Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07249/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 9th January 2014	**On 7th February 2014**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

S T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Solomon, Counsel instructed on behalf of the Tamil Welfare Association
For the Respondent: Mr I Jarvis, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a citizen of Sri Lanka born on 15th April 1991, appeals with permission against the decision of the First-tier Tribunal (Judge Bryant) who in a

determination promulgated on 23rd October 2013 dismissed the Appellant's appeal against the decision of the Respondent to grant further leave to remain as a student and refusal to grant the Appellant asylum under paragraph 336 of HC 395.

2. This appeal is subject to anonymity direction that no report or other publication of these proceedings or any part or parts of them shall name or directly or indirectly identify the claimant. Reference to the claimant may be use of her initials but not by name. Failure by any person, body or institution whether corporate or incorporate (for avoidance of doubt to include either party to this appeal) to comply with this direction may lead to a contempt of court. This direction shall continue in force until the Upper Tribunal (IAC) or an appropriate court lifts or varies it.

3. The Appellant entered the United Kingdom using a valid student visa using her own passport on 8th November 2011. The visa was valid until 3rd November 2012 and she applied for further leave to remain as a student which was refused on 13th March 2013. The Appellant made a claim for asylum on 26th June 2013 based on her claim that whilst she had been in Sri Lanka she had been the subject of arrest, detention and ill-treatment at the hands of the Sri Lankan authorities on account of imputed political opinion attributed to her through assistance given to the LTTE. The Respondent considered the basis of the claim that was made for the Appellant but did not accept her account and thus in a decision made on 14th July 2013 refused to grant her claim for asylum.

4. The Appellant exercised her right to appeal that decision and the appeal came before the First-tier Tribunal (Judge Bryant) on 15th October 2013. In a determination promulgated on 23rd October, he dismissed the appeal against the Respondent's decision following his finding that the Appellant had not discharged the burden of proof that she had been detained or ill-treated by the authorities or by the security forces in Sri Lanka. He further found that she was of no interest to the authorities if returned to Sri Lanka.

5. The Appellant sought permission to appeal that decision, such permission was granted by First-tier Tribunal Judge Hemingway on 18th November 2013.

6. The appeal came before the Upper Tribunal. Mr Solomon relied upon the comprehensively drafted Grounds of Appeal. The grounds in summary asserted that the judge erred in law by failing to make adequate findings as to the Appellant and her family's claimed past activities for the LTTE, by failing to properly address explanations offered by the Appellant for her failure to depart Sri Lanka earlier and her failure to claim asylum, by the wrong use of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and by failing to consider adequately the medical evidence placed before the Tribunal.

7. In his oral submissions Mr Solomon submitted that in respect of the history of her claim, the judge failed to make any findings concerning the assistance given by she and her family members to the LTTE. The factual background in support of the submission are set out at paragraph 1 of the grounds. The judge did not make any

findings in respect of the same save for the account given by her of assistance given to friends of her brother in 2009 which ultimately led to her arrest and detention in 2010. He submitted that there was a weak attempt to address these matters at paragraph 63 but failed to engage with the other factual elements of her claim.

8. As to corroborative evidence, the Appellant's brother gave evidence before the Tribunal yet the judge discounted that at paragraph 66 on the basis that he has no direct knowledge. This failed to take into account the evidence given by her brother, recorded at paragraph 50 that he had spoken to the Appellant's mother by telephone who had told him that his sister was detained. This appeared to be contemporaneous information and therefore the judge was wrong to discount the Appellant's brother's evidence as having no weight.

9. He further submitted that the judge failed to give adequate reasons for rejecting her arrest and detention within the determination. He placed weight upon her failure to claim asylum but in this regard, despite the Appellant giving a detailed explanation as to why she had not claimed asylum (see paragraph 3 of the grounds) the judge did not engage with that explanation. Similarly in respect of Ground 4, the judge placed weight upon her failure to leave Sri Lanka earlier. Whilst this was a period of one year, the judge's findings at paragraph 61 were unsupported by any evidence. Similarly paragraphs 5 and 6 of the grounds demonstrate that the judge did not make proper or adequate credibility findings from the evidence.

10. Turning to the medical evidence, the judge did not properly take into account the report of Dr J at paragraph 64 of the determination. The report demonstrated that the Appellant had scarring consistent with being burned and an injury to the side of her breast. The judge discounted that evidence noting that whilst the Appellant gave an account of being burnt on her back, there was no such injury seen by the doctor. Similarly she did not mention being hit with a pipe. However the report showed that she had a number of scars which were probative of being burnt by a cigarette and that was consistent with her account of ill-treatment. The reasons given by the judge rejecting Dr J's report were inadequate. Whilst the judge made reference to the fact that the expert did not consider other causes, the decision of the Tribunal in **RR (Challenging evidence) Sri Lanka [2010] UKUT 000274** states that it is incumbent upon the Respondent to put their case properly and that if an Appellant or expert chose to give oral evidence then the Respondent's cross-examination should fearlessly and clearly include the suggestion to the Appellant or the expert that, for example, an injury was not caused in the way alleged by the Appellant but by a different mechanism.

