



IAC-PE-AW-V1

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

Appeal Number: AA/03869/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 13th January 2016**

**Decision & Reasons Promulgated
On 29th March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

[S T]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel - Counsel

For the Respondent: Mr G Harrison - Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by [ST], a citizen of Sri Lanka born [] 1972. He appeals against the decision of the Respondent made on 28th February 2014 to refuse to grant asylum and to remove the Appellant from the United Kingdom.

2. The Appellant appealed against that decision and his appeal was dismissed by a First-tier Tribunal Judge on asylum and humanitarian protection grounds but allowed under Articles 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The Secretary of State appealed against the determination of First-tier Tribunal Judge Edwards and on 6th August 2015, having heard submissions, I found that there was a material error of law in Judge Edwards' determination because he had failed to give adequate reasons for his decision. He simply said that he could see no reason not to accept the medical evidence and gave very little explanation for dismissing the appeal on asylum grounds. It was agreed by the parties before me on 6th August that the decision of Judge Edwards could not stand and that the case would have to be reheard. I was told at that point that the Appellant, due to his medical condition, would not be giving evidence and that the case would proceed on submissions only.
3. I now proceed to remake the decision.
4. No oral evidence was tendered. The Appellant did not attend court.
5. I shall briefly set out the basis of the Appellant's claim for asylum.
6. The Appellant claims that he had no interest in joining the LTTE and did not do so, but because his younger brother was a member, the army suspected that he was a member too. On three different occasions between 2000 and 2004 he visited LTTE camps with his brother who was an active member and was involved in shootings.
7. He says that in 2007 his brother was involved in the shooting of a man called Reji. A week after that a man who was a member of Reji's brother's gang went to the Appellant's aunt's house and beat her and her daughter up, threatening to kill the Appellant and his brother. They smashed up the house. The Appellant remained at his aunt's until May 2009 when the army surrounded his aunt's house, entered it and arrested the Appellant. He was beaten and asked where his brother was. He was asked where the weapons were hidden. He was taken to a camp where his hands were tied behind his back and he was beaten. He was made to drink urine. He was hung up and left until the next day when he was taken down and beaten again. They kept asking him where his brother was and where the guns were hidden. He had his photograph taken and some people who had been with his brother identified the Appellant as being his brother. The army believed him to be his brother and continued to torture him. A bottle was broken on his cheek and salt was rubbed into the wound. On another occasion he was hooded and taken back to his aunt's house where the Appellant gave the men a grenade he had been given by his brother in 2008 at which point his brother told him that he should detonate it if anyone came to bother him. On this occasion the Appellant was beaten and stabbed on the legs and ankles with a knife. He was taken back to the camp. On one occasion he was tied up and lifted on a pulley above the ground, his head was covered with a plastic fertiliser bag and he felt boiling water being poured over his body. He asked to be shot he was in so much pain. He was kept in the camp for two years and three months. He was not beaten up but was not given any medicine to help heal his wounds.

8. One day in the evening a major called Wurakone came to the Appellant's cell, ordered soldiers to remove the handcuffs and told him that he was going to a different camp for investigation. He took the Appellant to his office and gave him a good pair of trousers and a shirt. He was taken to a restaurant where he met a man called Bobby. The major had apparently come to help him escape after the Appellant's aunt had paid him 10 Lakhs. He was taken by 'Bobby' in a van to Colombo, given clothes and a false passport and put on a flight to Dubai.
9. The Appellant said that whilst he was in detention in 2011 he was told that his brother had been killed and his body thrown over a bridge. His body had been found in the sea.

