



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/12467/2015

THE IMMIGRATION ACTS

Heard at Field House
On 17 April 2019

Decision & Reasons Promulgated
On 14 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

T W
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G Mellon of Counsel instructed by David Benson Solicitors

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

DECISION AND REASONS

1. The appellant appealed against a decision of the respondent dated 14 September 2015 to refuse to grant him asylum. After the appeal had been remitted twice to the First-tier Tribunal the appeal was allowed by Judge of the First-tier Tribunal Carroll in a determination promulgated on 25 October 2018. After a hearing on 23 January 2019 I set aside that decision and directed that the appeal be heard afresh before me. In these circumstances the appeal came before me on 17 April 2019.

2. In my decision setting aside the determination, which is annexed hereto, I set out the appellant's immigration history and referred to the medical evidence placed before the First-tier Judge. In paragraphs 25 through 28 of my determination I gave my reasons for setting aside the decision and referred to the reasons for refusal given by the Secretary of State.
3. In drafting this determination I note the terms of the judgment of the Supreme Court in **KV (Sri Lanka) v SSHD [2019] UKSC 10** which was handed down on 6 March 2019, that is two weeks after my decision was promulgated. That judgment dealt with the issue of self-inflicted injury by proxy and, in effect, emphasised that wounding by SIBP was "generally so unlikely" and that an explanation would have to be found for the number of wounds incurred. It was the view of the Supreme Court, endorsing the judgment of Elias LJ that:

"... very considerable weight should be given to the fact that injuries which are SIBP are likely to be extremely rare. An individual is highly unlikely to want to suffer the continuing pain and discomfort resulting from self-inflicted harm, even if he is anaesthetised when the harm is inflicted. Moreover, the possibility that the injuries may have been sustained in this way is even likely in circumstances where the applicant would have needed to be anaesthetised. This would in all probability have required the clandestine co-operation of a qualified doctor who would have had to be willing to act in breach of the most fundamental and ethical standards, and who had access to the relevant medical equipment."

4. The issue of the scars on the appellant's back therefore becomes a central issue in this appeal. While the respondent has put forward clear reasons why the appellant's claim is not credible. I have to consider the credibility of the appellant's claim in the context of the clear direction from the Supreme Court that it would be extremely unlikely that the injuries which the appellant suffered were inflicted by proxy. I would add, of course, that the standard of proof in this asylum claim is that of serious possibility or reasonable likelihood.
5. Both Miss Mellon and Mr Kotas referred to numerous documents including the various medical reports, the letter of refusal, relevant case law including **GJ and Others (post-civil war returnees) Sri Lanka CG [2013]** and **ME (Sri Lanka) [2018] EWCA Civ 1486** as well as background documentation. The appellant gave evidence regarding his claims of what had happened to him in Sri Lanka before he came to Britain as a student and when he was deported from Martinique. I consider that it is of use if I set out the submissions made to me at the hearing before referring to the documentary evidence. In brief however, in his evidence before me, the appellant relied on two statements and said that he had developed sympathy for Tamils after seeing videos of Tamils being ill-treated. He had helped LTTE members escape from Vavuniya to Chilaw, receiving 50,000 rupees on each occasion. He was helped by his father who was a lorry driver. In all he made five journeys. He had travelled on the last occasion to Vavuniya with a Tamil friend, Ganesh, in his three-wheeler (his tuk-

tuk) and while there his mother told him not to return to Chilaw as his father had been picked up at their home and detained and shortly, thereafter, was found dead on the railway line. He believed that his father had been murdered.