11. In the case of the report of Dr O, consultant psychiatrist, Mr Solomon acknowledged that the conclusion of the report did not support any claim made under Articles 3 or 8 concerning a freestanding risk of suicide however it did demonstrate that she had anxiety and depression which was due to her past experiences.

12. Given the errors in the determination in respect of the medical evidence and the findings of fact, the determination should be set aside.

13. Mr Jarvis on behalf of the Secretary of State submitted that the determination was a sound one and should not be set aside. He submitted that the criticisms advanced on behalf of the Appellant were in respect of form and not substance and that the judge had considered the evidence at length including that of the Appellant and her explanations for her failure to claim asylum in the United Kingdom and also her failure to leave Sri Lanka in the light of the experiences that she had claimed. He submitted that the judgment should be read in its entirety and whilst paragraph 1 of the grounds submitted that judge failed to make findings concerning her past history, it was plain from the determination that the judge was well aware of the past historical matters but dealt with what was the core aspect of her claim which was the interest in her by the authorities as a result of the incident in 2009 relating to the SIM card and her subsequent arrest and detention in 2010. He submitted that the judge was not required to go through every aspect of the claim but dealt with what was the crux of her case within the determination, looking at all matters in the round.

14. As to findings made relating to her delay in claiming asylum in the United Kingdom for a period of nearly two years after arrival and a delay in leaving Sri Lanka following the incidents, he submitted that the judge in reaching those findings took into account the Appellant's explanations and her evidence, but rejected it for the reasons given within the determination. The grounds were merely a disagreement with the findings reached by the judge in that respect. The judge has made no errors of fact when reaching his findings of fact and it could not be said that any of the findings made were perverse.

15. As to paragraph 5 of the grounds, the judge was entitled to take into account the evidence relating to the assistance given by the JP to the family and the absence of any evidence from the JP. At paragraph 46 the Appellant's own evidence was that corroborative evidence could have been available by a form of a letter from the JP but that he had not provided one. The judge was entitled to take that into account when making an assessment of her explanation as to why he rejected her evidence at paragraph 61.

16. As to the other corroborative evidence in the form of her brother, the judge noted that the Appellant's brother had no firsthand knowledge of the Appellant's history and even if he had focused on what the Appellant had said to her mother, that was relayed to her brother by her mother and again was not firsthand knowledge. The judge considered that matter in the round at paragraph 67 and also took into account that there had been no arrest warrant despite her claim to have failed to report and there was no evidence from the Appellant's father or from the JP despite a suggestion that such evidence was obtainable (see paragraph 47).

17. As to the medical evidence, whilst Mr Solomon relied on the decision of the Tribunal in **RR** (as cited), it was not authority to say that alternative causes are always required to be put to an Appellant or an expert if they gave oral evidence. That goes behind the essential requirement that it is for an Appellant to discharge the burden of proof as noted in the decision of **AJ (Cameroon) v the SSHD [2007] EWCA Civ 373** at paragraph 11 that the Tribunal is not obliged to look for some different or

modified case that might be in his favour to show how the Appellant came by his injuries. The judge's assessment of the psychiatric evidence was sound. Mr Jarvis relied upon the decision of the Court of Appeal in **HH (Ethiopia) v SSHD [2007] EWCA Civ 306** and paragraph 23 where the court noted that the judge in that case was entitled to comment upon the diagnosis in the way that he did because it was very largely dependent on assuming that the account given by the Appellant was to be believed.

18. In respect of the report of Dr J, Mr Jarvis relied upon the decision of the Tribunal in **JL (medical reports - credibility) China [2013] UKUT 145** noting that there was no reference in that determination to the decision of **RR**. Based on that determination, the judge was entitled to consider and look at evidence not previously given to the expert, in this case the admission of an injury by a pipe and that the Istanbul Protocol required the author of any expert evidence to consider the consistency of the injuries and the method of causation. The judge's approach was inline with that of the description in **JL (China)** (as cited). Thus Mr Jarvis submitted that there was no error or law disclosed in the determination of the Immigration Judge.