The Decision of the Secretary of State

10. The Secretary of State in the refusal letter accepted that the Appellant is Sri Lankan and a Tamil. The Secretary of State had checked a website called Tamilnet from which she apparently ascertained that Karuna's brother Reji was killed in 2004 and not in 2007 as stated by the Appellant and he was indeed killed by the LTTE special forces which is highly inconsistent with the account given by the Appellant. The Secretary of State considered that the account given by the Appellant was not credible because if the authorities were sufficiently interested in the Appellant to go and behave as they did at his aunt's house they would have checked with his other relatives, especially bearing in mind that he had only moved about twenty miles into the home of another very close relative. The Secretary of State noted that the Appellant had said three times in his interview that he was not given any medication for the wounds which he sustained in detention but then said that he was taken to a doctor in an army sick bay where he was given a bed and had his wounds cleaned and treated. He also said that they had left medicine with him so that his wounds could be cleaned and medicated. The Secretary of State considered this to be inconsistent with the background information which she had before her which is to the effect that a detainee has the right to see a medical officer and doctors are obliged to report any suspicious injuries. She considered the Appellant's account of what had happened in Sri Lanka and of his treatment in detention to be inconsistent. She took into account that although the Appellant had provided photographs showing various body parts none of them showed his face so no weight could be attached to the photos.
11. The Secretary of State also questioned the documentation used by the Appellant to travel to the UK. According to Home Office records the man whose name was on the passport that the Appellant used to travel to the UK lives at the same address in Bristol that was the Appellant's home from the time he arrived in the UK in September 2011 until 23rd November 2011 and both he and the man whose name was on the passport both originate from Batticaloa in Sri Lanka. Furthermore the travel document contains a Uganda exit stamp dated 26th September 2011, the day the Appellant claims to have been in Dubai about to commence his travel to the UK. The Secretary of State therefore did not accept that the Appellant had been given the passport by 'Bobby' who had been paid to arrange his escape.

12. The Appellant had provided other documents, particularly letters from the Information Book of Batticaloa Police Station and from the Rt Rev Dr J Kingsley Swampillai, Dr Arman Navasardyan and Dr Gramaniladhari, but these documents are all photocopies or faxed copies. The Appellant had said that he would provide the original documents but has failed to do so.
13. The Secretary of State considered the medical evidence that was before her at the time the decision was made:
 - (a) She noted that the Appellant had been initially assessed by the Cardiff Mental Health Team in June 2012 and that this assessment said that the Appellant - would be at a high risk of suicide if deported and while the risk was not imminent it was moderate and constant.
 - (b) On 25th June 2012 the Appellant was assessed by a mental health nurse after taking himself to a police station having had fleeting thoughts of suicide.
 - (c) On 10th July 2012 he was assessed by a social worker who noted that his tone and rate of conversation were appropriate while he spoke about problems in Sri Lanka, torture and the loss of his brother but he became angry and agitated at the discussion of deportation.
 - (d) On 5th December 2013 he met with a psychiatric doctor who stated that the Appellant had "no apparent symptoms of depressive disorder, PTSD".
 - (e) On 6th December 2013 he approached the police asking to be locked up to prevent himself taking his own life. He indicated that he felt there was no reason to stay in the world as he did not have a wife or children. The clinical impression was that he was well supported in the asylum community and that "you did not intend to end your life although remained concerned about deportation".
 - (f) On 9th December 2013 he was awoken by a representative of the UKBA and having had a knife under your pillow he threatened to kill himself on opening the door as he feared they had come to arrest and deport him.
14. In her report Dr Lord had noted that the Appellant has continued support from his aunt in Sri Lanka who has been assisting in his asylum appeal by sending human rights documents for him. She took from this that the Appellant has a loving supporting relative with his interests at heart.
15. The report of Dr Lord considers the Appellant's scars and the Secretary of State went through this report very thoroughly indeed. She concluded that the medical report does not support the Appellant's claim to have been ill-treated in detention. She did not accept that the medical report shows that the marks on the Appellant's body were caused in the manner claimed by the Appellant. She also noted that at no point had he provided a report showing a diagnosis of PTSD that had been written by a person qualified to diagnose this condition. Having said that the Secretary of State

noted that two years earlier the Appellant had been considered by a doctor to be at high risk of suicide should he be removed to Sri Lanka but this suicidal ideation is related not to his claimed past but to a future fear.