6. In March 2009 he was picked up at a checkpoint when with a friend. He stated he had been released in November 2009 after a bribe was paid by his brother but was placed on reporting conditions. He gave details of his leaving through the airport with the help of an agent. He was asked to identify people from photographs.
7. He stated that when deported from Martinique he had been picked up at the airport and handed by immigration to the CID and that it was then found that he was a wanted person so he was taken to a judge's house because he was wanted and thereafter he was sent to the Welikada Prison. He stated that when he had appeared before the judge he learned that his detention was based on a record on a database that he had helped members of the LTTE and that he had escaped from prison and gone to Britain, that he could be supporting the LTTE from Britain and therefore it was necessary to interview him further. He said he had been shown pictures when in prison and said he did not know the people in the pictures, although he had recognised one person. He said that he was ill-treated while he was being questioned. He stated that he had been released after the intervention of a Member of Parliament but the release had not been legal. There was a record which indicated that he was still imprisoned. He had left on a false passport but which contained a photograph but not his name.
8. In cross-examination the appellant was asked why he had helped the members of the LTTE and he said that he had wanted to help a Tamil friend after seeing videos of ill-treatment. His evidence regarding the contents of the videos was that it showed an atrocity after a bomb had gone off and he mentioned that the LTTE had forced people to join them. One of the videos had shown people being tortured. He then gave details of the money which he had received for transporting Tamils and said that he had helped Tamils because they were "normal people".
9. Although he was primarily a musician he had also driven a tuk-tuk and he said that his father had helped transport Tamils in his lorry on four occasions, but on the fifth occasion he had been with a Tamil in his tuk-tuk. He was then referred to the report of Dr Leggatt in which Dr Leggatt had said that the appellant had told her that his father was initially keen for the family's tuk-tuk to be used but that the appellant had made various round trips to Vavuniya to collect Tamil passengers who were escaping the civil war. The appellant emphasised that he had said that his father had helped him. He confirmed that he, but not his father, had been paid and that he had persuaded his father to help.
10. He was referred to a comment that he had made to a doctor that he had been involved in the militia. He stated that that was wrong: what he had said was that he had been detained by the militia in an army camp. He was then referred to a letter from his doctor dated 6 June 2016 which described visits to the doctor in May and

June 2016 when he had complained of back pain. Mr Kotas then asked him how it was that if he was suffering from posttraumatic stress disorder such that he was unable to attend the course for which he had received the student visa in August 2010, he had been able to work in Tesco. He said that he had not worked. It was then pointed out to him that he had attended his doctor in December 2014 when it was said that he had been trapped between two doors in a hospital while delivering pizza. He was asked if he was working then. He was also asked about the fact that at one appointment it was stated that he had been accompanied by his sister. He said he was accompanied by the woman with whose family he was living at that time. He stated that he had been trying to get to Canada because he had been told that he could not succeed in the asylum application here.

11. Having given Mr Kotas further details of his detention at the airport on return in 2015 he was again asked about his attendance at the doctor's surgery and asked if he had mentioned the scars on his back. He said that he may have talked about it. He was asked why the doctor had not said that he had scars on his back and it was put to him that at that time he had not had scars on his back.
12. He was asked if he had been involved in activity in Britain and he said that he had not and he confirmed to Mr Kotas that he had no evidence that there was an arrest warrant outstanding for him. He said that he was no longer in contact with his mother. He said that he had not instructed a lawyer in Sri Lanka and that one had not been contacted apart from the obtaining of the affidavit from his mother.
13. I asked him:

"Is it true when you first saw the doctor here you did not have scars on your back?"

The appellant replied:

"I don't remember I met a doctor in 2015 and I do not remember. I showed the doctor my wounds".

14. In his submissions Mr Kotas relied on the Reasons for Refusal Letter and asked me to find that the appellant's claim was inherently implausible and inconsistent with the country guidance in **GJ** and that in effect the core of the appellant's claim had not happened. He would therefore not be on risk on return and in that regard he referred to the judgment of the Court of Appeal in **ME (Sri Lanka)**. He asked me to find the appellant's story of having watched a number of videos and then decided to assist Tamils to move around was, for a Sinhalese, extremely unlikely unless there was financial motivation. He had not stated at interview why he would assist the Tamils, but only said that he was sympathetic with them and would therefore help them out. Moreover, he had indicated that the money paid related to his father rather than to himself and if there had been a financial remuneration factor surely that would have been mentioned at interview. The appellant had been vague in

what he had seen in the videos and there was discrepancies in his claim of how he had moved people around, whether by lorry or in the tuk-tuk. Moreover, he was vague as to how his brother had secured his release – the assertion of how he had been released was really based on convenient happenstance. If it were the case that the appellant had feared returning then surely he would have claimed asylum here before attempting to go to Canada. Mr Kotas also referred to the fact that a doctor had mentioned that he had attended with his sister.