19. I reserved my determination.

Conclusions:

20. The judge's findings of fact and analysis of the Appellant's credibility are set out at paragraphs 59 – 68 of the determination. The grounds make a number of criticisms about the findings by reference to specific paragraphs and the issue of credibility. However I remind myself the determination must be read as a whole. In this determination the judge sets out at length the evidence before him, both documentary and oral (see paragraphs 18 to 53 of the determination), he summarises the Respondent's case and also that of the Appellant relevant to the findings that he went on to make at paragraphs 59 to 68.

21. The core of the Appellant's claim related to events occurring in 2009 where she had been assisting friends of her brother who were LTTE members by helping them find accommodation, food and medical supplies and by purchasing a SIM card using her national ID card. On 22nd June 2010 it was said that six Sri Lankan soldiers came to her home, searched it while she and her mother were present after checking her identification. She was detained and taken to a camp where she was questioned and subject to physical and sexual harm during that detention. She was released with the help of a JP and also by way of a bribe and was bailed upon conditions of signing at the camp. Following her release, it was asserted that she continued to suffer abuse when reporting at the camp for a period of approximately ten months. She later left Sri Lanka after applying using the usual channels for a student visa; entering the UK on 5th June 2011 where she remained as a student. During her time she made a further application for leave to remain which was refused and then claimed asylum on 26th June 2013, two years after her arrival in the United Kingdom.

22. The judge's findings are set out at paragraphs 59 to 68. I set them out below:-

"59. Asylum. The respondent does not accept that the appellant was detained and abused as she claims or that she is of any interest to the authorities in Sri Lanka on any return. Further, even if the appellant's account is the truth of the matter, she would nevertheless still not have a profile which would bring her into one of the risk categories identified within the country guidance determination of CG and Others. The respondent did not have before her the witness statements of the appellant and her brother, their evidence as was given at this appeal, and the medical and psychiatric reports on the appellant. I consider all the evidence which is available to me to determine whether the appellant is credible in her account of her history in Sri Lanka.

60. The appellant claims to have been detained on one occasion for a number of days and during which time she was sexually abused and raped. She claims that during subsequent reporting following her release, she was further raped. She claims to have suffered injuries which are said to be confirmed by the medical report and to have suffered psychiatric trauma as evidenced by the psychiatric report.

61. Following her release from her brief period of detention, there elapsed almost a year before she left the country. Her explanation is that arrangements were being made for her to either travel to Germany where she has an aunt and then, failing that plan, to obtain a passport and visa to allow her to come to the United Kingdom as a student. The agent instructed clearly had contacts at the airport, according to the appellant's account, but yet all the efforts were made to ensure her lawful departure from the country with her own passport in her own name and a student visa to study at a named college in the United Kingdom. If the appellant was so traumatised by her alleged detention as she claims, and genuinely feared for her safety in Sri Lanka, I do not find it credible that the agent should not have been instructed to arrange her travel to the United Kingdom by any means as soon as possible. Instead, a year passed, during which time she reported to the authorities, as she claims, and was again raped by the same officer who had raped her whilst in detention. Her father knew of these further alleged rapes as she claims to have told her mother who in turn told her father. He had arranged for a JP to secure her release from detention, and subsequently his own release after she had left the country on her account, but yet that JP was not ever used to assist her when she reported to the authorities which resulted in her further sexual abuse. Her evidence at the appeal is that the JP could not be used every time. She also said that the JP said he would give a letter confirming his actions but there is no such letter before me. Knowing that his daughter was being abused again whilst reporting, I do not find it credible that the appellant's father would not have used the JP to ensure her safety when reporting or to have had immediate arrangements made for her to leave Sri Lanka.

62. The appellant's brother had been in the United Kingdom since 2002 and had claimed asylum and his evidence at the appeal was that the family in Sri Lanka had known that he had claimed asylum and therefore this would have been a process which would have been known to the appellant's family. The appellant would also have been aware that her brother had been granted leave to remain in the United Kingdom on the basis of that asylum claim but yet she did not claim asylum on arrival in the United Kingdom but instead commenced her studies.

She did not even claim asylum when that student visa was coming to an end but rather applied for an extension of leave. It was only when that application was refused that she subsequently claimed asylum. Whilst her evidence is that the agent told her not to claim asylum on arrival otherwise she would be deported immediately, I do not find it credible that she should not have sought the international protection of this country if she feared any return to Sri Lanka, particularly given the conduct of the United Kingdom authorities towards her brother here. Her evidence is that she would not have claimed asylum at all if her leave had been extended as a student. She would always have known that she would have no permanent leave to remain as a student and I therefore do not find it credible that she would not have immediately, or shortly after her arrival, have followed her brother's example and claimed asylum with him able to support that application. I find her failure to do so goes directly to whether her account of her history in Sri Lanka is as she claims it to be.