16. She went on to consider the Appellant's claim in light of the decision Y Sri Lanka [2009] EWCA Civ 362.

Submissions for Appellant

17. Ms Patel began by pointing out that the Home Office had previously withdrawn two decisions in this case. In the refusal letter they did not consider all the medical reports. There was a report from Dr Chandra Ghosh but this was not referred to in the refusal letter. She pointed out too that the Appellant had given a lot of detail in his responses to the questions at the interview, in particular about the camps that he went to and his brother's activities. His brother was killed by the authorities. She referred me to the death certificate of the Appellant's brother at page 163 of the bundle establishing his death on 2nd August 2011.
18. With regard to the death of Reji I have in the bundle a copy of a letter which the Appellant's representative sent to the Home Office in response to the refusal letter in which it is stated that the Appellant could not say exactly when Reji was killed. He knew only that it was between 2004 and 2007.
19. Ms Patel also referred me to page 166 of the Appellant's bundle 1 which is a copy of a letter dated 23rd November 2011 and on the headed notepaper of Médecins Sans Frontières signed by Dr Stewart Condon which states:

"I hereby certify that [ST] underwent treatment at the history of being poured a hot water on his chest up to his toes and he received treatment for the thermal injuries caused during the above incident."
20. Ms Patel submitted that this confirms that he was treated by Médecins Sans Frontières who routinely provide medical aid to those detained in Sri Lanka. At page 157 there is an arrest warrant dated 14th December 2011 issued for failure to attend the court. It was issued by the Magistrates' Court in Batticaloa. There is a letter also from the village leader dated 15th July 2013 saying that some unknown armed person came in search of the Appellant and his aunt. There is a letter from a Bishop of the Diocese of Trincomalee - Batticaloa dated 8th November 2011 at page 167 confirming the Appellant's brother to have been in the LTTE and the Appellant's arrest, detention and release by payment of a bribe.
21. Ms Patel also referred me to the document at page 168 of the Appellant's bundle 1 which was issued by the Human Rights Commission of Sri Lanka and refers to a threat reported to them on 27th March 2013 by [TS]. The complainant is the Appellant's aunt and this document ties in with the letter from village leader to which I incidentally would attach little weight since clearly it was written 3 months after the complaint was made and the information came from the Appellant's aunt.

There is nothing to suggest that the village leader witnessed the incident. Under 'Category' it states:

"Threat. [ST]."

22. Ms Patel said that this is an acknowledgement of a complaint made to the Human Rights Commission.
23. Ms Patel submitted that the Appellant would be at risk on return in terms of subparagraph 4 of the heading of **GJ**. He would be perceived to be a supporter of the LTTE and to have had a significant role. It is irrelevant whether he actually was involved with the LTTE. The Appellant fears ill-treatment on return. She asked me to consider all the medical evidence including his medical records which are in the bundle. She submitted that Dr Ghosh has confirmed in her report of 7th February 2014 that there is a causal link between the Appellant's current state and the ill-treatment to which the Appellant was subjected in Sri Lanka. In this report at page 9 she said that the attempt he made to kill himself while walking down the railway tracks suggests that he remains a very serious risk of suicide if he is faced with threats of deportation. There was also evidence that he had tried to set himself on fire and that he had taken an overdose. He has to collect his medication from the pharmacy daily because of the risk of overdosing. He keeps a knife by him and says that he would use it if attempts were made to pick him up to send him back to Sri Lanka.
24. In the most up-to-date report dated 26th September 2015 Dr Ghosh confirms that the Appellant made a suicide attempt on 25th July when he was admitted to hospital. He has a support worker and is supported by the Mental Health Team. He has been accessing mental health care for over three years and needs lots of support. He takes four different kinds of medication. She says it is obvious from pages 11 to 13 and 26 to 30 how often he has been admitted to hospital. At pages 26 to 30 of the Appellant's bundle 3 for example I have confirmation of attendance at the emergency department on 7th October 2012, the complaint being that he was "unwell"; on 6th December 2013 the complaint being "OD" which I assume is 'overdose' as the CDU indication is "deliberate self harm" - mixed overdose (he was discharged five hours later); on 9th December 2013 when the complaints were "suicidal thoughts, threatening to stab himself with a knife". (He was discharged home that day.)
25. He has been receiving counselling. There is a report from his Counsellor saying that he needs a more specialist form of support such as specific trauma-related therapy.
26. In his submissions Mr Harrison said he would rely on the refusal letter. He accepted that it does not deal specifically with the report of Dr Ghosh but it does deal with the Appellant's mental condition. He conceded that it is clear that the doctors are satisfied that the Appellant has mental health issues but at no point has anyone found out that he has been telling the truth. The Secretary of State did not believe him. Judge Edwards did not believe him. The doctors have taken what he has said at face value. He has never been found credible. Dr Lord found that there had been