15. He added that the appellant had told the doctor that he was involved with the military and the reality was that he had merely tried to explain that away. His story had changed depending on who he had talked to.
16. The appellant claimed that he had been detained at the airport in 2015 but the independent evidence, set out in GJ was that there were no detention facilities at the airport. Moreover, there was no evidence of a warrant or court order and therefore there was no reason why he should have been on a stop list. He would surely have been allowed to go home.
17. With regard to the appellant's scarring his assertion was that he had been subjected to repeated burns but when he got out of detention his grounds were only treated with cream. Moreover, when first seen by his doctor he had not had scars although the doctor had examined his back before sending him for an x-ray. This was powerful evidence that there were no scars when he was examined. Surely if he had just had fresh scars he would have asked the doctor to check them over and if the doctor, having examined him had seen them, that would have been mentioned. The only logical conclusion was that he did not have scars when he arrived in Britain and was first seen by a doctor.
18. Moreover, the appellant had not claimed that he had left the country since returning to Britain and therefore the scars could only have been caused by what had happened to him here. He referred to Dr Leggat's report but asked me to consider that they did not indicate that he had received the injuries in Sri Lanka. The evidence was, he asserted, that the appellant was an economic migrant.
19. Alternatively, he asked me to conclude that taking the claim at its highest and given that there was no evidence of an arrest warrant or that the appellant was on a stop list the only possible reason he could face persecution was because he had helped someone in 2008, which was eleven years ago. He pointed out the appellant had not been involved in politics and there was no evidence of diaspora activities and the reality was the appellant, if returned, was merely just a failed asylum seeker. It may be that he was ill-treated when he had returned because he had used a false passport but that would not be the case on return now as he would be returning on a travel document. There would therefore be no risk on return.
20. In reply Miss Mellon asked me to find that the appellant's claim was credible. She emphasised that the appellant had been consistent throughout the asylum process

and under cross-examination and indeed in what he had said to the medical professionals. The points raised by the respondent were minor. His evidence had been consistent throughout. He had been involved in the Tamil movement and had given reasons why that was the case. Indeed, there was some evidence of Sinhala support for the Tamil cause and indeed evidence that those Sinhalese who supported the Tamils were more severely punished. The only inconsistency is relating to the appellant's detention in 2015 as to whether or not the appellant was held at the airport. He had given a reason for this by stating that he was on a stop list.

21. She asked me to place no weight on the fact that the doctor had said that the appellant's sister had attended with him. With regard to scarring she asked me to note that at no time had the respondent raised the issue of self-inflicted injury by proxy either in the refusal letter or at any other time. She stated that the reality was there was some inaccuracies in the general practitioner's records, for example that she had referred to the appellant as being British but she had said that he had been assaulted in Sri Lanka.
22. She referred me to Dr Leggat's report regarding lower back pain and asked me to make a distinction between lower back pain and upper back pain and stated in any event that pictures were provided at the substantive interview. She referred me to the report of Dr Cohen of the Medical Foundation which affirmed that the "burn lesions" were diagnostic of the cause of torture attributed and had stated that "by the definition of paragraph 187 of the Istanbul Protocol, that no other cause is possible". This was a relatively rare finding and had been arrived at by an extremely experienced independent specialist medical expert from the Medical Foundation Medico-Legal Report Service. She also referred to the psychological report and the decision that the appellant required further counselling. She argued that the appellant was at risk of suicide and therefore would qualify under Article 3 of the ECHR.