63. I find that she added to her evidence at the appeal as to what she allegedly did for the two LTTE members she names and to whom she says she supplied the SIM card. At the appeal, she said she also took from them their ID cards as they gave them to her to give to someone else. It was put to her in cross-examination that this had not been mentioned by her before but she said she was not asked about it and did not realise she had to mention it. Somehow it was missed in her witness statement. I do not find it credible that she should not have fully set out all that happened to her in Sri Lanka when setting out her claim.

64. I note the medical report on the appellant by Dr J who noted a pigmented area down two thirds of the back of her left forearm and he opines that this injury would have resulted from blunt trauma; that is a blow from a thin hard object. The appellant does not give an account, other than to Dr J, of how she suffered any such blow from such a thin hard object. He found a depigmented scar on her right breast which he opines would have followed a cut with a sharp instrument. I note that she claims that she was cut on her breast during a rape. He also finds three scars on her right leg which he opines are characteristic of being caused by a burning cigarette and a scar below the knee which has the appearance of being caused by a burn consistent with a burning cigarette being rubbed across the tissues. He also found a vertical red mark near the hip joint likely to have been caused by a blunt trauma but which did not look particularly old. He also found a scar on the appellant's left ankle which has the appearance of being caused by a burn and could have resulted from rubbing the heated end of the cigarette across the tissue and she has four other scars by the knee and top of the foot. The appellant was unable to account for these. I note from question 50 in the appellant's asylum interview that she claims that she was burned by a cigarette being rubbed on her leg but was also burned on her back with a cigarette. I note that there is no reference to any burn on the appellant's back in Dr J's report. Dr J describes the burn scars he found as either being characteristic of being caused by a burning cigarette, being consistent with a burning cigarette being rubbed across the tissues or having the appearance of being caused by a burn which could have resulted from rubbing the heated end of a cigarette across the tissues. I do not find Dr J's report to be helpful in considering the burn marks he states he found given the varying descriptions as to how that scarring occurred and what may have caused that scarring. He does not consider the likelihood of any other causes. If the scarring he found was from lighted cigarettes, I do not find it

credible that no such burn was found on her back as the appellant specifically refers to having been burned there with a cigarette. I take the cut on the appellant's breast into account and I note that the appellant is unable to account for other scars found on her left knee and foot.

65. I also note the psychiatric report on the appellant prepared by Dr O. There is no suggestion in that report that the appellant suffers from PTSD as a result of her alleged abuse in Sri Lanka and I find that her report does not indicate that the appellant was abused and ill-treated as she claims in Sri Lanka. Dr O opines that her symptoms are consistent with a mixed anxiety and depressive disorder and that the most likely cause of her presentation is the fear of being deported. I do not find that that fear relates in turn to what the appellant alleges happened in Sri Lanka. Dr O also opines that she strongly suspects that the appellant is likely to commit suicide if she is deported. Dr O gives no basis for that opinion. I find the whole report to be lacking in detail and I do not find that the report is a basis upon which I could find that the appellant is credible in her account of her history in Sri Lanka or that, indeed, she would commit suicide if removed.

66. I note the statement and evidence of the appellant's brother but he has no direct knowledge of the appellant's history in Sri Lanka after he left in 2002. His evidence is based upon what she has allegedly told him although he does refer to her being on the waiting list for counselling and in his statement he states "my sister has sometimes met small accidents in the UK that she tried to cut her wrist with the knife". He adopted this witness statement as his evidence and he said he understood its contents. I do not understand what he means by this sentence but I do not find it goes to prove an attempted suicide.

67. There is no evidence that there is an arrest warrant for the appellant which I would have anticipated if the appellant had failed to comply with the reporting conditions of her release. There is no evidence from the appellant's father, or from the JP, as to his alleged reporting to the authorities instead of the appellant, or of any arrest warrant being issued for her. I would have anticipated such evidence if the appellant's account of what happened both before and after her departure from Sri Lanka is true. I also note the death certificate and newspaper report relating to who is said to be the appellant's cousin but I do not find it proved from those documents either that that person was killed by the army or that the person is indeed the appellant's cousin. The appellant's brother gives no evidence about that matter.

