



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

Appeal Number: AA/08417/2013

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice and Field House  
On 15 September 2014 and 13 January 2015**

**Determination  
Promulgated  
On 3 February 2015**

**Before**

**UPPER TRIBUNAL JUDGE PITT  
UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**IK  
(ANONYMITY ORDER MADE)**

Appellants

and

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

Respondent

**Representation:**

For the Appellant: Mr J Martin, instructed by ICS Solicitors

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure

to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

3. This appeal comes before us to be re-made following a decision dated 1 July 2014 of Upper Tribunal Judges Rintoul and Chana which found an error on a point of law in the determination promulgated on 26 November 2013 of First-tier Tribunal Judge A W Khan which refused the appellant's asylum appeal.
4. The error of law decision is at Appendix 1. In summary, it found that the First-tier Tribunal had taken an erroneous approach to court documents said to have been provided by a Sri Lankan lawyer and verified by a second Sri Lankan lawyer.
5. It was common ground before us that our task was to consider the court documents and evidence of the Sri Lankan lawyers, the weight afforded to those parts of the evidence being highly determinative as regards the appellant's claim to face a risk of serious harm on return to Sri Lanka.
6. This appeal has a somewhat lengthy history and it is expedient to set out first what has happened thus far.

#### First Asylum Claim

7. The appellant came to the UK on 15 January 2008 and claimed asylum on arrival. He maintained that he was born in Trincomalee, Sri Lanka where he lived with his parents and where his father owned a mill. In 2000 the Sri Lankan Army accused his father of assisting the LTTE, arrested and detained him and he was released only in 2002.
8. In 2005 the appellant's cousin who was living with the family was forced to join the LTTE. This cousin continued to visit the appellant's family, the LTTE bringing weapons to the home for them to be kept, threats being made if the family did not comply.
9. On 5 November 2007 the cousin visited again and the next night the pro-government Pillayan group came to the house and forced their way in. The appellant and his father were beaten. The appellant was taken to a camp and was tortured. He was also sexually assaulted. He was released on 26 November 2007 and asked to sign each week.
10. After his release, the appellant complained to a human rights organisation about his mistreatment and also to police. After his complaint to the police, he was questioned by members of the Pillayan group about having reported his mistreatment. They beat him and took him to a camp where he was again ill-treated. He was released upon payment of a bribe and travelled to Colombo and an agent was engaged to facilitate his departure

from Sri Lanka. He travelled to the United Kingdom arriving on 15 January 2008 and, as above, claimed asylum on arrival.

11. The appellant's first asylum claim was refused on 24 September 2009. The appeal was initially refused by Immigration Judge Beg (as she then was) in a determination dated 8 January 2010. The appellant's account was found not credible.
12. Reconsideration was ordered on 8 February 2010 by Senior Immigration Judge Eshun (as she then was) but the appeal was again dismissed in a decision dated 7 June 2010 of Senior Immigration Judge King (as he then was). Appeal rights were exhausted on 27 April 2011 following an unsuccessful appeal to the Court of Appeal.

### Second Asylum Claim

13. On 5 September 2012 the appellant made further representations which were accepted by the respondent as a fresh asylum claim.
14. In support of his second asylum claim, the appellant provided, amongst other documents contained at annex D of the respondent's bundle (RB),:
  - (i) further representations dated 5 September 2012 (D1-D6)
  - (ii) letter dated 13 July 2012 from the appellant's UK representatives to Mr Asoka Weerasooriya, a Sri Lankan lawyer (D12-D13)
  - (iii) letter dated 29 August 2012 from Mr Weerasooriya to the UK representatives (D15-D16)
  - (iv) a letter of instruction dated 5 July 2012 from the appellant's mother to Mr Weerasooriya (D17)
  - (v) documents from the Sri Lankan Bar Association, reports of court cases and a human rights report confirming Mr Weerasooriya's standing as a lawyer (D20-D32)
  - (vi) translations of copies of documents from the Mount Lavinia Magistrates' Court in the case of B5343/07 (D33-D61)
  - (vii) copies of the documents from the Mount Lavinia Magistrates' Court in the case of B5343/07 (D62-D90)
  - (viii) translation and copy of a police message dated 3 July 2012 to the appellant's mother asking her to attend Bambalapitiya Police Station on 5 July 2012 (D91-92)
15. The basis of the second claim was that on 3 July 2012 the appellant's mother contacted him telling him that she had been told to attend the Bambalapitiya police station on 5 July 2012. According to the appellant, on 4 July 2012 his mother contacted a Sri Lankan lawyer, Mr Asoka Weerasooriya. She met him on 5 July 2012 and provided him with a letter of instruction. She then went on the same day to Bambalapitiya police station with Mr Weerasooriya's junior colleague, Mr B R Priyaranjana Jayasinghe. She was questioned by police about the appellant's

involvement with the LTTE and, specifically, a bomb found on a bus in November 2007.

16. Mr Jayasinghe was told by police that they intended to obtain a court order enabling them to arrest the appellant. Mr Weerasooriya instructed Mr Jayasinghe to apply to the Mount Lavinia Magistrates' court for a certified copy of court file B5343/07 regarding the appellant. Mr Weerasooriya then sent the copy of the court file to the UK lawyers under cover of his letter dated 29 August 2012.
17. The copy of the court file showed that the police had filed a report in November 2007 concerning a bomb found on a bus that month. The documents from 2007 and 2008 indicated that a suspect, TS, was arrested and remanded in connection with the attempted bombing. Documents on the court file from July 2012 named the appellant as someone involved in placing the bomb on the bus. The court file contained an arrest warrant issued for the appellant directed to the Controller of Immigration and Emigration at Colombo airport.

#### Refusal of Second Asylum Claim

18. Having accepted that the further representations amounted to a fresh asylum claim, the respondent refused it on 21 August 2013.
19. The respondent's reasons for refusal letter dated 21 August 2013 indicated in paragraphs [29]-[30] that the appellant's new claim was undermined because the bus bomb in which he claimed to be implicated had occurred before he left Sri Lanka and he had not mentioned the matters set out in his further representations in his earlier claim.
20. At [31], the respondent relied on the appellant having been found to lack credibility by two judges in his first asylum claim.
21. The refusal letter went on to state at [32]-[36]:

"32. The documents you have submitted have been considered in the round, in light of the guidance set out in Tanveer Ahmed [2002] UKIAT 00439\* and bearing in mind the above credibility considerations. It is noted that the documents submitted for consideration are copies. Without original documents due consideration cannot be given to their veracity, however, the following taken from the Sri Lanka COI report, March 2012 has been noted:

*'Formally it is difficult for the accused to be able to obtain a copy of his/her own arrest warrant. When an arrest warrant is issued, a copy is kept on the legal file and the original is handed to the police. An accused cannot apply for copies of the arrest warrant to the relevant court. However, in practice forged documents are easily obtainable throughout Sri Lanka. Additionally, given ongoing and well documented concerns over corruption in the police it would probably not prove difficult to obtain a copy of an*

*arrest warrant, although it would probably require prior contacts within the police service.'*

33. As such, it is noted that forged documents are easily available in Sri Lanka and that there are concerns over police corruption. Therefore, an element of caution would be exercised when assessing such documents.

34. With particular regard to the documents submitted, which refer to an incident in which a suicide bomb was found on a bus, the date of the incident varies throughout the documents and is stated variously as 28 November, 20 November or 23 November 2007. It is not considered credible that official police documents regarding the same case would show such discrepancies in the most basic details. This significant inconsistency has cast further doubt on the reliability of these documents.

35. In the light of your credibility (as discussed above, and as considered in the RFRL of 24 September 2009) and the above-noted evidence, limited reliance has been placed on the documents you have now submitted.

36. Consequently, it is not accepted that you are suspected of involvement in an attempted bus bombing, or that you are now subject to an arrest warrant as a result."

22. An additional claim by the appellant to be involved with Tamil activists in the UK was not accepted at [35] as it was not supported other than by the evidence of the appellant himself.

#### Appeal before the First-tier Tribunal

23. For the First-tier Tribunal hearing before Judge Khan, the appellant provided a further bundle of evidence submitted under a cover letter dated 30 September 2013. We refer to this bundle as the "FTT bundle".

24. The FTT bundle contained:

- (i) statement from the appellant (tab 1)
- (ii) document verification report dated 25 September 2013 from Ms Sundari Jayasuriya (tab 2)
- (iii) country expert report dated 30 September 2013 from Dr Chris Smith (tab 3)
- (iv) letter dated 28 January 2013 from the British High Commission (BHC) in Colombo (tab 4).

25. Judge Khan refused the appeal. His findings are usefully summarised in the Upper Tribunal error of law decision (Appendix 1), as follows:

"11. Judge Khan directed himself [18] that the central issue in this case is whether the documents the appellant has produced in evidence had be (sic) relied upon to show that he was suspected

of carrying a bomb on a bus some time in November 2007 and as a result there was an outstanding warrant for his arrest. He stated:-

“In deciding whether these documents are genuine or not, I have paid close attention to the document verification report of 25 September 2013 from S Jayasuriya.”

12. Judge Khan found that:-

- i. he could not be satisfied that Ms Jayasuriya's report was credible evidence that the documents are in fact authentic due to the lack of detail and how it could be said that they were in fact genuine [21];
- ii. there were discrepancies as to whether the explosive material carried on the bus was in a parcel or whether it was concealed under a jacket or some other item of clothing [23] and, it is unclear from the reports when the incident was supposed to have taken place [23], different dates being given;
- iii. it was unclear why the appellant's mother would, as it appeared, have condemned him to the police in Sri Lanka, explaining his activities for the LTTE both in Sri Lanka and the United Kingdom; or, how she knew that he was doing so. It was incredible that she would have stated that the appellant had visited Sri Lanka several times from the UK [24] and thus attached little evidence to this part of her claim;
- iv. the documents submitted could not be relied upon to show either that the appellant actually placed a bomb on a bus or that he is innocent of this because it is a false allegation [27], the verification report not satisfying him that the documents are genuine;
- v. that there is no credible explanation as to why the police in Sri Lanka would suddenly have an interest in the appellant nearly five years after the incident; that, having had regards to the previous appeal and the appellant's other witness that he did not find him to be a credible witness [28 to 31];
- vi. that having rejected the appellant's claim there was an arrest warrant against him he did not consider he would be at real risk on return to Sri Lanka [33]; that the appellant's removal to Sri Lanka would not be in breach of paragraph 276ADE of the Immigration Rules or Article 8 of the Human Rights Convention.”

Error of Law Hearing before the Upper Tribunal

27. The determination of Judge Khan was appealed and permission to appeal granted by Upper Tribunal Judge Eshun on 30 January 2014. The reason given for granting permission to appeal was that the grounds “raise an arguable error of law in respect of the judge’s approach to the documentary evidence submitted by the appellant.”
28. The error of law hearing came before Upper Tribunal Judge Rintoul and Deputy Upper Tribunal Judge Chana on 29 May 2014. As above, their decision is at Appendix 1.
29. Their decision on error of law was as follows:

**“Did the determination of the First-tier Tribunal involve the making of an error of law?”**

19. In his determination at [18], [19], [21] and [31], Judge Khan refers to the question of whether or not the documents in question which are central to the appeal, are genuine or authentic. He states clearly that he is not satisfied that they are.
20. As Ms Wass submitted, where the respondent makes an allegation the document is not genuine or is somehow false, as appears to have been done here from the summary of the respondent’s submissions, that must be proved by the Secretary of State on the balance of probabilities. It is evident that Judge Khan wrongly considered that it was for the appellant to prove that the documents were genuine.
21. We do not consider that, as Mr Avery submitted, the judge was in fact assessing whether the documents were reliable. That is not the language he used.
22. It cannot in the circumstances be properly argued that this is not a material error as it is inevitable that his approach to the evidence of Ms Jayasuriya was incorrect. Further, as Ms Wass submitted the judge does not make any findings with regard to the evidence of Mr Weerasooriya which is of importance in assessing the documents because he obtained them from a court, his bona fides as a lawyer are confirmed by the respondent who also confirms that such court documents as have been produced can be obtained from courts (see the letter from the FCO to the Home Office). Given that in paragraph 14 of her report Ms Jayasuriya refers to having checked details with Mr Weerasooriya, the error is material.
23. Whilst we note that the judge found discrepancies in the report particularly regarding the date of the incident it is of course possible that the differences between 20, 23 and 28 may be accounted for by poor handwriting from which documents were transcribed. Further, the supposition that mistakes are not made in police documents is at best tendentious.