Discussion

23. While the reality is that it is likely to be rare that a Sinhalese would support the LTTE the appellant gave two reasons for why he carried out in transporting Tamils between Chilaw and Vavuniya. He stated that he had Tamil friends who had shown him videos of atrocities which had taken place. While Mr Kotas asked me to find that the appellant was inconsistent about what he had seen on the short videos the reality was that he saw more than one and therefore I do not consider that there is inconsistency between having seen instances of torture on video and the results of a bomb blast. Moreover, there was clearly a financial motive for this appellant whose income as a musician is unlikely to have been large and which was supplemented by his work as a tuk-tuk driver. I do not consider that there is anything of import in the apparent discrepancy between his saying that his father transported people by lorry on four occasions and also that he used his own tuk-tuk. It is clear that his father was involved in what might be considered to be a family money making scheme and I do

not therefore place weight on any apparent discrepancy as to whether or not the lorry or the tuk-tuk was used on all occasions or, as is more likely, on most occasions but not on the last. Applying the low standard of proof, I accept the appellant's evidence that for reasons both of sympathy – and he clearly had in mind the fact that the LTTE were themselves oppressing Tamils – that he should have transported Tamils not only out of sympathy but for financial reasons. I accept that having been detained that would have led to his detention and clearly if he were released after detention it would be likely that he would be asked to “sign on”.

24. Having arrived in Britain the appellant had leave to remain for two years and immediately, in 2010, obtained work. That in itself does not detract from his story of what had happened to him in Sri Lanka, notwithstanding the provisions of Section 8. I do not place weight on the apparent discrepancy that he said that he was not working after 2012 despite the fact that he was apparently delivering pizza when he was trapped between two doors, a situation which could well have been traumatising for him particularly if he had been detained in the past.
25. The appellant says that his father was detained because of what he was doing and I consider that that is possible although I do not make any finding on whether or not the appellant's father was killed while detained.
26. In all, having considered the evidence in detail I can only conclude on the low standard of proof the appellant's story of events up to his coming to Britain are reasonably likely to have taken place.
27. I would add that I am not blind to discrepancies between what the appellant may have said at interview and what was recorded in the doctor's notes but the reality is a doctor's duty is not to take a witness statement but to consider medical matters and prescribe relevant remedies.
28. The appellant states that when he was returned to Sri Lanka in 2015 he was picked up by immigration and handed over to the CID when he was taken before a judge before being taken to prison. I do not consider that what he stated was inconsistent with the guidance in **GJ** given that he says that he was handed over by immigration to the CID and then taken to a judge before going to prison. In prison, he said he was tortured and asked to name people whose photographs he was shown before his release was secured by a Member of Parliament. He then escaped through the airport using a false passport with his own photograph. I consider that that is possible but it does lead to the issue of the scarring which he has on his back and which was shown to Dr Leggat. Dr Leggat was clearly of the view that the appellant was tortured in the way he claimed and that the scarring was diagnostic of that. She stated that the lesions she saw were in keeping with burn injuries sustained ten months previously - that is at the beginning of 2015 before the appellant returned. Her report is compliant with the Istanbul Protocol. She is clearly experienced and her credentials are endorsed by Dr Cohen.