68. Whilst I fully take into account the evidence of the medical and psychiatric reports on the appellant and the evidence of the appellant's brother, I find the appellant to lack credibility to the extent that I do not believe her account of her history in Sri Lanka. I do not find that she proves, even to the low standard required, that she was ever detained, ill-treated, sexually abused or raped by the authorities or a member of the security forces in Sri Lanka and that she fled Sri Lanka through fear of persecution. I find it more likely that she came to the United Kingdom to study and made her asylum claim after the respondent had refused her application for further leave to remain as a student. I find that the appellant does not prove that she is of any interest to the authorities or any other individual or group in Sri Lanka. In particular, I do not find it proved that she is the subject of any arrest warrant or would be on any "stop list" as described

> within the determination of GJ and Others. I do not find it proved that the appellant on any return would be identified as a Tamil activist or would be perceived to be a threat to the integrity of Sri Lanka as a single state. She is not a journalist and there is no evidence that she has given evidence to the Lessons Learned and Reconciliation Commission. I do not find it proved that there is any extant court order against her. I do not find that the appellant proves that she comes within any of the risk categories of persons identified within GJ and Others"

23. The grounds submitted challenge the judge's determination as being one that lacks adequate reasoning and also that the judge did not consider explanations given by the Appellant, when reaching those findings of fact. It is further asserted that he failed to give proper and adequate consideration to the medical evidence submitted on her behalf.

24. In relation to a "reasons challenge", the correct approach was summarised in the decision of **Shizad (sufficiency of reasons; set aside) Afghanistan [2013] UKUT 0085 (IAC)** at paragraph [10] as follows:-

> "10. We would emphasise that although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, such reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge. Although a decision may contain an error of law where the requirements to give adequate reasons are not met, this Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant country guidance is taken into account, unless the conclusions that the judge draws from the primary data before him were not reasonably open to him."

25. It is plain from the findings of fact reached by the judge and recited above that the assessment was made after considering all of the evidence, both documentary and oral and that having done so he comprehensively disbelieved the core of the Appellant's account of being arrested, detained and ill-treated and found that she was of no interest to the authorities or the army in Sri Lanka.

26. The judge dealt with the core aspect of the claim in the findings of facts reached after considering all the evidence "in the round". Contrary to the assertion in the grounds, the judge was aware of the account given by the Appellant of family involvement in the LTTE. He recorded within the determination that the account of her brother's assistance to the LTTE and that he had left Sri Lanka in 2002 when the Appellant was 12 years of age. Her own evidence in respect of her activities were set out at paragraph 6 of the determination namely that she did not know anything about the activities of her brother who was in the United Kingdom with the LTTE and she was very young at the time. As regards her second brother, she believed him to have gone to India in 2006 after her cousin was shot by the army. She could give no further details of this and at paragraph 67 the judge took into account the death certificate and newspaper report said to relate to the Appellant's cousin's death but gave those documents no weight finding that they did not demonstrate

that the Appellant's cousin was killed by the army nor that the person named was the Appellant's cousin in any event. He also recorded that the Appellant's brother gave no evidence about this issue either. Thus the judge did deal with aspects of the Appellant's past historical claim.

27. As to her parent's activities at paragraph 5 her evidence was recorded as "her parents were never involved with the LTTE" and her activities at paragraph 7 referred to her dancing at some events but that "she was not involved in any other activities as she was too young." Her principal involvement with the LTTE related to events in 2009 which led, she claimed to her arrest and detention in 2010. This was the core aspect of her claim which the judge clearly considered and reached findings of fact upon in the body of the determination. The evidence before the judge was that both she and her parents had not been the subject of any interest by the Sri Lankan authorities arising from her brother's involvement in the LTTE given that he had left in 2002 and her brother leaving in 2006 until she had provided assistance in 2009. Thus the judge did not err in law in considering the evidence and reaching conclusions on what were the core issues in this case which the Appellant relied upon as evidence of persecution and risk on return.

28. The grounds advanced at paragraphs 2 and 5 amount to no more than a disagreement with the conclusions reached by the judge. The grounds assert at paragraph 2 that the judge failed to give adequate reasons for reaching his findings and that he erred in law by erroneously treating Section 8 of the 2004 Act and her failure to claim asylum as the starting point of his assessment of credibility at paragraph 62 of the determination. I do not consider that such a criticism is merited. By reason of the provisions of Section 8 of the 2004 Act, the judge was required to consider this as an issue but in any event, the refusal letter at paragraph 17 raised her failure to claim asylum and thus was required to be determined. As the Court of Appeal has held in **JT (Cameroon) [2008] EWCA Civ 878** at paragraph 21, Section 8 is no more than a reminder to fact-finding Tribunals that conduct coming within the category stated in Section 8 of the 2004 Act should be taken into account when assessing credibility. However, what is required is a global assessment of credibility (see **R (Sivakumar) v the SSHD [2003] UKHL 14**. Furthermore, such findings are not determinative of the claim. It is clear from reading the determination that the judge, contrary to the grounds submitted, did not treat this as a determinative factor nor as the starting point to his findings on credibility. Even ignoring the issue of delay in claiming asylum, the judge made a number of adverse credibility findings which dealt with the core of the Appellant's account.