24. Accordingly, we are satisfied that the judge did make a material error of law and that it would be necessary to remake the determination.”
30. The First-tier Tribunal also made the following directions:
  - “1. The determination of First-tier Tribunal Judge A W Khan did involve the making of an error of law, and it is set aside to be remade. Judge Khan’s findings as to the appellant’s credibility are preserved.
  2. At the reconvened hearing, the Upper Tribunal will consider what weight, if any, to attach to the documents extracted from the courts and the police in Sri Lanka, and to the letters and reports from Mr Weerasooriya and Ms Jayasuriya.”

#### Re-Making of the Appeal before the Upper Tribunal - Hearing on 15 September 2014

31. The re-making of the appeal was listed before us on 15 September 2014. For that hearing, the appellant provided a further bundle of evidence under cover of a letter of 3 September 2014. We refer to that bundle as the “UT bundle”.
32. The UT bundle contained only one new document. This was a letter dated 16 July 2014 from Dr Chris Smith at tab 1.
33. We heard submissions from both parties. As above, it was common ground that the issue before us was to assess the copies of the court documents and their provenance in order to decide whether the appellant’s second claim was credible and, if so, if he faced a risk of serious harm on return to Sri Lanka.

#### Re-Making of the Appeal before the Upper Tribunal - Hearing on 13 January 2015

34. Regrettably, particularly so given the long history of the case prior to it coming before us, an issue arose after the hearing which we considered to be of sufficient significance to require the parties to provide further evidence and argument at a further oral hearing.
35. Our concerns are set out in full in the direction dated 5 December 2014 which is at Appendix 2.
36. In summary, there are a number of similarities between the claim in this appeal and that of AA/04690/2013. For completeness sake we append that decision at Appendix 3.
37. That case was heard in the Court of Appeal as PJ (Sri Lanka) v SSHD [2014] EWCA Civ 1011, remitted by the Court of Appeal to the Upper Tribunal and



re-made as allowed in a decision promulgated on 20 October 2014. The case of PJ came to our attention as it was raised in submissions for the appellant at the hearing on 15 September 2014.

38. Both this appeal and AA/04690/2013 involve:
  - i. a false case being brought for involvement in an attempted bombing in 2007
  - ii. no action being taken against the appellants until after they had left Sri Lanka and until 2012
  - iii. the false case being brought by police from the Bambalapitiya Police Station
  - iv. reliance on documents on court files held at Mount Lavinia Magistrates' Court including an arrest warrant directed to the Controller of Immigration and Emigration at Colombo airport
  - v. the Sri Lankan lawyers involved in obtaining and confirming that the court documents were reliable being Mr Asoka Weerasooriya, Ms Sundari Jayasuriya and Mr B R P Jayasinghe
  - vi. the same UK solicitors
39. On 5 December 2014 we issued the direction at Appendix 2 requesting any further evidence on which the parties wished to rely in regard to these similarities, a skeleton argument and attendance at a hearing to provide oral submissions.
40. No further evidence was provided by either party but both provided a skeleton argument and we heard oral submissions. We reserved our decision.

### Our Assessment – Legal Principles

41. It was the similar facts and documents in the case of PJ (Sri Lanka) v SSHD [2014] EWCA Civ 1011 and the subsequent re-making of that appeal in the Upper Tribunal which led us to the further hearing on 13 January 2015.
42. It follows that it is an essential part of our task here is to approach the copies of the court documents before us and evidence of Mr Weerasooriya and Ms Jayasinghe in line with the ratio of the Court of Appeal in PJ.
43. At [41] and [42] of PJ, Lord Justice Fulford set out the view of the Court on the correct approach to the court documents from Sri Lanka and the role of Sri Lankan lawyers in obtaining them, thus:

“41. In my judgment, Judge Woodcraft doubted the validity of these documents (certainly to a material extent) on a significantly false basis. Thereafter, Judge Kekic – having accepted Mr Jayasinghe’s status as a lawyer – failed to address the key issue that then arose given the suggested source of these documents

(a court in Sri Lanka) and the route by which they were obtained (two independent lawyers who sent them directly to the appellant's solicitor in the United Kingdom). Whilst it is undoubtedly the case that false documents are widely available in Sri Lanka, once it was established that the documents in question originated from a Sri Lankan court, a sufficient justification was required for the conclusion that the appellant does not have a well-founded fear of persecution. Prima facie, this material reveals that the appellant has previously been arrested in connection with a bomb, three members of his family had close LTTE connections and he is wanted for questioning '*to decide whether he had been engaged in LTTE terrorist activities*' but perhaps of greatest significance there is a letter from the Magistrate of the relevant court to the Controller of Immigration and Emigration stating that the appellant is in the United Kingdom and that he is to be arrested on his return to Sri Lanka. In the absence of a sufficient reason for concluding otherwise, the inescapable conclusion to be drawn from this material – retrieved independently, it is to be stressed, by two lawyers from the Magistrates' court on separate occasions – is that the appellant will be arrested on his return to Sri Lanka as a result of links with the LTTE and their activities. Judge Kekic suggested that the inference to be drawn from the evidence was that Mr Jayasinghe had '*obtained false evidence*' and that '*the appellant had forgotten the account he had previously given when these falsified documents were prepared*'. However, in my view, without an adequate explanation, it is difficult to understand how the appellant could have falsified a letter from the Magistrate of the relevant court to the Controller of Immigration and Emigration ordering the appellant's arrest which he then placed in the court records so that it could later be retrieved by two separate lawyers. At the very least, this feature of the evidence required detailed analysis and explanation.

42. These documents lie at the centre of the application for protection, and I consider that Judge Kekic misdirected herself when she concluded that they had been falsely prepared without providing any reasoning as to how the appellant could have infiltrated forged material into the court records, particularly since there is no suggestion that the lawyers had been involved in any discreditable conduct".
44. We note the strength of the comments made by the Court of Appeal as to the *prima facie* weight attracting to the court documents. The Court considered of the "greatest significance" a letter from the Magistrate of the relevant Court to the Controller of Immigration and Emigration stating that the appellant was in the United Kingdom and that he was to be arrested on his return to Sri Lanka.
45. We noted also that it was the Court of Appeal's view that, in essence, the strength of the evidence contained in the Magistrates' court documents provided by those accepted to be Sri Lankan lawyers was such that the appellant's claim was very likely to be made out, only "a sufficient

justification” or a “a sufficient reason for concluding otherwise” or an “an adequate explanation” and “detailed analysis and explanation” of this evidence allowing for another conclusion.

46. We bore these comments in mind and applied the approach set down by the Court of Appeal in PJ when reaching our view on the evidence as it was before us.

47. We should also indicate that we assessed the evidence before us not only in line with the specific guidance of the Court of Appeal in PJ but also following the ratio of Tanveer Ahmed (Documents unreliable and forged) Pakistan \* [2002] UKIAT 00439.

48. At [38], the Tribunal in Tanveer Ahmed\* concluded that:

“38. In summary the principles set out in this determination are:

1. In asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on.

2. The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.

3. Only very rarely will there be the need to make an allegation of forgery, or evidence strong enough to support it. The allegation should not be made without such evidence. Failure to establish the allegation on the balance of probabilities to the higher civil standard does not show that a document is reliable. The decision maker still needs to apply principles 1 and 2.”

49. The Court of Appeal discussed Tanveer Ahmed\* at [29]-[32] of PJ. Lord Justice Fulford indicated that:

“29. In my judgment, there is no basis in domestic or ECHR jurisprudence for the general approach that Mr Martin submitted ought to be adopted whenever local lawyers obtain relevant documents from a domestic court, and thereafter transmit them directly to lawyers in the United Kingdom. The involvement of lawyers does not create the rebuttable presumption that the documents they produce in this situation are reliable. Instead, the jurisprudence referred to above does no more than indicate that the circumstances of particular cases may exceptionally necessitate an element of investigation by the national authorities, in order to provide effective protection against mistreatment under article 3 ECHR. It is important to stress, however, that this step will frequently not be feasible or it may be unjustified or disproportionate. In *Tanveer Ahmed* the court highlighted the cost and logistical difficulties that may be involved, for instance because of the number of documents submitted by some asylum claimants. The enquiries may put the

applicant or his family at risk, they may be impossible to undertake because of the prevailing local situation or they may place the United Kingdom authorities in the difficult position of making covert local enquiries without the permission of the relevant authorities. Furthermore, given the uncertainties that frequently remain following attempts to establish the reliability of documents, if the outcome of any enquiry is likely to be inconclusive this is a highly relevant factor. As the court in *Tanveer Ahmed* observed, documents should not be viewed in isolation and the evidence needs to be considered in its entirety.

30. Therefore, simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step. Instead, it may be necessary to make an enquiry in order to verify the authenticity and reliability of a document – depending always on the particular facts of the case – when it is at the centre of the request for protection, and when a simple process of enquiry will conclusively resolve its authenticity and reliability (see *Singh v Belgium* [101] – [105]). I do not consider that there is any material difference in approach between the decisions in *Tanveer Ahmed* and *Singh v Belgium*, in that in the latter case the Strasbourg court simply addressed one of the exceptional situations when national authorities should undertake a process of verification.
31. In my view, the consequence of a decision that the national authorities are in breach of their obligations to undertake a proper process of verification is that the Secretary of State is unable thereafter to mount an argument challenging the authenticity of the relevant documents unless and until the breach is rectified by a proper enquiry. It follows that if a decision of the Secretary of State is overturned on appeal on this basis, absent a suitable investigation it will not open to her to suggest that the document or documents are forged or otherwise are not authentic.
32. Finally, in this context it is to be emphasised that the courts are not required to order the Secretary of State to investigate particular areas of evidence or otherwise to direct her enquiries. Instead, on an appeal from a decision of the Secretary of State it is for the court to decide whether there was an obligation on her to undertake particular enquiries, and if the court concludes this requirement existed, it will resolve whether the Secretary of State sustainably discharged her obligation (see *NA (UT rule 45: Singh V Belgium)* [2014] UKUT 00205 IAC). If court finds there was such an obligation and that it was not discharged, it must assess the consequences for the case.”
50. Following this exposition of the principle in *Tanveer Ahmed*\*, it was not our view that the respondent here was under an obligation to investigate the evidence further. That was not the conclusion of the Court of Appeal in *PJ* where the evidence was of a similar nature. There was also no obligation on us to order investigation even where we invited further evidence and comment in our direction of 5 December 2014. Mr Kandola’s submission on both occasions that he appeared before us was that the respondent

considered that there were potential difficulties in making enquiries of the court or police in Sri Lanka where this could bring the appellant to a level of attention that might in itself give rise to difficulty and even a further *sur place* claim.

51. Put simply, therefore, whilst bearing in mind the ratio of PJ, we applied what is a long-standing approach to the documentary evidence in such proceedings, that being that the burden is on the appellant to show that the documents “on which he seeks to rely can be relied on” and that we should assess the documentary evidence “after looking at all the evidence in the round.”
52. We have also reminded ourselves that in HK [2006] EWCA Civ 1037 it was held that instead of asking whether an account was inherently implausible, one should look at the evidence and ask oneself whether for example it is consistent with the background material and any expert evidence in support whether such evidence was of good quality.