29. Mr Kotas referred me to the general practitioner's notes, pointing out that when the appellant saw his general practitioner on his return in April and May 2015 no mention was made of scarring. However, it is the case that when the appellant was seen in May 2015 with the problem of "back pain" the doctor did state "assault in Sri Lanka February?" and stated that there was tenderness to the bone. On 15 June 2016 the notes referred to, on examination "scars on back from where being burned.". It is of note that that entry does not state "new scars" and although the notes refer to the appellant having a "usual GP", Dr Sun, I consider that had "new" scars been found on that occasion that would have been indicated. I therefore do not place weight on the fact that scars were not mentioned when the appellant was first examined by his GP and indeed I cannot be certain that the doctor looked at his upper back as it was lower back pain for which he went to see the doctor. I would add that the reality is when interviewed on 30 July 2015 the appellant did state that he had been tortured but it is of note that there were no follow up questions asked. It would have surely been appropriate for the interviewer to have asked how he was tortured or asked to see the scars. While the writer of the refusal letter did have photographs of the scars before him, they were only considered in the light of the guidance in Tanveer Ahmed which quite clearly from the judgment of the Court of Appeal in KV was not appropriate. Again, following that judgment and there being no alternative explanation put forward by the respondent I can only find that the appellant's scars were obtained in the way he states - that is that he was tortured in Sri Lanka in 2015.
30. Mr Kotas asked me to conclude that, even taking the appellant's claim at its highest he would not be in danger of persecution on return now following the guidance in GJ.
31. I follow the judgment in ME (Sri Lanka) and note that of course the guidance in GJ is not determinative. There is also in the background documentation considerable evidence that there is still ongoing ill-treatment of those who are thought to be inimical to the Sri Lankan state. Moreover, I am conscious of the provisions of paragraph 339 of the Rules and that past persecution can be determinative of future persecution. While I accept Mr Kotas' argument that there is no arrest warrant outstanding for the appellant on return and no warrant for his arrest I consider that given what has happened in the past there must be a serious possibility that he would be on a stop list and therefore detained, and coming from Britain with his history and indeed what he asserts was said to the judge and what was given as a reason for his continued detention - that he was coming from Britain and might have been involved in diaspora activities and be a supporter of the LTTE - and further given that there is some evidence that Sinhalese who supported the LTTE are treated particularly harshly, I consider that on the low standard of proof there is a real risk that the appellant would face persecution on return. I therefore, having set aside the decision of the First-tier Judge, allow this appeal on asylum and human rights grounds.

Notice of Decision

This appeal is allowed on asylum grounds and further on human rights grounds (Article 3).

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed:

Date: 5 May 2019

Deputy Upper Tribunal Judge McGeachy

Annex.

1. The Secretary of State appeals, with permission, against a decision of Judge of the First-tier Tribunal Carroll, who in a determination promulgated on 25 October 2018 allowed the appeal of TW against a decision of the Secretary of State to refuse to grant asylum.
2. Although the Secretary of State is the appellant before me I will for ease of reference refer to him as the respondent as he was the respondent in the First-tier. Similarly I will refer to TW as the appellant as he was the appellant in the First-tier.
3. The appellant is a citizen of Sri Lanka born on 23 June 1983. He initially came to Britain as a student in June 2010 but his leave to remain in that capacity was curtailed in May 2012. He then applied for a further leave to remain as a student. That application was refused in January 2015.
4. The following month the appellant left Britain intending to travel to Canada via Martinique. In Martinique he was detained by the French Authorities and found to be in possession of a forged passport. After being detained for three days he was then deported to Sri Lanka.
5. He alleges that on 21 February 2015, on his return to Sri Lanka, he was detained and imprisoned until 4 March 2015 and while in prison that he was beaten and tortured. He was shown photographs and asked if he knew who the people photographed were. His mother spoke to a Member of Parliament and secured his release. The appellant then left Sri Lanka.
6. The appellant's claim was that, although he was Sinhalese he and his father had helped transport LTTE members from Vavuniya to Colombo between 2007 and 2010. He said that in March 2009 he had been stopped in a random check when it was found that he was wanted by the TID. He was detained by the police before being taken to the Boosa Camp in Galle where he was kept until November that year being tortured but not questioned. His brother paid a bribe for him to be released and after release he had been told to report in Colombo. He had left Colombo in August 2010 to come to Britain.
7. The judge in paragraphs 2 to 8 set out the appellant's immigration and procedural history but made no mention of his being detained in Sri Lanka in 2015. He did however state that he adopted paragraphs 3 to 13 of the reasons for refusal which referred to the appellant being detained in March 2010 and in 2015.
8. The judge noted medical evidence which included a report from Dr Virginia Leggatt. He quoted from that report and in particular a section heading "interpretation of physical evidence" which referred to lesions which were caused by burns to the

appellant's back sustained while he was imprisoned in March 2015. She said that she had examined him in January 2016 - months later - and that the lesions were in keeping with burn injuries sustained ten months before.