injuries to his body and says one of them is diagnostic (the burn by hot water) but there are many ways of getting this. She said the fact that the Appellant has claimed on four occasions that he has tried to kill himself and has never been successful speaks to his real intention. What he says indeed is that he will kill himself if attempts are made to remove him from the UK. He questioned why the letter from Médecins Sans Frontières was written after the Appellant's brother died. There is an issue of when he was treated.

27. Mr Harrison pointed out that there is a document at page 104 of bundle 3 which is a letter from Dr Lucie Klenka a Consultant Psychiatrist. She had seen the Appellant on 24th August 2015. He had told her that he is suffering and at times he does feel suicidal. She confirmed that this is reflected in the assessments that had been recently carried out by the Liaison Team. She said that he is still no further forward as far his legal status in the UK is concerned and is understandably worried about deportation which is undoubtedly contributing to his mental state. He told her that it was the constant flashbacks, nightmares and images that he gets in his head of his time back in his home country which are the most debilitating of his symptoms. He is on a waiting list for EMDR (no explanation of this acronym given) with psychological therapies. She states:

"I have not made a follow-up appointment to see him but if circumstances change I will be happy to do so in the future."

28. In response Ms Patel pointed out that the Appellant does not have the ability to instruct those instructing her.
29. She said it is clear from the above that the Appellant has mental health problems. He has presented on several occasions with suicidal thoughts and ideation. This is a significant factor in the Assessment of his appeal. In her report of 7th February 2014 Dr Ghosh states that the Appellant is suffering from severe PTSD. She states that any threat of deportation is likely to lead to a greater deterioration of his mental state. She says that he remains a significant suicide risk and if he were put on a plane to Sri Lanka it is her opinion that he would kill himself. There is also a letter dated 25th June 2014 from Dr Lucie Klenka saying that any communication about his asylum status and any discussion about the possibility of him returning to Sri Lanka would place an enormous amount of stress on the Appellant and she feels that he would be incapable of giving any valid evidence in court or whilst being cross-examined. She opines that the distress that this would cause would mean that any evidence that he would give would be very much overshadowed by the extreme emotions that he would be experiencing at the time of attempting to give his evidence.
30. Dr Lesley Lord found that a scar on the Appellant's cheek is diagnostic of a healed incised wound caused by a sharp object and typical of a wound that was not repaired and which gaped as it was healing. It is therefore highly consistent with his account of being slashed on the cheek with a piece of broken glass. She finds the long scar on his left arm to be diagnostic of an incised wound and therefore highly consistent with his account of him having used the sharp point of a pen used to drag down the arm.

The other mark that she found diagnostic is the scarring on the arm, chest and genital area diagnostic of healed burns and therefore with his account of having hot water thrown at him.

Burden and Standard of Proof

31. The burden is on the Appellant to show with regard to the asylum appeal that returning him would expose him to a real risk of an act of persecution for reasons set out in Regulation 6 of the 2006 Regulations. With regard to Humanitarian Protection he would have to show substantial grounds for believing that he would face a real risk of serious harm as defined by paragraph 339C of the Immigration Rules or face a real risk of a breach of his protected human rights.