#### Our Assessment of the Appellant’s Documents

53. We accepted, as in PJ, that the court documents were provided by a Sri Lankan lawyer of good standing, here, Mr Weerasooriya. His professional standing is shown in his registration with the Sri Lankan Bar and Supreme Court, his involvement in court cases and, indeed, is attested by the British High Commission in Sri Lanka in its letter dated 28 January 2013 (FTT bundle, tab 4).
54. The court documents here were also the subject of a verification report from a second Sri Lankan lawyer, Ms Jayasuriya. Her good standing is attested by Dr Chris Smith, a respected country expert on Sri Lanka. In his report dated 30 September 2012 at [19] to [21] he confirms his “utmost confidence” in the organisation for which Ms Jayasuriya works, approves the methodology used for verification. At [22] he specifically confirms that he has known Ms Jayasuriya personally for 15 years and describes her as a “long standing and trusted colleague” who “leads the verification team.”
55. Further, as in PJ, the British High Commission letter dated 28 January 2013 also confirmed that an official from the Bar Association of Sri Lanka had advised that court files were available to lawyers and this would include copies of any handwritten notes.
56. We do not dispute the good standing or status of Mr Weerasooriya or Ms Jayasuriya as lawyers or that they would be given access to the type of documents on court files on which the appellant here seeks to rely.
57. It remains the case that other aspects of the evidence, to our mind, amounted to the “sufficient justification” required by the Court of Appeal in PJ such that even where court documents have been provided and

commented on by Sri Lankan lawyers of good standing that evidence is not here capable of showing a risk of return.

58. In order to justify that finding, we must set out a “detailed analysis and explanation” as required by the Court of Appeal where there is evidence of the apparent strength of that provided by the court documents, Mr Weerasooriya and Ms Jayasuriya.
59. The concerns we had with the documentation before us arose not exclusively but mainly from cross-referencing the evidence provided by the UK and Sri Lankan lawyers, court documents and the appellant. We found it expedient to begin to set out our concerns using the order in which the appellant submitted the various materials, albeit reference to later documents being necessary in short order.

#### Mr Weerasooriya’s evidence

60. Mr Weerasooriya’s evidence and the court documents were submitted as part of the appellant’s second asylum claim made to the respondent and are contained in appendix D of the respondent’s bundle (RB).
61. The first document referring to Mr Weerasooriya is the letter dated 13 July 2012 from the appellant’s legal representatives to him (D12-D13).
62. The letter states that the appellant came to the UK on 15 January 2008. He had informed the firm that his mother had told him that she was contacted by police on 3 July 2012 and contacted Mr Weerasooriya on 5 July 2012. He had sent his junior, Mr B R Priyaranjana Jayasinghe, to the police station with the appellant’s mother on 5 July 2012.
63. The letter from the UK representatives states at D12 that the police interview with the appellant’s mother on 5 July 2012 was conducted “in the presence of your junior”.
64. The UK representative’s letter dated 13 July 2012 also states that the appellant’s mother was asked about his LTTE connections and an incident in which a bomb was found in a jacket on a bus. It goes on to request an explanation as to “why the Sri Lankan Police suddenly have an interest in our client and his connection with the LTTE after our client left Sri Lanka after a long time since January 2008 (sic).”
65. We should point out here that this is, in our view, an obvious question arising from the facts of this claim and one which the evidence relied on by the appellant does not anywhere attempt to answer.
66. The final paragraph of the letter from the UK representatives states that:  
  
“We understand from our client that his mother will pay your professional fees in relation to this matter.”

67. In response, Mr Weerasooriya sent a letter dated 29 August 2012 to the UK representatives (D15-D16). Mr Weerasooriya states that the appellant's mother instructed him on the recommendation of the appellant. According to Mr Weerasooriya she contacted him on 4 July 2012, not 5 July 2012. He confirms that Mr Jayasinghe accompanied the appellant's mother to the police station. Mr Jayasinghe informed Mr Weerasooriya that the appellant's mother had been "interrogated" for "a considerable period" about the appellant, particularly concerning the bus bomb.
68. Mr Weerasooriya states that he instructed Mr Jayasinghe to obtain a certified copy of the court case "B5343/2007" from the Mount Lavinia Magistrates' Court. The letter states that the copies obtained were enclosed.
69. Mr Weerasooriya then indicates that on examination of the copy of the court file he found that the police had reported finding a "suicide jacket" on a bus, the court record going back to 26 November 2007. At that time the accused had not been identified. Subsequent investigations had led to the police identifying the appellant as "an active LTTE activist who is clearly connected to the suicide jacket issue."
70. The letter goes on to state that:

"His mother Mrs [I] has also indicated that she is aware of his involvement in LTTE activities such as bring arm (sic) to Colombo, participating in protests against the Sri Lanka Government organised by the members of the Tamil diaspora in the UK. She has also confirmed, under interrogation, that she had seen her son taking part in protests organised by the UK based Tamil diaspora against the Sri Lankan President Mahinda Rajapakse when he visited London recently.

Further, according to the B Report, she confirms that her son left Sri Lanka on 01<sup>st</sup> of January 2008 under Sri Lankan identity card no: 883490088V, travelling on Passport no N1611984. The Report also states that your client has visited Sri Lanka several times. The Police are now pursuing a line of filing charges against your client under the Offensive Weapons Act under which the Court has instructed the Immigration to have your client arrested in the event of him travelling in or out of Sri Lanka."

71. A number of concerns arise from this correspondence. The first is that, as set out in the previous paragraph, the letter dated 29 August 2012 from Mr Weerasooriya states that the appellant's mother gave the Sri Lankan police extensive and incriminating evidence about the appellant. The appellant confirms the information given by his mother in his witness statement (FTT bundle, tab 1).
72. The information it is claimed that the appellant's mother gave to the police is also recorded in police reports from the court file (D57, D59). It is

recorded in those reports that the appellant's mother linked the appellant specifically to the bus bomb.

73. It is the appellant's evidence that his only involvement with the LTTE was via his cousin; see [8]-[9] above. According to his account, therefore, almost all of what his mother is stated to have told the police is profoundly incorrect.
74. There has never been any explanation from the appellant or his mother or anyone else as to why his mother would have said these things to the police. There is no statement from her indicating that she did so but nowhere is it suggested that she did not. On the contrary, as above, it is the evidence of the appellant and Mr Weerasooriya that she gave this completely incorrect but very incriminating information to the Sri Lankan authorities.
75. We found that to be a highly unusual and damaging feature of the evidence before us and one that concerned the letter from Mr Weerasooriya and the court documents, bringing into question the weight we could place on those documents.
76. Further, at [9] of his witness statement (FTT bundle, tab 1), the appellant states that the authorities told his mother that intelligence sources in the UK had confirmed that the appellant was active in the LTTE intelligence wing in the UK.
77. Again, according to the appellant's own evidence this is not correct, albeit he maintains he has supported opposition activities in the UK at a lower level. Again, there is no statement from the appellant's mother confirming that she was told this.
78. We also noted that at [6] of his witness statement the appellant maintained that his mother was forced to sign two documents which she had not read. This is not referred to in the letter from Mr Weerasooriya even where his junior accompanied her to the police station. There is again nothing from the appellant's mother confirming that this happened.
79. As we have referred to them above it is as well to deal here with the police reports on the court file at D57 and D59 which record the information which is supposed to have been given by the appellant's mother to the authorities. We noted that the information in these two documents is identical but that the first is dated 11 July 2012 and the second 12 July 2012. Both end with a request for an order to be sent to the Controller of Immigration and Emigration to arrest the appellant. Nothing before us explained why the police would lodge two identical documents on successive days.
80. A number of other matters arise from the correspondence between the UK representatives (D12-D13) and Mr Weerasooriya (D16-D17) which caused



us to question the weight we could place on it. We noted that in the letter from the representatives, it is stated that the police interview with the appellant's mother on 5 July 2012 was conducted "in the presence of your junior". Mr Weerasooriya's letter indicates that Mr Jayasinghe accompanied the appellant's mother to the police station but does not state in clear terms whether he was present in the interview itself or not. The appellant's witness statement (FTT, tab 1) states at [4], however, entirely otherwise and that "the junior was not permitted to be present during my mother's interrogation."

81. We also noted that the letter from Mr Weerasooriya indicates that the appellant's mother told police that the appellant left Sri Lanka on 1 January 2008 under Sri Lankan identity card no. 883490088V, travelling on passport no. N1611984. The identity card number provided is the same as that provided by the appellant in his screening interview at A13 of the respondent's bundle.
82. However, at A6 of his screening interview conducted on 15 January 2018, the appellant stated that he saw his parents 4 days earlier which would be 11 January 2008. This is not consistent with the information at D57 and D59 of a departure date of 1 January 2008 which the appellant's mother is stated to have given the authorities.
83. Also, at A11-A12 the appellant stated that the agent held the passport on which he travelled at all times and that he "never" held it himself. We wondered how the appellant's mother could know the number of the passport on which the appellant travelled to the UK some 4 years' before she provided the information to the authorities, when he maintains he never knew it.
84. Also, the correspondence between the UK representatives and Mr Weerasooriya and the appellant's witness statement at [5] (FTT bundle, tab 1) refer to the explosive device on the bus being hidden in a "jacket". The court documents at D34, D36, D45, D46 and D55 refer to the explosives being in a "parcel".

#### Further features of the court documents

85. The court documents are not consistent as to when the bomb was found on the bus. At D34-D37 there is a report from a police officer about a complaint brought by a member of the public about explosives being found on a bus. At D34 the report refers to the complaint being made on 23 November 2007. The same report indicates on D35 that the bus bomb incident occurred on 28 November 2007. At D45, the witness statement of the complainant refers to the incident occurring on 20 November 2007. At D55, a front sheet of a police report refers to the incident being on 23 November 2007.

86. It might be argued that it is not surprising that documents arising from a false case brought by the Sri Lankan police should contain such inconsistencies and that the different dates do not detract from the weight to be afforded to the court documents.
87. However, that line of argument highlights a further significant concern arising from the court documents which is that they do not refer to the appellant at all until 2012. The file appears to have been opened in 2007, however, when the police had another, entirely different suspect, someone named in the court documents as TS. At D44 there is a report dated 21 December 2007 referring only to TS as the suspect, not the appellant, stating that he had been detained, asking for his remand until 4 January 2008. At D38-39 TS is named in entries dated 4 January 2008, 16 January 2008 and 30 January 2008. TS appears to have been on remand, a trial listed for 30 January 2008 and an identity parade for this person cancelled on 4 January 2008 as further inquiries were needed. The document at D50-D53 would appear to relate to the cancellation of his identity parade and ongoing investigation in 2007 and 2008, TS being named again at D52 and D53.
88. As we have pointed out above, the references to the appellant in the court documents do not begin until 2012. The discrepancies in the documents at D34, D35 and D45 concerning the date of the bus bomb do not arise from documents produced at the time of police contacting the appellant's mother in July 2012 and relating to the evidence she gave and alleged events thereafter. It was not clear to us if the appellant's case is that the entire file was manufactured by police (or others) in 2012 with documents being produced going back to 2007 or an earlier file commenced in 2007 was doctored in 2012 in order to include false documents relating to him. If it were the former, why would the file not refer to the appellant from 2007 onwards? If it is the latter, the discrepancies do not arise from fabrication but from errors in a genuine case from a time before the appellant was wrongly included.
89. Also, even after the references to the appellant appear in the court records, the other suspect, TS continues to feature. Even where it might be credible that the police were investigating two suspects at once, the document at D40, an entry dated 11 July 2012 by a Magistrate, appears to confuse the two. It states as follows:

"On the request of OIC, Bambalapitiya case is called

Suspect: TS (remand)

Through this further report the suspect, IK's report is submitted.  
I plead that the order has to be issued on to arrest the suspect on his arrival to the country.

However it appears that the filed report is incomplete. It is not clear that the committed offense or crime comes under which law provision. Order to police to get further report and inform the court.”