9. The judge also referred to a letter from Dr Cohen of the Medical Foundation who referred to Dr Leggatt's report saying that her finding that the burn lesions were diagnostic of torture was a relatively rare finding but had been arrived at by an extremely experienced independent specialist medical expert and he went on to further comment that Dr Leggatt had said that the appellant had not exaggerated or embellished his psychological evidence which might be expected in a person fabricating an account. The judge also considered a psychiatric report prepared by Dr S Dhumad who concluded that the appellant's presentation was consistent with a diagnosis of moderate depressive episode and that his symptoms met the criteria for post-traumatic stress disorder.
10. The judge referred to the determination of the Tribunal in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013]** and to the various relevant factors set out therein.
11. In paragraphs 23 onwards the judge set out his assessment of the appellant's case. He noted that the appellant's involvement with the LTTE was limited to the years 2007 to 2009 and that he did not claim to be subject to any arrest warrant nor did he claim to have taken part in any Tamil activist activities whilst in the UK. He noted that the appellant claimed to have been required to report after his second detention and that his claim that he would be of interest to the Sri Lankan Authorities "arises out of his claim that he has been twice detained and tortured".
12. The judge went on to say that aspects of the appellant's account "are insufficiently supported by the evidence" referring to the appellant's claim that his father was arrested, detained and killed. The judge stated that the only document before him relating to the appellant's father's death indicated that the death, as recorded, was due to a train accident.
13. The judge then went on to say:-
 - "25. Looked at overall, however, the appellant has given a credible and consistent account throughout the asylum process and throughout his engagement with the medical professionals. Dr Leggatt's report is exceptionally careful and detailed and as I have noted above was not before the respondent at the time of the decision under appeal.
 26. I am satisfied to the required standard that the appellant is credible as to the core of his account to have been detained and tortured twice by the Sri Lankan Authorities. He has not sought to embellish his account by claiming to have had any role in post-conflict Tamil separatism during his time in the United Kingdom but the evidence shows that he is highly

likely, if returned, to be the subject of adverse interest to the Sri Lankan Authorities. It was accepted in GJ and Others that internal relocation is not possible for those who are considered to be of adverse interest to the Authorities.”

14. The judge therefore allowed the appeal.
15. The Secretary of State appealed the decision of the judge in the First-tier stating that the judge having found that the appellant did not claim to be subject to any arrest warrant and did not claim to have taken part in any Tamil activist activities in Britain had failed to correctly apply the risk attack categories in GJ and Others when finding that the appellant was at risk on return, particularly given the factual findings that the appellant had ceased activity with the LTTE in 2009, there was no outstanding arrest warrant against him and he was not involved in any diaspora activities. Moreover the determination in GJ had stated that in post-conflict Sri Lanka an individual’s past history will be relevant only to the extent that was perceived by the Sri Lankan Authorities as indicating a present risk to the unitary Sri Lankan state or Sri Lankan Government.
16. It was stated that the judge had failed to adhere to the findings/risk categories in the extant country guidance case by allowing the appeal on the basis of the appellant’s past history in Sri Lanka, rather than the risk factors outlined in GJ and Others.
17. Permission to appeal was granted on that basis.
18. At the hearing of the appeal before me Ms Willocks-Briscoe stated that the judge had accepted that the appellant had been detained and tortured only twice and therefore the remainder of what he had said should be taken as not being accepted by the judge. It was not clear on what basis the judge had found that the appellant would be at risk on return. The judge had himself pointed out there was no extant arrest warrant nor was it suggested there was any ongoing investigation with regards to the appellant. The findings did not say that he was required to report but only that he had been detained and tortured. Therefore the appellant did not fall into any of the relevant risk categories.
19. Ms Jegarajah, in reply, stated that the grounds of the appeal were misconceived. The judge had found it credible that the appellant had been detained on two occasions. She referred to evidence of the appellant’s mental health difficulties and the fact that there was evidence that he had been tortured. The judge had incorporated the Secretary of State’s factual summary and she stated that there was evidence from the appellant’s mother that CID officers had visited her house after the appellant had been released who had said that he had escaped and asked that he be produced. She stated the judge was not required to give much by way of reasoning. The interview was very detailed and it was clear that the judge accepted what the appellant had said. The appellant had indicated at interview that he believed that the Authorities thought that he had been helping the LTTE in Britain.