My Findings

32. I have given very careful consideration to all the evidence put before me in this case, including the medical evidence, the arrest warrant and the other documents. I have considered all the background information relied upon by both parties and the Home Office Operational Guidance note relative to Sri Lanka (OGN).
33. The Appellant claims that he would be at risk of persecution in Sri Lanka because he would be perceived as a supporter of the LTTE. He was never involved with the LTTE but his brother, now deceased, was. The Appellant claims to have been arrested, detained, ill treated and released on payment of a bribe. He claims that an arrest warrant was issued in December 2011 and that in 2013 the authorities went looking for him in Sri Lanka. There is some evidence that he was treated for burns in Sri Lanka by Médecins Sans Frontières (MSF) but it is not clear when this treatment was given, the grammar in the note is poor and it is unclear why the note would be issued in November 2011 after the Appellant had left the country. There is a question too of how he obtained it.
34. Because the Appellant did not give evidence there was no opportunity to seek clarification of any of the matters which do raise issues such as the note from MSF, his evidence that he received no medical treatment or medication and his evidence relating to the death of Reji which was both inconsistent and at odds with the background information. He clearly said in his interview that his brother shot Reji in 2007. I note that the Respondent raised questions about the Appellant's identity and about the documents he was carrying when he entered the UK.
35. It seems to me that much of the Appellant's account of events in Sri Lanka is intrinsically implausible. I have considered whether his mental state may have caused difficulties for him in recounting what happened in Sri Lanka but both in his screening and asylum interviews he said he had no medical problems apart from some back pain. He underwent a very comprehensive interview and gave detailed answers. No other evidence was provided by the Appellant apart from a response to the refusal letter for which it is reasonable to assume he gave instructions to his representatives. There are no statements.

36. The Appellant was never involved with the LTTE. I accept that he may have been suspected of involvement because of his brother. I must however take into account that he had no problems for a two year period between 2007 and 2009 and I consider it highly unlikely that during that period he did not leave the house as claimed in his interview. He said that in 2009 when he was arrested there were 100 men surrounding his aunt's house. It is hard to comprehend why so many men would be deployed on this since there is nothing to suggest that the Appellant had done anything to bring himself to the attention of the authorities or that there had been any concerted effort to find him prior to that. The Appellant was clear that when he was first taken into custody he was being asked about his brother so the 100 men were not there because it was believed he *was* his brother, a known LTTE activist. It was only some time into his detention that the authorities apparently formed the view that the Appellant was indeed his brother. This leads me to ask how he was able to secure his release from detention, as he said, '2 years and three months after his arrest in May 2009'. His brother was apparently killed on 2nd August 2011 and the Appellant claims to have found out about this in September 2011 from the man who let him out of detention. The fact that a Major, a senior officer was prepared to take the risk of releasing him on payment of a bribe does not indicate any particular interest in the Appellant. His brother was by this time dead. The Appellant left Sri Lanka in September 2011 and a warrant for his arrest was issued in December that year. I do not accept that the authorities would have had any interest in the Appellant at that time. In general the chronology of his account and of the documentary evidence raises many questions.
37. It is of course the case that in 2009 there were many arrests of people believed to be supporters of or working for the LTTE either willingly or otherwise. Despite the inconsistencies in his evidence I shall give the Appellant the benefit of the doubt and accept that he was at some point arrested, detained and ill-treated. I agree with the Respondent that the report of Doctor Lord assists the Appellant a little but I think it highly unlikely that he was detained for as long as he says or that he was released with the aid of a Major when he says he was, given the very recent death of his brother who they had mistaken him for.
38. There is some additional documentary evidence some of which I have referred to above. It seems to me that these documents were commissioned for the purposes of the asylum appeal. There is a letter from the police in Batticaloa saying that the Appellant's aunt had reported him missing after he had been 'abducted' by an unidentified group with green uniforms in May 2009. This document was issued on 7th November 2011 around the same time as the other documents and the Appellant never said he had been abducted. He was clear from the outset that he had been arrested.
39. I turn to the question of risk on return and in order to assess this I must first consider what the Tribunal said in the Country Guidance case **GJ**. Ms Patel in her submissions said that paragraphs 4 and 7(a) apply to the Appellant. The summary states:

(2) The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.

