or continuing treatment. She is being monitored having regard to the problems that she does display. Undoubtedly her best interests lie with being with both parents and she would be returning to Sri Lanka with them. The appellant and his wife have now been here for more than three years. The appellant himself ostensibly arrived as a student and his wife as his dependant. There is no good reason to doubt that they would return as a family to live with the appellant's parents or would find their own accommodation. Such family and private life as they have built up in the United Kingdom has only been since around the time of claiming asylum

and may be enjoyed in Sri Lanka. The Article 8 claim was not pursued with any relish and on the facts such interference as there would be in the family and private lives of the appellant, his wife and child, is entirely proportionate in the interests of effective immigration control. I conclude therefore that the appellant does not succeed in his human rights claim either.

Notice of Decision

71. For the reasons already given I dismiss this appeal on asylum, humanitarian protection and human rights grounds.
72. I do not make an anonymity direction. None was sought and I see no need for one in the particular circumstances.

Signed

Date **11 December 2014**

Upper Tribunal Judge Pinkerton