20. She referred to the judgement in ME (Sri Lanka) [2018] EWCA Civ 1486 asserting that it was evident that any detention was based on sophisticated intelligence and that the appellant would still be of interest in return.
21. In reply Ms Willocks-Briscoe said that the reality was that the judge had not made findings nor any attempt to analyse the appellant's account. It was not clear how he came to his conclusions.

Discussion.

22. I consider that there are material errors of law in the determination. The reality is that it was incumbent upon the judge to have engaged with the case before him.
23. It is of note that the judge did not engage with the terms of the Reasons for Refusal Letter which found that the appellant's claim to have helped the LTTE was not credible and had noted that by his own admission the appellant had not attended any LTTE events or demonstrations or been politically active in Sri Lanka and it was therefore considered that he did not have a significant role or profile in relation to post-Tamil separatism and therefore his profile did not meet the relevant category set out in GJ. Moreover the appellant was not a journalist or human rights activist, had not given evidence to the Lessons Learned and Reconciliation Committee and there was nothing to indicate that his name was on a computerised stop list accessible at the airport, comprising a list of those against whom there was an extant court order or arrest warrant.
24. The letter pointed out that he had left Sri Lanka on his own passport in August 2010 and had only stated "I think so" when asked if the Authorities were still looking for him and had not accepted that he was of current interest to the Sri Lankan Authorities.
25. The Reasons for Refusal Letter contained a section dealing with the appellant's claimed arrest and detention in February 2015 on the basis that it was not accepted that the appellant had helped the LTTE before leaving in March 2010. Reference was made to the treatment of deportees from Britain on return to Sri Lanka. It was accepted that whilst the appellant might have been questioned because he had been deported from Martinique, that would have been in order to determine if he had any outstanding warrants or criminal offences. Clearly the appellant had had none. It was also evident that returnees were held for no more than seven hours and no one had ever been arrested or detained on arrival in Sri Lanka and the letter asserted therefore that it was inconsistent that the appellant would have been arrested on return. It was stated that the photographs did not support his claimed treatment in detention. It was also pointed out that the appellant had attempted to enter Britain under a false identity in May 2015 which was a factor that damaged his credibility.

26. The judge simply did not engage with the reasons given by the Secretary of State for refusing the application nor does he give reasons for accepting what the appellant said and why he considered that the respondent was wrong to conclude that the appellant was not credible. He merely states that he accepts the appellant's evidence.
27. It was incumbent upon him to make findings of fact in the context of the background evidence including that set out in relevant country guidance, give reasons for his findings and then to consider the claim in the context of the categories set out in country guidance.
28. Clearly the judge did not do this and I consider that that is an error of law and accordingly I set aside his determination. Ms Jegarajah asserted that the grounds of appeal were misconceived in that they did not assert that the judge had made findings which were not open to him or were in any way perverse but merely referred to the fact that the judge did not apply the criteria set out in **GJ** and furthermore that that country guidance case related to Tamils and not to Sinhalese such as the appellant who assisted Tamils and was therefore irrelevant. While I consider that the grounds of appeal could more clearly have asserted that the judge erred by not giving reasons for his findings and conclusion, they concentrated on the fact that the judge had not applied the relevant country guidance in **GJ** and I consider that the grounds, by focusing on the fact that the judge did not apply that country guidance, did clearly point to the error of law in the determination in that that CG determination which focusing on claims made by Tamils can clearly be applied to any who assert that they would be persecuted because of their support of the Tamil cause. By not considering the claim within the context set out in **GJ** when making his credibility findings the judge erred in law.
29. It is therefore appropriate that I set aside the determination of the first-tier judge.

Notice of Decision

The judgment of the First-tier Judge is set aside.

Directions

1. Given that this appeal has already been remitted to the First-tier on two occasions the appeal will remain in the Upper Tribunal for a full hearing on all issues.
2. The time estimate, four hours.
3. Sinhalese interpreter.
4. The appellant will serve a further bundle of documents duly paginated containing the appellant's statements, the medical reports, relevant case law and background information.