(3) The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.

(4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.

(5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.

(6) There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.

(7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:

(a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.

(b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.

(c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.

(d) A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.

(8) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the

extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.

(9) The authorities maintain a computerised intelligence-led “watch” list. A person whose name appears on a “watch” list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.

(10) Consideration must always be given to whether, in the light of an individual’s activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the “Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka”, published by UNHCR on 21 December 2012.

40. Paragraph 4 only applies to the Appellant if he is at risk of arrest and detention on return and taking account of what the Tribunal said at paragraphs 8 and 9 I see no reason to consider that he would be of any interest. It is accepted that many people in Sri Lanka had some involvement with the LTTE but there is no evidence that the Appellant ever had any. His brother is dead. He was released from detention. I do not accept that an arrest warrant would be issued against him in December 2011 or even if one was that the authorities have shown any interest in him since then. I do not accept that they were looking for him in 2013, given the evidence before the Tribunal in **GJ**. There is no reason why the Appellant would be perceived to be a threat to the integrity of Sri Lanka as a single state. He never had any role in the past let alone a significant one and if he had had such a role he would not have been allowed out of prison as he was and significant efforts would have been made to find him.
41. I find therefore that the Appellant has not established that there is a reasonable likelihood that he would face a real risk of persecution if he were returned to Sri Lanka.
42. I turn now to the medical evidence and the question of whether in light of his medical condition the removal of the Appellant from the UK would give rise to a breach of his human rights under either Article 3 or 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In the most recent medical report the conclusion of Dr Ghosh is that the Appellant is suffering from quite severe PTSD and that there is a causal link between his mental state and the description of the torture. He is receiving anti depressants and antipsychotics. Dr Ghosh says the antipsychotics have been prescribed because the Appellant has developed persecutory delusions in relation to people of Sri Lankan origin as a result of his PTSD. There is a considerable amount of evidence of mental health problems from which it is clear it is the fear of being returned to Sri Lanka that has

the most impact on the Appellant. In that regard I have considered the decision of the Court of appeal **J v Secretary of State for the Home Department [2005] EWCA Civ 629**. In that case the Appellant, also Sri Lankan, had said that he would commit suicide if he were returned to Sri Lanka. It was found that the Appellant had been detained and subjected to horrific torture but that he would not be at risk of persecution on return. The medical evidence recorded that he had taken an overdose after his asylum claim had been refused and had 'features of severe depressive disorder' and PTSD. He was under the care of psychiatric services in the UK. A Consultant Psychiatrist said that his statement that he might kill himself in the UK rather than be returned to Sri Lanka 'should be taken very seriously'. She said he might try to commit suicide en route to Sri Lanka and thus perhaps pose a threat to other passengers. She said that his problems had been exacerbated by the asylum process in the UK. The Court of appeal in considering the matter relied on the decision **D v UK (1997) 24 EHRR 423** and **N(FC) v SSHD [2005] UKHL 31**. They discussed the question of 'a significant increase in the possibility of completed suicide'. They referred to **JS v SSHD [2005] UKIAT 00083** and to **AA v SSHD [2005] UKIAT 00084**.

43. The circumstances of the Appellant in **J** are clearly similar to those of the Appellant but I have of course considered the Appellant's case on its own merits whilst taking account of the general principles expressed in **J**.