90. We were reluctant to place weight on a document in this form which names one suspect, TS, the only person previously identified in the court file as a suspect, but then in the next line immediately refers to another person as “the suspect”, that being the appellant.
91. A further entry beginning on D40, continued on D41 and dated 13 July 2012 is a request from the Bambalapitiya police for an order to arrest the appellant on return. The next entry on D41 dated 18 July 2012 refers only to TS.
92. Further, the court file also contains requests on 11 July 2102 (D40), 12 July 2012 (D48) and 13 July 2012 (D40-D41) from the police for an arrest order concerning the appellant.
93. The court documents also show at D48, however that an arrest order for the appellant was signed by a Magistrate on 12 July 2012 to be sent to the Controller of Immigration and Emigration. If that order was signed on 12 July 2012, why is there an entry on the court file dated 13 July 2012 at D40-41 requesting such an order?
94. Still further, there are, in fact, two copies of an arrest order to be sent to the Controller of Immigration and Emigration on the court file. The first is at D48, as just identified. The second is at D49. It is in identical terms to the document at D48 other than containing two dates, one at the top being 12 July 2012 and the one at the bottom being 13 July 2012. Nothing before us explains why there would be two arrest orders on the court file in this manner, the latter containing an additional date.
95. We should also point out that the refusal of an arrest warrant and request for the police to get a “further report” dated 11 July 2012 (D40) is not followed by any document on the file containing further information that might have led the Magistrate to issue the arrest warrant. As above, the police reports dated 11 July 2012 at D57 and 12 July 2012 at D59 are identical and do not provide any further information.
96. Further still, it is part of the appellant’s claim that he has been involved in opposing the Sri Lankan authorities at a low level as part of the Tamil diaspora in the UK. According to his witness statement at [10] and [11] he protested at a visit to the UK by the Sri Lankan President and associated with Tamil leaders such as “Reverand (sic) Immanuel”, “Mr Suren Surenderan” and “Mr Mayan Kandiyah”. The respondent rejected this part of his claim as it was unsupported; see [22] above. The appellant maintained at [11] of his witness statement that he could not obtain any evidence of his activities in the UK as the Tamil diaspora was not sufficiently well-organised.

97. Firstly, it was not at all clear to us why the leaders of the Tamil diaspora could not provide confirmation of knowing the appellant and his taking part in opposition activities. Secondly, according to the court document at (D58-59), the appellant's mother in Sri Lanka had been able to identify his activities from television broadcasts and that is also stated in the letter from Mr Weerasooriya. If that was so, it was additionally unclear to us why it was not possible to identify and at least provide some kind of reference or detail to those broadcasts in order to support this part of his claim.

Ms Jayasuriya's evidence

98. For the appeal before the First-tier Tribunal, the appellant also provided a report dated 25 September 2013 of a Sri Lankan lawyer, Ms S Jayasuriya (FTT bundle, tab 2), a lawyer in Sri Lanka. The report lists her curriculum vitae and indicates that she works with a UK country expert on Sri Lanka, Dr Chris Smith. She has provided document verification reports for a number of UK law firms.

99. At [9] Ms Jayasuriya set out that her instructions from Dr Chris Smith were:

"... to verify the authenticity of certified copies Case Number Case ref: B 5343/2007 related to Mr [IK] issued by the Mt. Lavinia Magistrates Court in Sri Lanka. Cash receipt issued by the court Registrar's office dated 07 August 2012 indicating the date the copy was released on payment of government fee of Rs.200.00."

100. At [10] Ms Jayasuriya states:

"The documents contained in the Magistrate Court's record sent for verification included the following..."

and she then sets out what appears to be a list of the court documents at D34-D61.

101. The report continues at [11]-[14]:

"11. The Court records were checked at the Magistrates Court, Mt Lavinia and we confirm that the case records including all attached B reports, airport notification and journal entries are authentic. There is a file on case No B 5343/2007 on record at the Mt Lavinia Courts.

12. Police records at the Bambalapitiya also confirm that the B report was filed in the MC, Mt Lavinia. I did not request details of the investigation as my task is limited to verification of the authenticity of the documents sent for verification and not make a judgement on the contents.

13. I also contacted Mr. Asoka Weerasooriya, Attorney at Law, who had provided a letter addressed to [the appellant's UK representatives] stating that he had instructed his junior and filed a motion and obtained the said certified copies of the court records. Mr Weerasooriya

confirmed that he had issued the letter and also re-confirmed the findings of his investigation. I do not know Mr. Weerasooriya personally but I have heard of his work as an Attorney-at-Law by repute. He is a well-known and respected lawyer in Sri Lanka who was attached to the Attorney Generals (sic) Department before starting private practice in Sri Lanka.

### **Opinion**

14. Based on the information received it is my opinion that the documents sent for verification is (sic) authentic."

102. The difficulty we have with this report is that it lacks detail as to what checks were carried out and how the conclusion that the documents were "authentic" was reached. The statement at [11] that "The Court records were checked" and that "the case records ... are authentic" does not indicate, for example, when this was done, who did it or if a fee was paid for access to the file.

103. We also noted that nothing before us from Ms Jayasuriya or any other source indicated that the arrest order signed by the Magistrate was on any record or file held by the Controller of Immigration and Emigration.

104. Our concerns about the verification report increased when we considered it alongside the evidence of Dr Smith. He states in his report dated 30 September 2013 (FTT, tab 3) at [19]-[20] that:

"19. Port Hall Consultancy Ltd operates a document verification service that is based in Colombo, Sri Lanka. Documents relating to this case have been verified by my team to the highest possible standard. The conclusion reached by the team is that the documents are genuine and the reasons for this conclusion are set out in the verification report.

20. I have the utmost confidence in the ability of this team to arrive at the best possible conclusions and I therefore support the assessment that the documents are genuine."

105. Dr Smith's report goes on to state at [21]-[22]:

"21. The document verification process involves verification at source and the procedure and methodology used by the verification team is comprehensively set out in the verification report that is submitted with this expert witness report. As such, there is no merit in repeating statements relating to methodology.

22. I have worked with Mrs Sundari Jayasuriya in various roles for some fifteen years, both as employer and employee. She is a long standing and trusted colleague and leads the verification team. I have worked with Mr B.B.S.E.M Perera since the formation of the verification team. Since the formation of the team, some three years ago, the standard of his work has been exemplary."

106. At [23], Dr Smith states that “[t]here has been a ‘B’ report issued in the Appellant’s name, stating the intention of the police to commence proceedings against him.”
107. We had a number of difficulties with this section of Dr Smith’s report. Firstly, regarding his comments at [21], as we have indicated above, the verification report of Ms Jayasuriya does not “comprehensively” set out “the procedure and methodology used”. It is notably lacking in that regard.
108. Further, Dr Smith states at [23] that the “B’ report” was issued in the name of this appellant. We wondered if that could be an accurate statement given that the B report here given the references only to the other suspect, TS, prior to July 2012; see [86] and [87] above.
109. Dr Smith provided a further letter dated 16 July 2014 commenting on the approach taken by the Immigration and Asylum Tribunal to the report of Ms Jayasuriya and states:

“The tried and tested methodology for Sri Lankan documents is to verify at source. Many documents from Sri Lanka are genuine documents but there (sic) are obtained and completed illegally. Therefore, the only reliable way to verify is from the place of issue. Therefore, Ms Jayasuriya visited Mt Lavinia Court and requested a relevant cross check of the relevant documents and **was told** that these documents were on file. She then triangulated by checking the relevant documents at Bambalapitiya police station and **was again told** that the documents were on file.

With respect, IJ Khan appears not to have understood the way in which we verify documents and we apologise if this is not clear in our report. We also apologise for omitted the date of verification.

We would like to reiterate Ms Jayasuriya’s findings that the documents she was asked to verify are, in her opinion, genuine and that the methodology employed to reach this conclusion is robust and, moreover, the credibility of which has never been called into question before (our emphasis).”

110. With respect, without any intention to question the *bona fides* of either Dr Smith or Ms Jayasuriya, we found that this letter raised further concerns about how Ms Jayasuriya or Port Hall Consultancy Ltd conducted the assessment of the court documents.
111. Dr Smith’s letter states that Ms Jayasuriya “was told” that the documents were on the Mount Lavinia Magistrates’ Court file and the Bambalapitiya police file. This suggests that she did not see the files herself. As above, Ms Jayasuriya’s own report does not state in terms that she herself inspected the court or police files. If she did not so, who did? Much is made here and in PJ of her *bona fides* (which we do not dispute) but we are not

satisfied as to her specific role in verifying the documents before us and do not have information as to who else might have been involved. Dr Smith endorses the reliability of a “Mr B.B.S.E.M Perera” but nothing before us indicates that he was involved in this particular matter.

112. We noted further that the weight afforded to the documents in PJ at [41] arose because of :

“... the route by which they were obtained (two independent lawyers who sent them directly to the appellant’s solicitor in the United Kingdom) ...”

and:

“... retrieved independently, it is to be stressed, by two lawyers from the Magistrates’ court on separate occasions ... .”

113. In the appeal before us, we do not have anything indicating that Ms Jayasuriya or any second lawyer obtained copies of the court file that was sent by Mr Weerasooriya. Additionally, the evidence here, for the reasons given above, is that it is unclear whether Ms Jayasuriya personally accessed the court file.
114. Still further, the only person who had access to the court file in question here was neither Mr Weerasooriya nor Ms Jayasuriya, for both whom we have evidence of good standing, but Mr Jayasinghe. We have no confirmation of his qualifications or *bona fides*.
115. We also noted that nothing before us from Ms Jayasuriya or any other source indicated that the arrest order signed by the Magistrate was on any record or file held by the Controller of Immigration and Emigration.

### Wider Considerations

116. We have set out above our significant concerns on a number of aspects of the documentary evidence before us. There is nothing explaining why the authorities would have brought a false case over 4 years after the appellant left Sri Lanka, why the appellant’s mother gave evidence against him, the varying dates of the bus bomb incident, the references to a parcel bomb and a bomb concealed in a jacket, the original suspect being someone entirely other than the appellant when the court file was opened some 4 years before he is mentioned or the unexplained copies of the arrest warrant and further requests for such a document by police even after it was signed.
117. We noted that, beyond the court documents considered above, there were other documents relied upon by the appellant in support of his claim to have been falsely implicated in an attempted bombing. In so far as they had probative value, it was not our view that anything about them indicated they could carry weight when considered against the force of the

matters undermining the documentary evidence as a whole. The document at D61 “certifies” that the copies of court documents provided are from file B/5343/2007 but does not refer to the appellant or, given the general statement made, address the concerns we have set out above. An original of the message from the police to the appellant’s mother at D91 asking her to attend on 5 July 2012 could presumably have been provided but was not. Mr Weerasooriya and Ms Jayasuriya make no comment on this document and its provenance so there is nothing before us indicating whether it appears to be, for example, in an appropriate format.

118. There are other matters which we found, when the court documents and information from Mr Weerasooriya and Ms Jayasuriya is set against them, reduced the weight to be afforded to those documents.
119. The appellant has shown himself to be someone of dishonesty as he has been convicted of fraud and attempted theft which he was sentenced to 12 months’ imprisonment. The nature of the convictions was that he possessed a skimming device intended to enable him to steal money from an ATM.
120. Further, as above he was found not to be a credible witness by two judges in his first asylum claim.
121. There is the additional evidence before us, accepted by the Court of Appeal at [41] of PJ that:

“... it is undoubtedly the case that false documents are widely available in Sri Lanka ... .”
122. These three matters indicated strongly to us that great caution had to be exercised when assessing any assertion put forward by the appellant now, even where he sought to rely on the type of evidence found by the Court of Appeal in PJ to be capable of attracting significant weight.
123. When the concerns we have set out that arise from an analysis of the court documents and evidence of Mr Weerasooriya and Ms Jayasuriya are considered together with the appellant’s convictions, lack of credibility in his previous asylum and availability of forged documentation in Sri Lanka, our conclusion was that those documents and that evidence could not attract sufficient weight so as to show that the appellant is of interest to the Sri Lankan authorities now or would be on return.
124. Put another way, for the reasons set out above, having assessed the weight to be placed on the court documents and evidence of Mr Weerasooriya and Ms Jayasuriya “after looking at all of the evidence in the round”, it is our view that the appellant has not made out his claim to be at risk on return to the lower standard of proof.