29. Contrary to Ground 3, I am satisfied that the judge did give consideration to the explanation proffered by the Appellant as to her failure to claim asylum. The judge recorded her evidence upon this issue in the determination at paragraphs 41 and 62 and made specific findings in relation to it at paragraph 62. The judge was entitled to place weight on the Appellant's brother's past conduct and evidence concerning his claim for asylum and that this was a process known to the Appellant's family in Sri Lanka. Further, that the Appellant was aware that her brother had been granted leave to remain based on his asylum claim but that she did not claim asylum after

arrival but commenced studying. As the judge noted, despite her claim to have been suffering ill-treatment at the hands of the Sri Lankan authorities she did not claim asylum when the student visa was coming to an end but applied for an extension. It is plain that he took into account her evidence that she did not claim on arrival because the agent had told her that if she did so she would face deportation. He expressly referred to this at paragraph 62 but rejected her explanation based on her own knowledge concerning the experiences of her brother who had been given protection in the United Kingdom and had not been deported. Thus there is no merit in that ground.

30. As to Ground 4, the judge took into account the Appellant's conduct in remaining in Sri Lanka for a significant period following her claim to have been arrested, detained and ill-treated. As the judge noted at paragraph 61, following the release from detention the Appellant remained in Sri Lanka for approximately a year. Her explanation for not leaving sooner was that arrangements were being made for her to travel to Germany where she had an aunt or failing that, to obtain a student visa using proper channels to come to the United Kingdom. However the judge noted that on the evidence given by the Appellant, the agent who had been instructed was someone who had contacts at the airport which could be used to leave by means other than lawfully but that the efforts made for her departure were all lawfully done using a properly obtained student visa and passport in her name which took a process of a number of months. The judge considered that:-

> "If the appellant was so traumatised by her alleged detention as she claims, and genuinely feared for her safety in Sri Lanka, I do not find it credible that the agent should not have been instructed to arrange her travel to the United Kingdom by any means as soon as possible. Instead, a year passed, during which time she reported to the authorities …"

31. He further took into account the evidence before him that the family had used a JP to secure not only her release from detention but also her father's release after she had left Sri Lanka but that the JP had not been used to assist her at a time when she was a subject of further sustained and consistent abuse during a reporting period. The judge went on to consider the explanation for this lack of help by the JP that he could "not be used every time". In this respect the judge noted that there had been no evidence from the JP confirming his actions (see paragraph 61 of the determination). Mr Solomon criticises the approach of the judge as requiring the Appellant to provide corroboration of her claim. Whilst it would be a misdirection to imply that corroboration is necessary in an asylum appeal, the fact that corroboration is not required does not mean that a judge is required to leave out of account the absence of documentary evidence which could reasonably be expected. It was entirely open to the judge to take into account that there had been no letter from the JP confirming his actions (see paragraph 61) as this was firmly based on the evidence set out at paragraph 46 where it was recorded that the JP could have provided a letter but had not done so.

32. Similarly in the determination at paragraph 67 it was open to the judge to note that there was no arrest warrant for the Appellant which he would have anticipated if the Appellant had failed to comply with the reporting conditions of her release nor was there any evidence from her father or from the JP. He concluded "I do not find it credible that the Appellant's father would not have used the JP to ensure her safety when reporting or to have had immediate arrangements made for her to leave Sri Lanka."

33. Contrary to the assertions in the grounds at paragraphs 4 and 5, the judge's findings at paragraph 61 were supported by evidence and were findings reasonably open to him on that evidence. The grounds are no more than a disagreement with the conclusions reached.

34. At Ground 6 it is asserted that the judge directed himself concerning the case of Chiver that some inconsistencies/omissions are inevitable but failed to apply that to his findings at paragraph 63 but in any event, that did not materially advance her claim and was insufficient to detract from her credibility. At paragraph 63, the judge found that the Appellant had in essence embellished her account during her evidence and reached the conclusion that he did not find it credible that "she should not have fully set out all that had happened to her in Sri Lanka when setting out her claim." The amount of weight given to issues of credibility and questions of discrepancy or disagreement on the evidence, is a matter for the trial judge. There is no rule that an issue of credibility does not matter if it does not go to material issue or core of the claim as Mr Solomon has argued. This was a finding open to the judge on the evidence and in any event, could not have said to be a finding or one upon which the case turned upon and was only one finding of a number considered cumulatively that were made by the judge, which he found to undermine the core of her claim.