44. The threshold for a breach of Article 3 is extremely high and must be assessed in the light of the various stages of the removal process, i.e. in the UK and in Sri Lanka. There was discussion in **AA** and **JS** about these various stages and it was accepted that an Appellant would have the support of his mental health professionals in the UK on receipt of the decision to remove him and that the Home Office have a policy for removals where there is a stated risk of suicide and would provide an escort if no family member was available to travel with the Appellant. It was accepted that mental health care is available in Sri Lanka. In **AA** the Tribunal said,

"Third stage-transit: there are no reasons to suppose that the Secretary of State would not provide appropriately qualified escorts. This is known to be done. Other measures in other cases may include accompanying family members."

45. In **J** the Court said,

'But in any event, there is no reason to suppose that the measures that would be put in place in the UK to protect the appellant from self-harm would not include measures to mitigate his PTSD and depression. He has been treated for these conditions in this country for a few years, and there is no indication that this treatment will not continue for so long as is necessary. It is conceded on behalf of the appellant that there are adequate facilities in Sri Lanka, and there is no reason to suppose that his treatment would not be continued there.'

46. According to Dr Lord's report the Appellant has the continuing and loving support of his aunt in Sri Lanka. He has presented at hospital several times saying he has had suicidal thoughts though he has also variously said that he had no such thoughts.

On one occasion he said that that he had been walking along the railway line. There is no evidence that he has ever had to be sectioned or indeed hospitalised for any more than a few hours. It is recorded in a letter of 4th January 2014 from his Counsellor Monica Balley that he had told her that he had made several suicide attempts between 7/10/13 and 13/1/14. His hospital records record that he had threatened to cut his throat and that he had overdosed on pills on 6th December 2013, on which occasion he was discharged from hospital after 5 hours. There is no evidence of 'several suicide attempts'. I was told that the Appellant was incapable of instructing his solicitor but it is not clear when this became the case. He had clearly received documents from his aunt in 2013 and to assist his appeal and these had been passed to his representatives.

47. I accept that the Appellant has mental health problems, that he on one occasion attended hospital having taken an overdose and that he has on several occasions attended and reported suicidal ideation. I accept that he has medication and support in the UK. I accept that he does not want and indeed fears return to Sri Lanka. I am however not satisfied, given the process that would be adopted to remove him, the fact that he could live with his aunt in Sri Lanka and that she would care for and support him, and the fact that medication and treatment for his illness would be available to him, that his removal would give rise to a breach of Article 3.
48. I would make it clear that I have carefully considered **Y& Anor (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362** and have in particular noted that the Court said,
- 'None of this reasoning represents a licence for emotional blackmail by asylum-seekers. Officials and immigration judges will be right to continue to scrutinise the authenticity of such claims as these with care. In some cases the Home Office may want to seek its own or a joint report. But there comes a point at which an undisturbed finding that an appellant has been tortured and raped in captivity has to be conscientiously related to credible and uncontradicted expert evidence that the likely effect of the psychological trauma (aggravated in the present cases by the devastation of home and family by the tsunami), if return is enforced, will be suicide.'
49. I do not accept that the circumstances of the Appellants in Y pertain in this case. The Appellant has family in Sri Lanka and the medical evidence does not support a finding that his mental health is sufficiently serious to warrant a grant of leave to remain in the UK.
50. I have also considered whether there would be a breach of Article 8, following the guidance set out in **Razgar, R (on the Application of) v. Secretary of State for the Home Department [2004] UKHL 27**, and in s117B of the Nationality Immigration and Asylum Act 2002. He has provided no detail of family life in the UK. I accept that he has a private life and that that private life includes his medical treatment and his relationships with the professionals who look after and support him but for the reasons set out above I do not consider that his removal would give rise to a disproportionate interference with his private life and find it would be proportionate taking account of the need for effective immigration control in the UK.

Notice of Decision

The appeal is dismissed on asylum and human Rights grounds.

The Appellant has not established a right to Humanitarian Protection in the UK.

No anonymity direction is made.

Signed

Date: 8th March 2016

N A Baird

Deputy Upper Tribunal Judge Baird