125. It was not suggested that any other aspect of the appellant's profile could lead to a risk of harm on return. Having referred to the guidance of the Tribunal in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC) we did not find that there was anything preventing his return to Sri Lanka.

### Conclusion

126. We remake the decision in the appeal by dismissing it on asylum and Article 3 ECHR grounds.

Signed 

Date: 2 February 2015

Upper Tribunal Judge Pitt

## **APPENDIX 1**

# **ERROR OF LAW DECISION OF UPPER TRIBUNAL JUDGE RINTOUL AND DEPUTY UPPER TRIBUNAL JUDGE CHANA PROMULGATED ON 7 JULY 2014**

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

Appeal Number: AA/08417/2013

### **THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 29<sup>h</sup> May 2014**

.....

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL  
DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**I K  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Wass, Counsel

For the Respondent: Mr Avery, Presenting Officer.

### **DETERMINATION AND REASONS**

1. The appellant is a citizen of Sri Lanka who appeals with permission against the determination of First-tier Tribunal Judge A W Khan promulgated on 26 November 2013 in which he dismissed the appellant's appeal against the decision of the Secretary of State made on 21 August 2013 to remove him from the United Kingdom consequent on refusal of his claim for asylum.

### **The Appellant's Case**

2. The appellant was born in Trincomalee, Sri Lanka where he lived with his parents and where his father owned a mill. In 2000 the Sri Lankan Army accused the father of assisting the LTTE, arrested and detained him and he was released only on payment of a bribe. The appellant's cousin who was living with the family was forced to join the LTTE; he later visited them from time to time, and the LTTE brought weapons to the home for safekeeping. The family complied with this due to the threats made to them. On 5 November 2007 the cousin visited and stayed a night; the next night the Pillayan group came to the house, forced their way in and attacked the appellant's father, and abducting the appellant. He believes this occurred because neighbours had informed on the cousin's visits. The appellant was beaten, taken to a camp and was tortured; he was also sexually assaulted. He was released on 26 November 2007 and asked to sign each week.
3. After reporting this to the police he was stopped and questioned by members of the Pillayan group about his complaint. They beat him up, took him back to their camp and tortured him again. He was released upon payment of a bribe, travelled to Colombo and an agent was engaged to facilitate his departure from Sri Lanka. He travelled to the United Kingdom arriving on 15 January 2008 and claimed asylum on arrival.
4. The appellant's first asylum claim was refused on 24 September 2009 and an appeal against that decision was upheld.
5. On 5 September 2012 the appellant made representations claiming that he had been contacted by his mother on 3 July 2012 and that she had told him that the police had visited looking for him and requiring her to attend the police station on 5 July 2012. She was then questioned about the appellant, his family and his relations with the LTTE.
6. The family then appointed a lawyer, Asoka Weerasoothera who discovered that the police had filed a report on 12/13 July 2012 naming the appellant as a suspect in an attempted bus bombing in November 2007, the report also stating that his mother had told the police that he had been a prominent LTTE activist meeting with various members and transporting firearms and bombs from Trincomalee to Colombo and was working closely in the Tamil diaspora and the UK. Copies of court records and police reports and arrest warrants were attached and the Secretary of State accepted that this was a fresh claim for asylum, considered it and refused it for the reasons given in the letter of 21 August 2013.

7. Since then, on 24 September 2013, the appellant has been convicted in the United Kingdom of offences involving dishonesty and sentence to 12 months' imprisonment.

### **The Respondent's Case**

8. The respondent's case is set out in the refusal letter dated 21 August 2013. The Secretary of State considered:-
  - i. that the documents supplied were not reliable in light of the guidance given in **Tanveer Ahmed [2002] UKIAT 00439** given the ease with which forged documents easily are obtained in Sri Lanka and that it was not credible that official police documents regarding the same case would show the date of the incident variously as 20, 23 or 28 November 2007 and taking into account the adverse credibility findings in respect of the appellant as set out in the refusal letter of 24 September 2009, she did not accept that the appellant was suspected of involvement in an attempted bus bombing or he was now subject to an arrest warrant.
  - ii. Having had regard to the factors set out in **GJ and Others (post-civil war returnees) CG [2013] UKUT 00319 (IAC)** she was not satisfied that the appellant was a Tamil activist or fell within the risk categories identified. She was not satisfied that he qualified for humanitarian protection and considered that his removal to Sri Lanka would not be in breach of the United Kingdom's obligations pursuant to Article 8 of the Human Rights Convention having had regard to Appendix FM and paragraph 276ADE of the Immigration Rules.

### **Appeal before the First-tier Tribunal**

9. The appeal came before First-tier Tribunal Judge A W Khan sitting at Kingston Crown Court on 12 November 2013. He heard evidence from the appellant and submissions from representatives on behalf of the appellant and the Secretary of State. In addition he had before him the following:-
  - i. expert report from Dr Chris Smith;
  - ii. verification report from S Jayasuriya, Attorney at Law in Sri Lanka;
  - iii. correspondence between the appellant's solicitors and Asoka Weerasooriya in Sri Lanka in respect of enquiries made on his behalf and translations of the relevant original documents;
  - iv. letter from the British High Commission in Colombo to the Home Office in relation to Asoka Weerasooriya;
  - v. correspondence with the Home Office indicating that the original documents had been lost by them.

10. It was put to Judge Khan by the respondent that the appellant was a liar [14] and that the documents in question had been manufactured to appear genuine. In response it was put on behalf of the appellant that the documents had been obtained by an attorney in Sri Lanka; that there was nothing to suggest the attorney could not be relied upon and the documents had been verified by a second attorney, Ms Jayasuriya [15] and that on the basis of the expert testimony of Dr Smith, it is likely that the appellant would appear on a computerised stop list accessible at Colombo Airport and would therefore, following **GJ**, be at risk.
11. Judge Khan directed himself [18] that the central issue in this case is whether the documents the appellant has produced in evidence can be relied upon to show that he was suspected of carrying a bomb on a bus some time in November 2007 and that there was an outstanding warrant for his arrest. He stated:-

“In deciding whether these documents are genuine or not, I have paid close attention to the document verification report of 25 September 2013 from S Jayasuriya”.

12. Judge Khan found that:-

- i. he could not be satisfied that Ms Jayasuriya’s report was credible evidence that the documents are in fact authentic due to lack of detail and how it could be said that they were in fact genuine [21];
- ii. there were discrepancies as to whether the explosive material carried on the bus was in a parcel or whether it was concealed under a jacket or some other item of clothing [23]; and, it is unclear from the reports when the incident was supposed to have taken place [23], different dates being given;
- iii. it was unclear why the appellant’s mother would, as it appeared, have condemned him to the police in Sri Lanka, explaining his activities for the LTTE both in Sri Lanka and the United Kingdom; or, how she knew that he was doing so. it was incredible that she would have stated that the appellant had visited Sri Lanka several times from the UK [24] and thus attach little evidence to this part of the claim;
- iv. the documents submitted could not be relied upon to show either that the appellant actually placed a bomb on a bus or that he is innocent of this because it is a false allegation [27], the verification report not satisfying him that the documents are genuine;
- v. there is no credible explanation as to why the police in Sri Lanka would suddenly have an interest in the appellant nearly five years after the incident; that, having had regards to the previous appeal and the

appellant's other witness that he did not find him to be a credible witness [28 to 31];

- vi. that having rejected the appellant's claim there was an arrest warrant against him he did not consider he would be at real risk on return to Sri Lanka [33]; that the appellant's removal to Sri Lanka would not be in breach of paragraph 276ADE of the Immigration Rules or Article 8 of the Human Rights Convention.

13. The appellant sought permission to appeal on the grounds that:-

- i. while it was for the appellant to establish that the documents relied upon were reliable, that was not the question the judge asked, and he had erred in law by considering whether the appellant had shown the relevant documents to be authentic/genuine or not as the burden is on the respondent to prove that a document is not genuine;
- ii. the judge had failed properly to explain why the report of Ms Jayasuriya was not one on which he could place reliance given that these also confirmed the findings of Asoka Weerasooriya;
- iii. the judge had failed to make any findings in relation to the letter provided by Mr Weerasooriya which was material to the case; and
- iv. the judge had failed to take into account the appellant's evidence of why his mother had said that he had been involved in LTTE activity in Sri Lanka and the UK and the finding that he had been to Sri Lanka several times was not rational.

14. On 30 January 2014 Upper Tribunal Judge Eshun granted permission stating that the grounds raised an arguable error in respect of the judge's approach to the documentary evidence submitted by the appellant.

15. By way of a reply to the grant pursuant to Rule 24 the respondent stated that judge had considered the evidence and concluded that the documentation could not be relied upon that being a finding open to him.

### **Submissions**

16. Ms Wass submitted that it was evident by his numerous references to "genuine" and "authentic" that the judge was considering not whether the documents in question were reliable but whether they had been fabricated or false. It was to be noted also that in her report [14] Ms Jayasuriya had said that the documents were authentic, the judge therefore having given no proper reason for his findings. She submitted that Ms Jayasuriya's report was linked also to the failure of the judge to make findings with respect to the letter from Mr Weerasooriya as what he had found and confirmed to Ms Jayasuriya. With respect to the latter, there had been no consideration to the fact that a respected Sri Lankan lawyer had obtained

independently copies of the court file in Sri Lanka there being evidence that this was possible and that taking this together with Ms Jayasuriya's report, there was no sufficient basis for the judge's findings.

17. Mr Avery submitted that there was a distinct lack of detail in Ms Jayasuriya's report as to how the documents were compared and what was seen at the court. In the circumstances the judge had been entitled to conclude that the report did not assist him in assessing the documentation. He submitted that in reality the judge had applied the **Tanveer Ahmed** test and had simply found that the documents were reliable. He submitted that there were serious credibility problems with the documentation as to when the incident took place and the other inconsistencies all of which had been taken into account by the judge who had reached a decision open to him bearing in mind the previous poor credibility findings and the appellant's most recent conviction of an offence involving dishonesty.
18. In reply Ms Wass submitted that what was recorded in respect of the submissions made by Counsel and the Presenting Officer to Judge Khan were not in the totality of what had been said and even if so what the judge needed to do was to follow the law.

**Did the determination of the First-tier Tribunal involve the making of an error of law?**

19. In his determination at [18], [19], [21] and [31], Judge Khan refers to the question of whether or not the documents in question which are central to the appeal, are genuine or authentic. He states clearly that he is not satisfied that they are.
20. As Ms Wass submitted, where the respondent makes an allegation the document is not genuine or is somehow false, as appears to have been done here from the summary of the respondent's submissions, that must be proved by the Secretary of State on the balance of probabilities. It is evident that Judge Khan wrongly considered that it was for the appellant to prove that the documents were genuine.
21. We do not consider that, as Mr Avery submitted, the judge was in fact assessing whether the documents were reliable. That is not the language he used.
22. It cannot in the circumstances be properly argued that this is not a material error as it is inevitable that his approach to the evidence of Ms Jayasuriya was incorrect. Further, as Ms Wass submitted the judge does not make any findings with regard to the evidence of Mr Weerasooriya which is of importance in assessing the documents because he obtained them from a court, his bona fides as a lawyer are confirmed by the respondent who also confirms that such court documents as have been produced can be obtained from courts (see the letter from the FCO to the Home Office). Given that in paragraph 14 of her report Ms Jayasuriya

refers to having checked details with Mr Weerasooriya, the error is material.

23. Whilst we note that the judge found discrepancies in the report particularly regarding the date of the incident it is of course possible that he differences between 20, 23 and 28 may be accounted for by poor handwriting from which documents were transcribed. Further, the supposition that mistakes are not made in police documents is at best tendentious.
24. Accordingly, we are satisfied that the judge did make a material error of law and that it would be necessary to remake the determination.