35. I do not find any merit in the argument that the judge failed to take proper account of the evidence of the Appellant's brother. The evidence is specifically recorded at paragraphs 49 to 52 of the determination. At paragraph 66, he correctly noted that the Appellant's brother had no direct knowledge of the Appellant's history in Sri Lanka after he left in 2002 when the Appellant was 12 years of age. Her evidence before the Tribunal was recorded at paragraph 6 that she did not know of his activities in the UK as she was very young at the time which is borne out by the chronology and that his evidence was based on what she had told him. Whilst Mr Solomon submits the judge ignored evidence recorded at paragraph 50, that he had spoken to his mother by telephone and that she had told him that the Appellant had been detained, does not in my judgment take the matter any further. The judge was entitled to reach the conclusion that given the length of time that he had been out of Sri Lanka, her age at the time that he last saw his sister and her lack of knowledge of his activities and that he had no firsthand knowledge of events in Sri Lanka was evidence not capable of being afforded any weight. The judge balanced this against findings at paragraph 67 that there was no evidence of an arrest warrant which was reasonably likely if she had failed to comply with reporting conditions, there was no evidence from the Appellant's father or the JP which the judge noted that he would have "anticipated such evidence if the Appellant's account of what happened both before

and after her departure from Sri Lanka is true." He also took into account the contents of a newspaper report. I find no error of law in the judges approach to this issue.

36. I now turn to the medical evidence. The criticisms advanced on behalf of the Appellant relate to the medical evidence on the basis that the judge failed to have adequate regard to that evidence and insofar as the evidence was rejected, the judge gave inadequate reasons for doing so.

37. It is not disputed that the judge correctly summarised the contents of the report of Dr J at paragraphs 32 to 35 of the determination and the relevant parts relating to the scars that the doctor has noted. The judge set out his findings in respect of the report at paragraph 64 which has been set out earlier. The judge was not bound to accept the report of Dr J. The position is summarised by Stanley Burton LJ in the case of **SS (Sri Lanka) v SSHD [2012] EWCA Civ 155** at paragraph 21 of his judgment where he said:

> "21. Generally speaking, the weight, if any, to be given to expert (or indeed any) evidence is a matter for the trial judge. A judge's decision not to accept expert evidence does not involve an error of law on his part, provided he approached that evidence with appropriate care and gives good reasons for his decision. Ultimately, therefore, there are only two issues as to the Senior Immigration Judge's treatment of the medical evidence: did he address that evidence with appropriate care and did he give good reasons for his conclusion? Those two questions are interrelated. It is difficult to conceive of a case in which a judge gives adequate reasons for his conclusions on expert evidence yet he is held to have exercised insufficient care. His reasons demonstrate his care."

38. Whilst the judge noted evidence of scarring, he gave a number of cogent reasons as to why he placed little or no weight upon the report which related to consideration of the evidence as a whole. In respect of the pigmented area (on the back of her left forearm) where the doctor opined the injury would have resulted from blunt trauma from a thin hard object, the Appellant did not give an account as to how had suffered such a blow other than to Dr J. There were scars that the Appellant could not account for (knee and top of foot), there was also no scarring by way of a burn to her back. The judge recorded that the Appellant had given a specific account concerning an injury to her back (see question 50 of interview) which was as a result of burns by cigarettes but there was no reference to such a burn on her back. The judge, when considering the evidence, found that when considering the scars said to be caused by such a method of burning, he did not find the evidence of Dr J helpful given the varying descriptions as to how that scarring had occurred and what might have caused the scarring. The judge also considered that the doctor did not consider the likelihood of other causes and that of the scars identified from lighted cigarettes, he did not find credible "that no such burn was found on her back as the Appellant specifically refers to having been burnt there with a cigarette." This was a case where the Appellant had not claimed asylum upon arrival and did not do so for a period of nearly two years despite the account of ill-treatment when the scars would have been more recent for the doctor to assess.

39. Mr Solomon relies upon the decision of the Tribunal in **RR** (as cited) which he submits is authority for the proposition that if challenging evidence of causation it is therefore incumbent on the judge or the parties to put such competing explanations to the Appellant. The Tribunal in that case did not make any reference to the Court of Appeal authority dealing with medical reports nor did it make any reference to the Istanbul Protocol. **RR** was a case very much on its own facts. The decision relied upon by Mr Jarvis was that of **AJ (Cameroon)** (as cited) which makes it clear that the burden of proof is squarely upon the Appellant (see paragraph 11of AJ(Cameroon). A more recent decision of the Tribunal relied upon by the Secretary of State is **JL (medical reports - credibility) China [2013] UKUT 145 (IAC)** which considered the issue of medical evidence and causation further, where it stated at paragraph 29:-

> "29. From leading cases dealing with medical evidence in asylum-related cases it is clear that those writing medical reports are expected to keep within certain parameters. As expert witnesses they have duties under Practice Direction 10 of the Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal. They are to follow the guidance given in the Istanbul Protocol, especially [186-187] dealing with different degrees of consistency and [162] dealing with objectivity and impartiality. **SA (Somalia) [2006] EWCA Civ 1302**, when considering causation of injuries said to have been inflicted by torture or other forms of ill treatment, they are to consider possible alternative explanations. As stated in **SA (Somalia)** [28]:
>
> > 'It is also desirable that, in the case of marks of injury which are inherently susceptible of a number of alternative or "everyday" explanations, reference should be made to such fact, together with any physical features or "pointers" found which may make the particular explanation for the injury advanced by the complainant more or less likely.' (See also **RT (medical reports, causation of scarring) Sri Lanka [2008] UKAIT 00009**).