### **DIRECTIONS**

- 1 The determination of First-tier Tribunal Judge A W Khan did involve the making of an error of law, and it is set aside to be remade. Judge Khan's findings as to the appellant's credibility are preserved.
- 2 At the reconvened hearing, the Upper Tribunal will consider what weight, if any, to attach to the documents extracted from the courts and the police in Sri Lanka, and to the letters and reports from Mr Weerasooriya and Ms Jayasuriya.
- 3 Any additional material on which either party seeks to rely must be served on the Upper Tribunal and on the other party at least 7 working days before the date of hearing, and must be accompanied by a notice pursuant to rule 15 (2A) setting out in detail and with cogent argument why the new material should be admitted.

Signed

Date 1 July 2014

Upper Tribunal Judge Rintoul



## APPENDIX 2

### DIRECTION OF UPPER TRIBUNAL JUDGE PITT 5 DECEMBER 2014

**Appeal No: AA/08417/2013**

#### **DIRECTION**

1. As the parties will be aware, after having had an asylum claim and appeal refused, on 5 September 2012 this appellant made further submissions on a *sur place* basis claiming that he had been contacted by his mother on 3 July 2012 and that she had told him that the police had visited looking for him and requiring her to attend the police station on 5 July 2012. She was then questioned about the appellant, his family and his connections with the LTTE.
2. The family then appointed a lawyer, Mr Asoka Weerasooriya, who discovered that the police had filed a report in July 2012 naming him as a suspect in an attempted bus bombing in November 2007 the report also stating that his mother had told the police that he had been a prominent LTTE activist meeting with various members and transporting firearms and bombs from Trincomalee to Colombo and was working closely in the Tamil diaspora in the UK.
3. Mr Asoka Weerasooriya provided the appellant's UK lawyers with copies of court records, police reports and arrest warrants in support of the *sur place* claim. The documents were stated to be found on files at the Mount Lavinia Magistrates Court and the Bambalapitiya Police Station.
4. Mr Asoka Weerasooriya was assisted in his work by another lawyer, Mr B R P Jayasinghe; see Mr Asoka Weerasooriya's letter dated 29 August 2012 at tab 3 of the appellant's bundle dated 3 September 2014.
5. The Secretary of State accepted that the further submissions amounted to a fresh claim for asylum, considered it and refused it for the reasons given in the letter of 21 August 2013.
6. For the appeal before the First-tier Tribunal, a second Sri Lankan lawyer, Ms Sundari Jayasuriya, also provided a report dated 25 September 2013 stating that she had examined the court and police station documents.
7. After reserving this appeal on 15 September 2014, the panel's attention was brought to Upper Tribunal's determination in AA/04690/2013. This case was heard in the Court of Appeal as PJ (Sri Lanka) v SSHD [2014] EWCA Civ 1011 and remitted to the Upper Tribunal to be re-made. A

hearing took place on 30 September 2104 and the Upper Tribunal's determination of AA/04960/2013 was promulgated on 20 October 2014. The same UK lawyers, ICA Solicitors, conducted both cases.

8. The Court of Appeal decision and determination of AA/04690/2013 set out a similar factual scenario to that in this appeal. Paragraphs 3-10 of the determination of AA/04690/2013 state as follows:

"3. On 3 April 2012 the Appellant sought asylum claiming that if he returned to Sri Lanka he faced mistreatment because of the authorities' perceptions as to his political opinions based on the connection between members of his family to the LTTE. In that regard he claimed that his sister joined the LTTE in 1993 – specifically a Black Tiger's suicide squad member, who was killed on 11 May 2006 by the Sri Lankan Navy. The Appellant's brother was forcibly enlisted in the LTTE in 1996 and killed on 24 September 1997. His father, though not a member of any political party, worked as a boatman for Colonel Soosai, the commander of the LTTE Black Sea Tiger Unit from its inception in 1992. The Sri Lankan Navy was said to have killed the Appellant's father on 7 February 2000 during an engagement near Mullaitivu.

4. It was the Appellant's account that he was put under pressure to join the LTTE. He claimed to have been arrested by the Sri Lankan Police on 30 November 2007 with three or four other men, because a bomb that did not explode was found at a railway station near the his home. The Appellant was held overnight and released on 1 December 2007. The Appellant claimed that whilst in detention he was beaten and pushed against a wall. In due course the Appellant brought his release document to the United Kingdom.

5. The Appellant's account was that he was not charged or bailed or subject to reporting conditions but he nonetheless claimed to fear that he would be arrested by the Army and the CID if returned to Sri Lanka.

6. It was the Appellant's account that on 30 December 2011 his mother was told by Police Officers that the Appellant was suspected of having contact with the LTTE and that they were making enquiries about him.

7. In consequence the Appellant made contact with a solicitor in Colombo a Mr Jayasinghe in order to obtain advice as to what steps his mother should take.

8. It was the Appellant's case that on 13 February 2012 the Sri Lankan authorities issued an arrest warrant for him and that a letter was sent from a Magistrate to the Controller of Immigration and Emigration stipulating that the Appellant was in the United Kingdom but that if he returned to Sri Lanka he should be taken into custody.

9. At interview the Appellant stated that the information came from his United Kingdom solicitors on 16 February 2012. On 29 February 2012 the Appellant's British solicitors wrote to Mr Jayasinghe requesting that he obtain any documents relevant to the case. On 16 March 2012 Mr Jayasinghe made an application to the relevant court and in consequence

various papers were provided on 19 March 2012. Mr Jayasinghe wrote to the Appellant's British solicitors on 20 March 2012 enclosing a certified copy of a report and certain other documents that had been provided to the court by the Police together with a cash receipt for 30 rupees (the cost of obtaining the copy documents). The contents reveal that the authorities in Sri Lanka had linked the Appellant with the 2007 bombing that they refer to as a "bomb case" at Wellawatta Railway Station and that he was to be arrested on arrival in Sri Lanka.

10. The Appellant submitted additional documents in support of his claim for asylum including a photocopy of his father's death certificate stating that he died on 7 February 2000, the cause of death being "Death while the attack of Sri Lankan Navy" (sic), a "receipt of arrest" dated 1 December 2007, an arrest warrant in his name dated 19 March 2012 and a letter from Mr Jayasinghe."

9. The determination of AA/04690/2013 continues, discussing the litigation in the Court of Appeal,:

"18. It was pointed out that once the Respondent refused the Appellant's claim for asylum the Appellant's United Kingdom solicitors wrote on 9 May 2012 to a more senior Sri Lankan lawyer, Mr Weerasooriya requesting that he repeat the process of ensuring that the relevant papers originally came from the court and were not forgeries. He was asked to provide another set of the relevant materials as a matter of urgency including the "Magistrates Minutes" and the "Notification to the Controller of Immigration and Emigration dated 19 March 2012". On 23 May 2012 Mr Weerasooriya replied stating that his junior had obtained a complete certified copy of the documents that matched those produced by Mr Jayasinghe. For self-evident reasons they now bore a rubber stamp from the Magistrates' Court dated 23 May 2012 (as opposed to 19 March 2012, the date when Mr Jayasinghe undertook this work).

19. Before their Lordships Mr Martin was recorded as submitting that both lawyers had provided evidence of their Bar Association membership and they were entered on the Supreme Court role. Moreover the British High Commission in Colombo provided confirmation, first that Mr Weerasooriya was a lawyer in Sri Lanka and second that it was possible for lawyers to obtain court files. Critically, it was submitted that the risk of forgery greatly diminished if the documents came directly from the court."

10. We also noted from [23] of AA/04690/2013 that:

"23. At the outset of the hearing Mr Martin handed to us copies of two documents comprising; a letter from the British High Commission in Colombo addressed to the UKBA and dated 28 January 2013 sub-headed "Sri Lankan Cases with Lawyers' Letters" and; a document headed "Document Verification Report" dated 10 October 2013 by Mr S Jayasuriya an Attorney-at-Law of the Supreme Court of Sri Lanka. "

11. To summarise, in this appeal, Mr Asoka Weerasooriya was the first lawyer involved in commenting on the court and police station files. The

documents here and in the case of AA/04690/2013 indicate strongly that it is the same Mr Asoka Weerasooriya who was instructed in both cases.

12. A Sri Lankan lawyer named Ms Sundari Jayasuriya carried out the second examination in this appeal, examining documents held at the Mount Lavinia Magistrates Court and the Bambalapitiya Police Station. As at [10] above, in AA/04690/2013, a lawyer named S Jayasuriya also provided a report attesting to the existence of documents at the Mount Lavinia Magistrates Court and the Bambalapitiya Police Station. This person is referred to in the Upper Tribunal determination of AA/04690/2013 as “Mr” but personal details provided in both cases for this lawyer are almost identical and indicate that it is the same person, identified in the paperwork in this appeal as “Ms” Sundari Jayasuriya.
13. Both appeals also feature a Mr B R P Jayasinghe. In this appeal he is referred to as a junior colleague of Mr Asoka Weerasooriya. In AA/04690/2013 he is named as the first lawyer to comment on the case being brought against the appellant in Sri Lanka.
14. Both appeals concern the fabrication of a case by the Sri Lankan authorities showing these appellants being involved in an attempted bombing, those cases being brought against them some years after they left Sri Lanka, both fabricated cases producing documents held at Mount Lavinia Magistrates Court and the Bambalapitiya Police Station.
15. The Tribunal notes the similar personnel and facts and finds those matters require further submissions from the parties.

## **DIRECTIONS**

16. The Tribunal directs that both parties attend the Tribunal on **Tuesday 13 January 2015** to provide oral submissions on the common features of these two cases, namely the similarity of the facts of a fabricated allegation of involvement in an attempted bombing, reliance on documents held on files at Mount Lavinia Magistrates Court and the Bambalapitiya Police Station, and role of Mr Asoka Weerasooriya, Ms Sundari Jayasuriya and Mr B R P Jayasinghe in both.
17. If either party wishes to submit any written documentation in relation to these matters it should be filed with the Tribunal and served on the other party by **Tuesday 6 January 2015**.
18. Both parties are directed to file with the Tribunal and serve on the other party a skeleton argument no later than **Friday 9 January 2015**.
19. The parties are on notice that a failure to comply with these directions may lead the Upper Tribunal to proceed on the basis that nothing (or nothing further) is to be said or advanced in support of that party’s case before the Upper Tribunal.

Upper Tribunal Judge Pitt  
5 December 2014

## **APPENDIX 3**

### **DETERMINATION OF AA/04690/2012 PROMULGATED ON 20 OCTOBER 2014**

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

Appeal Numbers: AA/04690/2012  
AA/04691/2012  
AA/04692/2012

#### **THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 30 September 2014**

.....

**Before**

**UPPER TRIBUNAL JUDGE GOLDSTEIN  
UPPER TRIBUNAL JUDGE OCONNOR**

**Between**

**PJ  
AJ  
KJ**

**(ANONYMITY ORDER MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr Jonathan Martin, Counsel instructed by Messrs ICS Solicitors

For the Respondent: Ms Julie Isherwood, Senior Home Office Presenting Officer

#### **DETERMINATION AND REASONS**

1. The Appellant and his wife and child are citizens of Sri Lanka. We shall refer to the first named Appellant PJ as “the Appellant” for the purposes of our determination.
2. The Appellant entered the United Kingdom as a student on 14 September 2008 with a visa valid until January 2010. His wife joined him on 25 January 2009 as his dependant. The Appellant’s student visa was extended to 23 July 2012 and during this process he was granted leave to remain as a Tier 1 (Post-Study Work) Migrant. His wife returned to Sri Lanka on 19 October 2010 in order to give birth and she and their child returned together to this country on 16 November 2011.
3. On 3 April 2012 the Appellant sought asylum claiming that if he returned to Sri Lanka he faced mistreatment because of the authorities’ perceptions as to his political opinions based on the connection between members of his family to the LTTE. In that regard he claimed that his sister joined the LTTE in 1993 – specifically a Black Tiger’s suicide squad member, who was killed on 11 May 2006 by the Sri Lankan Navy. The Appellant’s brother was forcibly enlisted in the LTTE in 1996 and killed on 24 September 1997. His father, though not a member of any political party, worked as a boatman for Colonel Soosai, the commander of the LTTE Black Sea Tiger Unit from its inception in 1992. The Sri Lankan Navy was said to have killed the Appellant’s father on 7 February 2000 during an engagement near Mullaitivu.
4. It was the Appellant’s account that he was put under pressure to join the LTTE. He claimed to have been arrested by the Sri Lankan Police on 30 November 2007 with three or four other men, because a bomb that did not explode was found at a railway station near the Appellant’s home. The Appellant was held overnight and released on 1 December 2007. The Appellant claimed that whilst in detention he was beaten and pushed against a wall. In due course the Appellant brought his release document to the United Kingdom.
5. The Appellant’s account was that he was not charged or bailed or subject to reporting conditions but he nonetheless claimed to fear that he would be arrested by the Army and the CID if returned to Sri Lanka.
6. It was the Appellant’s account that on 30 December 2011 his mother was told by Police Officers that the Appellant was suspected of having contact with the LTTE and that they were making enquiries about him.
7. In consequence the Appellant made contact with a solicitor in Colombo a Mr Jayasinghe in order to obtain advice as to what steps his mother should take.
8. It was the Appellant’s case that on 13 February 2012 the Sri Lankan authorities issued an arrest warrant for him and that a letter was sent from a Magistrate to the Controller of Immigration and Emigration stipulating

that the Appellant was in the United Kingdom but that if he returned to Sri Lanka he should be taken into custody.

9. At interview the Appellant stated that the information came from his United Kingdom solicitors on 16 February 2012. On 29 February 2012 the Appellant's British solicitors wrote to Mr Jayasinghe requesting that he obtain any documents relevant to the case. On 16 March 2012 Mr Jayasinghe made an application to the relevant court and in consequence various papers were provided on 19 March 2012. Mr Jayasinghe wrote to the Appellant's British solicitors on 20 March 2012 enclosing a certified copy of a report and certain other documents that had been provided to the court by the Police together with a cash receipt for 30 rupees (the cost of obtaining the copy documents). The contents reveal that the authorities in Sri Lanka had linked the Appellant with the 2007 bombing that they refer to as a "bomb case" at Wellawatta Railway Station and that he was to be arrested on arrival in Sri Lanka.
10. The Appellant submitted additional documents in support of his claim for asylum including a photocopy of his father's death certificate stating that he died on 7 February 2000, the cause of death being "Death while the attack of Sri Lankan Navy" (sic), a "receipt of arrest" dated 1 December 2007, an arrest warrant in his name dated 19 March 2012 and a letter from Mr Jayasinghe.
11. In the event by letter dated 2 May 2012 the Appellant was informed that his asylum application was refused and in giving reasons for such refusal the Secretary of State concluded that the documents submitted by the Appellant did not advance his case. In that regard reliance was placed in a letter from the British High Commission in Colombo dated 14 September 2010 that addressed the issue of fraudulently obtained documents. The letter referred to the high level of corruption in Sri Lanka "and the unscrupulously actions of government officials at all levels, (that) somewhat undermines the issuing process for many official documents".
12. Notably however the letter included the following:
 

"Formally it is difficult for the accused to be able to obtain a copy of his/her own arrest warrant. When an arrest warrant is issued, a copy is kept on the legal file and the original is handed to the police. An accused cannot apply for copies of an arrest warrant to the relevant court. However in practice forged documents are easily obtainable throughout Sri Lanka. Additionally, given ongoing and well-documented concerns over corruption in the police it would probably not prove difficult to obtain a copy of an arrest warrant, although it would probably require prior contacts within the police service".

### **The Proceedings**

13. It is right to say that the history of these proceedings have been extensively considered by the Court of Appeal in PJ (Sri Lanka) v the Secretary of State for the Home Department [2014] EWCA Civ 1011.



14. At the hearing before their Lordships followed the Appellant's unsuccessful appeal before the First-tier Tribunal. The Appellant having subsequently and successfully obtained the grant of permission to appeal that decision, it was heard by the Upper Tribunal in a decision promulgated on 20 December 2012 and was determined that the First-tier Tribunal's determination disclosed no error of law that justified setting their decision aside. It is of note however to record the Upper Tribunal in their determination nonetheless criticised the First-tier Tribunal Judge for having doubted the professional standing of Mr Jayasinghe, in circumstances when it was argued before the Upper Tribunal that since the same documents were obtained separately by two lawyers "compelling reasons" needed to be provided if they were to be rejected as unreliable. Notwithstanding that the First-tier Tribunal had described the document produced by the Appellant as being worthless and lacking in any validity, the Upper Tribunal in all the circumstances determined there had been no error of law that justifying setting aside their decision particularly when the judgment was read as a whole.
  
15. Permission to appeal to the Court of Appeal was granted on 16 October 2013 by Sir Stanley Burnton who was of the view that the possible consequences of an individual on return to Sri Lanka who was suspected of involvement in a bombing meant that there was a sufficiently compelling reason for the appeal to be heard. Sir Stanley Burnton observed inter alia:
 

"It seems to me that when the documents do come from a lawyer in Sri Lanka, who purports to confirm their genuineness and who effectively does say that the genuineness or not of the documents can be checked by the High Commission in Sri Lanka, it may be that a different approach to the documents was appropriate."
  
16. In PJ at paragraph 17 their Lordships recorded the submission of Mr Martin (who also appeared before us) that he had based his appeal on the proposition that as the documents were genuine then the Appellant was a refugee. They recorded his submission in that regard as follows:
 

"Both lawyers produced copies of a court file obtained from the Magistrates' Court in Colombo. The documents in that file included a report made by S S K Dharmaratne Inspector of the Police Station in Colombo North, CID which stated that the Appellant has previously been arrested, that he was known to have three family members with close LTTE connections and that he was wanted for questioning 'to decide whether he had been engaged in LTTE terrorist activities'. A further document on the file was a letter from the Magistrate to the Controller of Immigration and Emigration stating that the Appellant is in the UK and that he should be taken into custody on his return to Sri Lanka".
  
17. Their Lordships further recorded Mr Martin's submission that there needed to be a reason of real substance in order to doubt the veracity of the documents obtained from the court.

18. It was pointed out that once the Respondent refused the Appellant's claim for asylum the Appellant's United Kingdom solicitors wrote on 9 May 2012 to a more senior Sri Lankan lawyer, Mr Weerasooriya requesting that he repeat the process of ensuring that the relevant papers originally came from the court and were not forgeries. He was asked to provide another set of the relevant materials as a matter of urgency including the "Magistrates Minutes" and the "Notification to the Controller of Immigration and Emigration dated 19 March 2012". On 23 May 2012 Mr Weerasooriya replied stating that his junior had obtained a complete certified copy of the documents that matched those produced by Mr Jayasinghe. For self-evident reasons they now bore a rubber stamp from the Magistrates' Court dated 23 May 2012 (as opposed to 19 March 2012, the date when Mr Jayasinghe undertook this work).
19. Before their Lordships Mr Martin was recorded as submitting that both lawyers had provided evidence of their Bar Association membership and they were entered on the Supreme Court role. Moreover the British High Commission in Colombo provided confirmation, first that Mr Weerasooriya was a lawyer in Sri Lanka and second that it was possible for lawyers to obtain court files. Critically, it was submitted that the risk of forgery greatly diminished if the documents came directly from the court.
20. It will suffice for the purposes of this determination to set out below the conclusions of Fulford LJ who gave a leading judgment with which McFarlan LJ and Arden LJ agreed at paragraphs 41 and 42 below:

"41. In my judgment, Judge Woodcraft doubted the validity of these documents (certainly to a material extent) on a significantly false basis. Thereafter, Judge Kekic - having accepted that Mr Jayasinghe's status as a lawyer - failed to address the key issue that then arose given the suggested source of these documents (a court in Sri Lanka) and the route by which they were obtained (two independent lawyers who sent them directly to the Appellant's solicitor in the United Kingdom). Whilst it is undoubtedly the case that false documents are widely available in Sri Lanka, **once it was established that the documents in questions originated from a Sri Lankan court, a sufficient justification was required for the conclusion that the Appellant does not have a well-founded fear of persecution. Prima facie, this material reveals that the Appellant has previously been arrested in connection with a bomb, three members of his family had close LTTE connections and he is wanted for questioning 'to decide whether he had been engaged in LTTE terrorist activities' but perhaps of greatest significance there is a letter from the Magistrate of the relevant court to the Controller of Immigration and Emigration stating that the Appellant is in the United Kingdom and that he is to be arrested on his return to Sri Lanka. In the absence of a sufficient reason for concluding otherwise, the inescapable conclusion to be drawn from this material - retrieved independently, it is to be stressed, by two lawyers from the Magistrates' court on separate occasions - is that the Appellant will be arrested on his return to Sri Lanka as a result**

**of links with the LTTE and their activities.** Judge Kekic suggested that the inference to be drawn from the evidence that Mr Jayasinghe had *'obtained false evidence'* and that *'the Appellant had forgotten the account he had previously given when these falsified documents were prepared'*. **However, in my view, without an adequate explanation, it is difficult to understand how the Appellant could have falsified a letter from the Magistrate of the relevant court to the Controller of Immigration and Emigration ordering the Appellant's arrest which he then placed in the court records so that it could later be retrieved by two separate lawyers. At the very least, this feature of the evidence required detailed analysis and explanation.**

42. **These documents lie at the centre of the application for protection**, and I consider that Judge Kekic misdirected herself when she concluded that they had been falsely prepared without providing any reasoning as to how the Appellant could have infiltrated forged material into the court records, particularly since there is no suggestion that the lawyers had been involved in any discreditable conduct". (Emphasis added).
21. The Lordships thus decided to allow the appeal but remit the case to the Upper Tribunal for a rehearing.
22. Thus the appeal came before us for this purpose on 30 September 2014.
23. At the outset of the hearing Mr Martin handed to us copies of two documents comprising; a letter from the British High Commission in Colombo addressed to the UKBA and dated 28 January 2013 sub-headed "Sri Lankan Cases with Lawyers' Letters" and; a document headed "Document Verification Report dated 10 October 2013 by Mr S Jayasuriya an Attorney- at-Law of the Supreme Court of Sri Lanka.
24. In summary the letter from the BHC Colombo confirmed the bona fides of Mr Weerasooriya noting that he was registered with the Bar Association.
25. Further, the letter which was generic in form and not necessarily specific to this particular case confirmed that an official from the Bar Association of Sri Lanka had advised that court files were available to lawyers and this would include copies of any handwritten notes. The DVR of Mr Jayasuriya, who had been instructed by the Appellant's British solicitors to yet further verify the authenticity of the documents produced, included the following verification:

"Our investigations/enquiries at the Bambalapitiya Police confirm that the above name (PJ) was arrested by the Bambalapitiya Police in a search operation of a house in .. Wellawatta Colombo on 30/11/2007. He was arrested together with four other persons in relation to the above case.

Police records confirm that Mr PJ was released on Police bail by the Bambalapitiya Police on 01/12/2007. Bambalapitiya Police lock-up records were checked and Mr PJ's name is on record.

Notification of arrest of PJ's Bambalapitiya Police dated 01/12/2007 is genuine and issued by the Bambalapitiya Police when he was released on the said date.

The Court records were checked at the Magistrates Court, Mt. Lavinia and we confirmed that the case records including all attached 'B' reports, airport notification and journal entries are authentic. There is a file on case number B4852/2007 on record at the Mt. Lavinia Magistrates' Court.

Police records at the Bambalapitiya Police also confirmed that the 'B' reports was filed in the MC, Mt. Lavinia.