The decision goes on to say at paragraph 30 that:

> "Those writing medical reports must ensure where possible that before forming their opinions they study any assessments that have been made of the Appellant's credibility by the immigration authorities and/or a Tribunal Judge and that those who provide expert reports, medical or otherwise, are provided with documents relevant to the matters that they are asked to consider."

40. As submitted by Mr Jarvis, Dr J did not follow the guidance in the Istanbul Protocol relating to degrees of consistency nor did he consider alternative explanations (see **SA (Somalia)**) which was a point made by the judge. Further, he did not consider when making an assessment of the scarring the consistency of her account that she had given a specific account of a burn being made to her back yet no scar had been found on the site identified by her in her evidence.

41. The judge also considered a report from Dr O, consultant psychiatrist based on an hourly meeting. The report recited the Appellant's account. The judge made his findings about the report at paragraph 65 (see earlier). It is plain that the judge gave adequate and evidence based reasons for reaching the conclusion that little or no

weight should be attached to that report. He made specific criticisms concerning the report; that it contained no analysis or any basis for the opinion reached. Whilst the report made reference to symptoms of anxiety and distress, it did not state that the reason for such a presentation was a result of any past experiences and in so far as it gave any reason, it was said to relate to her fear of deportation. Dr O specifically stated that there had been no attempts made to harm herself (see paragraphs 30 and 38) and the judge considered that the doctor had not given any basis for his opinion that she would be likely to do so in the future. The report did not make any reference to any previous history of the Appellant nor to any treatment sought by her from a GP or otherwise. As conceded by Mr Solomon the report as it stood could not have reasonably been one to support a freestanding claim under Article 3 or 8.

42. Having considered the judge's treatment of the medical evidence, I do not find that it has been demonstrated that the judge's approach to that evidence was flawed. In the decision of **Y and Z v the SSHD [2009] EWCA Civ 362**, it was held that no judge is bound simply to accept everything that an expert says but that a judge must give reasons for rejecting such evidence. It further acknowledged that the factuality of an account might be so controverted by the Tribunal's own findings as to undermine that evidence. Furthermore it cannot be said that the judge fell into error in the way set out in the decision of **Mibanga v the SSHD [2005] INLR 377** where the process of arriving at an adverse credibility finding was based on the Tribunal's view of the Appellant's evidence and then as a separate exercise considered whether that finding might be shifted by the expert medical evidence. As the case law indicates, the evidence must be considered as a whole and any reports relevant to credibility must be assessed during the process. Contrary to the assertions made in the grounds, the judge did consider all the evidence together in this way, including the medical evidence and reached conclusions when considering it as a whole, before rejecting the central core of her claim as set out at in the summary at paragraph 68.

43. I remind myself that I can only interfere with a judge's determination if an error of law has been made out and in this respect I have given careful consideration to the submissions made on behalf of the Appellant by Mr Solomon, both written and oral. However in conclusion, when considering the determination as a whole, I do not consider that it has been demonstrated that the judge gave inadequate reasons for reaching the overall conclusions that he set out at paragraph 68 in respect of her account. In reaching his conclusions he properly assessed the evidence before him and the conclusions reached were adequately reasoned and were fully open to the Judge on the evidence before him. I consider that any submission based on irrationality, that is to say, that no reasonable judge, would have concluded as the Immigration Judge did on the evidence placed before him, could not be successfully advanced in this case. The question which I have to answer is not whether another Immigration Judge or I myself would have reached the same conclusion as the Immigration Judge in this case but whether no Immigration Judge could properly have reached the same conclusion. In my view it is impossible to say that the findings of the Immigration Judge were perverse or irrational and I find that the conclusions were fully open to him on the evidence before him and that the decision was sufficiently reasoned. The grounds are a disagreement with those findings

reached and consequently no error of law has been demonstrated in the determination of the First-tier Tribunal and in those circumstances should stand.

Decision

The making of the previous decision did not involve the making of an error on the point of law. The decision shall stand.

Anonymity

The First-tier Tribunal make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order (pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed Date

Upper Tribunal Judge Reeds