The court records were checked at the Chief Magistrates Court Number 3 at Colombo-12 and we confirm that the case records including all attached 'B' reports, airport notification and journal entries and authentic. There is a file on case number B8144/3/2012 on record at the Chief Magistrates Court at Hulftsdob in Colombo-12.

Police records at the Modara Police also confirm that the 'B' reports were filed in the Chief Magistrates Court at Hulftsdob in Colombo-12. I did not request detail of the investigation as my task is limited to verification of the authenticity of the documents sent for verification and not to make a judgment on the contents.

Notice to Controller of Immigration and Emigration - We conducted investigation under Bandaranayake International Airport and confirm that the notice issued by the Magistrate requesting the arrest of the suspects is genuine and on record at the Controller of Immigration and Emigration. As the suspects are said to be evading arrest by repatriating abroad the notice has been issued ordering the arrest on return to Sri Lanka.

I also contacted Mr Asoka Weerasooriya, Attorney-at-Law who had provided a letter addressed to Mr Ambananden Sooben, ICS Solicitors, stating that he had instructed his junior and filed a motion and obtained the same certified copies of the court records. Mr Weerasooriya confirmed that he had issued the letter and also reconfirmed the findings of investigation. I do not know Mr Weerasooriya personally but I have heard of his work as an Attorney-at-Law by repute. He is a well-known and respected lawyer in Sri Lanka who was attached to the Attorney General Department before starting private practice in Sri Lanka.

### **Opinion**

Based on the information received it is my opinion the documents (Case Ref's: B4852/2007 and B8144/3/2012) sent for verification is authentic".

26. Ms Isherwood informed us that the DVR had only been seen and received by her that morning. She told us that the Respondent had an interest in verifying documents. She accepted that nothing had been done by the Secretary of State to try and verify the documents produced apart from the BHC letter of 28 January 2013 (see above) and asked to confirm that Mr Weerasooriya had registered at the Bar in Sri Lanka.

27. Ms Isherwood stated that she wanted to take instructions although she was “not sure what on yet” we granted her request that we should rise while she made her enquiries.
28. Upon our return to the hearing room Ms Isherwood informed us the Respondent had been in contact with Colombo and understood that they could obtain a response/report hopefully within fourteen days as to the veracity of the documents upon which the Appellant relied, but Ms Isherwood continued the difficulty was the amount of corruption in Sri Lanka. However, at this point we reminded her that this had been the standpoint of the Secretary of State in this case from the outset it was addressed by their Lordships in PJ. Two lawyers independently of each other whose status was not questioned by the Secretary of State had already made it clear that the documents were genuine and reliable. We thus queried of Ms Isherwood why in such circumstances a further delay in this case would be justified?
29. When further pressed to explain our what basis Ms Isherwood sought to persuade us that it was in the interests of justice to grant an adjournment mindful of the wealth of evidence already before us, Ms Isherwood explained that if as a result of the Secretary of State’s further enquires she found that she could herself place reliance on them then it would be the Respondent’s position that she would accept that the Appellant was at risk.
30. Not surprisingly, Ms Isherwood’s adjournment request was vigorously resisted by Mr Martin who inter alia pointed out the Secretary of State had had two and a half months in which to make her enquiries since the promulgation of the decision of the Court of Appeal in PJ. The Respondent might have also thought it sensible if so minded to check the veracity of the documents given they had been in her possession since April 2012. The Appellant’s life had been on hold for long enough. Mr Martin submitted that the just and timely disposal of this appeal warranted that it should proceed to its conclusion today. It was simply too late in the day to seek an adjournment.
31. We refused Ms Isherwood’s adjournment request. We considered that Mr Martin’s observations were well-founded. The documents concerned had indeed been in the Secretary of State’s possession since April 2012. There had been ample opportunity to make appropriate enquiries but the Respondent had failed to do so. Promulgation of the Court of Appeal decision in PJ took place in July 2014 over two months previously. We concluded that for those reasons and given the evidence cumulatively before us but quite apart from their Lordships’ observations in PJ included reports of the two lawyers originally involved and now a further report from a third lawyer there was in the circumstances, ample evidence before us to consider and determine the outcome of this appeal.

32. We further observed that the letter from the BHC dated 10 October 2013 was a document that featured in the hearing in PJ and was in the possession of the Treasury Solicitor. The fact that internal difficulties meant that Ms Isherwood was not in possession of the document until today was in such circumstances not a factor that we could take into account in her favour. This case had been in the appeal track for some considerable time and we were further minded and sensitive to the stress and anxiety and uncertainty thus faced by the Appellant who had come to the hearing today expecting for his case to proceed. The just disposal of this appeal and the interests of justice warranted that we should do precisely that and thus Ms Isherwood's adjournment request was refused.
33. There was common ground between ourselves and the parties' that the outcome of the appeal turned upon our consideration of the documentation before us and the weight that we decided to attach to those documents. In that regard we asked Ms Isherwood if she could clarify the Respondent's position specifically as to whether if the Tribunal found the documents to be reliable such as significant weight could be attached to them, was it the Secretary of State's position that in such circumstances it would be accepted that the Appellant would be at real risk if now returned to Sri Lanka. Ms Isherwood responded that whilst she appreciated the significance of our enquiry the position remained that she would continue to rely on the Secretary of State's Letter of Refusal 2 May 2012.
34. We were informed by Mr Martin that he did not intend to call the Appellant to give oral evidence before us and the parties were in agreement that the hearing should now proceed on the basis of submissions only.
35. At the conclusion of their respective submissions we were able to inform them that we had no difficulty in concluding that this appeal should be allowed for the reasons that would follow in this, our determination.

### **Assessment**

36. Our starting point has been the findings of their Lordships in PJ not least those expressed by Fulford LJ at paragraphs 41 and 42 of his judgment (above) who, considered of "greatest significance" the letter from the Magistrate of the relevant Court to the Controller of Immigration and Emigration stating that the Appellant was in the United Kingdom and that he was to be arrested on his return to Sri Lanka. His Lordship had continued that "In the absence of a sufficient reason for concluding otherwise, the inescapable conclusion to be drawn from this material - retrieved independently, it is to be stressed by two lawyers from the Magistrates' court on separate occasions, is that the Appellant will be arrested on his return to Sri Lanka as a result of links with the LTTE and their activities".

37. His Lordship's observations have been reinforced by the production before us of the letters handed in by Mr Martin comprising the BHC Colombo letter of 28 January 2013 and the Document Verification Report of the Attorney-at-Law in Sri Lanka Mr S Jayasuriya not least in terms of those aspects of each of those documents that we have identified above. Taking this we have had no difficulty in such circumstances mindful of the overwhelming accumulation of evidence in support that the documents concerned are reliable and are such that we can attach significant weight to them. It follows that we find that the Appellant not least to the lower standard of proof has convincingly established the truth of his account. Indeed and as an example, the Appellant's account of his arrest and detention following the discovery of an unexploded bomb near his home has been clearly confirmed by the documents and reaffirmed in the DVR of 10 October 2013 submitted by Mr Jayasuriya.
38. It was notable and indeed to Ms Isherwood's great credit, that she accepted that the bona fides of Mr Jayasinghe and Mr Weerasooriya lawyers in Sri Lanka was not challenged. She accepted, that the evidence clearly established that such documents did indeed appear in the court records.
39. In particular whilst it was her submission that although the documents in their form might be genuine their content might be false, Ms Isherwood recognised that the issue of as she put it "the content and weight to be placed on it" was a highly significant factor in determining whether or not this Appellant would be at real risk if now returned to Sri Lanka.
40. In that regard Ms Isherwood recognised that whatever the genuineness of the content of those documents given her acceptance that they were on the evidence on the court records, that if the Sri Lankan authorities found them they would not question that the Appellant was the subject of an arrest warrant and indeed that he was required to be arrested upon return to Sri Lanka.
41. We therefore enquired of Ms Isherwood as to where that left the Secretary of State's case. If the Respondent was not challenging the bona fides of the lawyers and not suggesting that the documents concerned were not on the court records then it would surely follow that the Appellant would upon arrival at Sri Lanka Airport be found to be on a "Stop List" and in such circumstances a person who would be at real risk of persecution.
42. It is right to state that Ms Isherwood's brief response was that she continued to rely on the Reasons for Refusal Letter.
43. Whilst that letter made reference to the availability of forged official documents in Sri Lanka was notable, as indeed Mr Martin pointed out in his closing submissions that at paragraph 24 of the Respondent's Letter of Refusal she had cited a letter from the BHC in Colombo dated 14 September 2010 concerning forged and fraudulently obtained documents

and that the passages relied upon from that letter claimed inter alia that it was common knowledge that persons could obtain an ID card or passport in any identity they wanted with the right contacts. The Visa Section regularly saw forged education certificates and bank statements and employment references. The passages cited did not however identify the documents upon which the Appellant in the present case relied in the category of forged or identify. There was no reference in that letter to documents on the Court record or letters from Magistrates of relevant Courts to the Control of Immigration Emigration.

44. We have reminded ourselves that in HK [2006] EWCA Civ 1037 it was held inter alia that instead of asking whether an account was inherently implausible, one should look at the evidence and ask oneself whether for example it is consistent with the background material and any expert evidence in support whether such evidence was of good quality. That is the approach that we have taken in our consideration of the credibility of the Appellant's account and claims. Our assessment of his credibility has been helped considerably by the documentary evidence that the Appellant has been able to produce in support of his claims that are indeed consistent with his account such that not least the lower standard of proof concluded that the Appellant's account is credible.
45. That however is not the end of the story because whether or not the Appellant's credibility was in question the issue that we have to determine is whether in his particular circumstances he would be at real risk if now returned to Sri Lanka. For this purpose we have taken full and careful account of the guidance of the Tribunal in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC) a decision subsequently approved by the Court of Appeal in MP (Sri Lanka) [2014] EWCA Civ 829 that we have applied against the backdrop of the facts as we have found them.
46. The Tribunal in GJ concluded that 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 was a spent force and there had been no terrorist incident since the end of the civil war. The Tribunal identified the current categories of persons at real risk of persecution or serious harm on return to Sri Lanka whether in detention or otherwise.
47. In that regard and at (7)(d) of their headnote the following was stated:
 

*“(d) A person's 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”.*
48. In light of our findings and in common with the views expressed by their Lordships in PJ we too have come to the “inescapable conclusion” to be



drawn from not least the documentary material before us retrieved independently by two lawyers from the Relevant Magistrates' Court on separate occasions and subsequently reaffirmed by yet a third lawyer Mr Jayasuriya, that in the Appellant's circumstances he would undoubtedly be arrested on his return to Sri Lanka as result of links with the LTTE and their activities in consequence of his family connections with the LTTE. We find in common with their Lordships those documents indeed lie at the centre of the application for protection and as we have already stated for the above reasons they are documents to which we can attach significant weight. As found by the Tribunal in GJ those on a stop list are those in respect of whom arrest warrants had been issued and/or court orders. We are satisfied that an arrest warrant has indeed been issued in relation to this Appellant that he is therefore undoubtedly at real risk of detention and ill-treatment at the point of return.

49. For the above reasons, the Appellant's appeal is therefore allowed on asylum grounds and under Article 3 of the ECHR. No separate Article 8 ECHR argument was advanced. The Appellant is not entitled to the grant of humanitarian protection.

### **Conclusion**

50. We remake the decision in the appeal by allowing it on asylum and human rights (Article 3 ECHR) grounds.

This was dictated at the end of the Winscribe – many thanks

Add Guidance to the present case

We note that at paragraph 20 of the Respondent's Letter of Refusal under the sub-heading "Supporting Documents" it was noted that the Appellant had submitted:

"Affidavit dated 19 March 2012 attesting to the fact that you are believed to be collecting money in the United Kingdom for distribution in Sri Lanka for the use of the LTTE organisation".

Signed

Date

Upper Tribunal Judge Goldstein