



IAC-AH-KEW-V1

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

Appeal Number: AA/10871/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 November 2015**

**Decision & Reasons Promulgated  
On 3 December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**M L  
(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Ms Manjit Dogra, Counsel, instructed by Marsh and Partners  
Solicitors

For the Respondent: Mr S Whitwell, Specialist Appeals Team

**DECISION AND REASONS**

1. This is the re-hearing of the appellant's asylum appeal, following his successful error of law challenge to the decision of the First-tier Tribunal dismissing his appeal against the refusal by the Secretary of State to recognise him as a refugee. The First-tier Tribunal made an anonymity direction, and I consider it is appropriate that the appellant continues to be accorded anonymity for these proceedings in the Upper Tribunal.

## **Relevant Legal Principles**

### **The Geneva Convention**

2. Article 1 of the 1951 Geneva Convention defines a refugee as someone who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it.

### **Asylum under the Immigration Rules**

3. Under paragraph 334 of the Immigration Rules an asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied, *inter alia*, that he is a refugee as defined by the Geneva Convention.

### **Grant of Humanitarian Protection under the Immigration Rules**

4. Paragraph 339C of the Immigration Rules provides that a person be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied, *inter alia*, that he does not qualify as a refugee, but that substantial grounds have been shown for believing that the person concerned, if he is returned to the country of return, would face a real risk of suffering serious harm and is unable, or owing to such risk, unwilling to avail himself of the protection of that country.

### **The Burden and Standard of Proof**

5. In international protection claims, the standard of proof is that of real risk or reasonable degree of likelihood. Evidence of matters occurring after the date of decision can be taken into account.

### **Past Persecution or Serious Harm**

6. Under Paragraph 339K, the fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or serious harm, will be regarded as a serious indicator of the person's well-founded fear of persecution or serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

### **Duty to Substantiate Claim for International Protection**

7. Paragraph 339L of the immigration rules provides that it is the duty of the person to substantiate his claim. Where aspects of his claim are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:
  1. The person has made a genuine effort to substantiate his claim;

2. All material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
3. The person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
4. The person has made his claim at the earliest possible time, unless the person can demonstrate good reasons for not doing so;
5. The general credibility of the person is established.

### **The Evidence**

8. The evidence before me comprises the evidence which was before the First-tier Tribunal and the additional oral evidence that I received from the appellant, to which I refer in greater detail as appropriate below.

### **The Appellant's Material History**

9. The appellant is a national of Sri Lanka, whose date of birth is 4 September 1987. On 21 January 2009 he applied for entry clearance to the UK as a student, and the application was granted on 5 February 2009. He arrived in the UK on 23 February 2009 on a valid student visa which expired on 30 June 2012. On 28 March 2012 he made an in-time application for leave to remain as a Tier 1 Highly Skilled Migrant. He was granted leave in this capacity on 13 August 2012, and his leave was valid until 13 August 2014.
10. In August 2012 the appellant returned to Sri Lanka for a visit of nearly three months. On 31 December 2013 the appellant returned to Sri Lanka for another visit. On 21 January 2014 the appellant left Sri Lanka and returned to the UK, travelling (as before) on his own passport. In July 2014 he attended the Asylum Screening Unit in Croydon and made a claim for asylum.

#### *The screening interview*

11. The appellant was given a screening interview on 14 July 2014. He had been fingerprinted for his visa application to come here, and also when he was arrested in Sri Lanka on 14 January 2014 as the army thought he was an LTTE member. His national ID card had been taken from him by the Sri Lankan army on the same occasion. He suffered from depression and insomnia. He took citalopram, one tablet daily. His GP was Dr Newman, who operated from a practice in Edgware. At question 4.1 he was asked what his reason was for coming to the UK. He said he had come here to study initially. He had gone back to Sri Lanka to visit his family. He was arrested by the Sri Lankan army as they thought he was an LTTE member. He was beaten, tied up and he had hot water poured on him. He was also kicked about with boots. He was now scared he would be arrested and killed if he returned to Sri Lanka. He was detained for two days, following his arrest on 14 January 2014. His father paid a bribe for his release. He was never charged or convicted.

12. He was asked whether he was subject to an arrest warrant or wanted by any law enforcement authority for an offence in any country. He answered yes, "it" was issued in Sri Lanka on 17 February 2014. He was asked to explain why he thought his claim could not be decided quickly. He answered he was expecting a letter from his lawyer to confirm what had happened to him in Sri Lanka. He was asked to give details of his family. His family in Sri Lanka consisted of his father, (born in 1960), his mother, five brothers (ranging in age from around 30 years old down to around 11 years old) and a sister aged around 20 years old.

*The psychiatric report*

13. Shortly before the screening interview, the appellant had seen Dr Robin Lawrence, general adult psychiatrist, at the Harley Street Medical Express Clinic on 7 July 2014. Mr Lawrence had prepared a report dated 9 July 2014.
14. His initial impression was that the appellant appeared anxious and depressed. He showed him a photocopy of a prescription from his GP and a box of citalopram tablets. He told him that he had started these pills on 2 July 2014. All of his symptoms were characteristic of depression, and they were also very typical of post traumatic stress disorder.
15. He had been living in the UK for six years. When he first came at the age of 21 he came to study, and he achieved an MBA from the London College Business Institute of E-Commerce in Whitechapel. After achieving this MBA in 2012, he went home for three months leave which he enjoyed with his family in Addalitheni in the eastern province of Sri Lanka.
16. Following his second visit to Sri Lanka he was kidnapped and tortured. He had returned to Sri Lanka on 31 December 2013 and was with his family as usual. On 14 January 2014 at 8pm he was in a tea shop with his friends. A vehicle came in front of the shop, four people came out and they told him they had to investigate. They were casually dressed and had no ID. He refused to go with them, and said that he needed to speak to his father. They confiscated his phone and forced him into the vehicle blindfolded. They took him on a journey which lasted approximately an hour, and he was taken to an unknown location. He was taken into a dark room, where he was interrogated. They knew he had connections with the LTTE, which he denied. They asked him why he visited from London. He said he had only come to visit his parents. They slapped him and pushed him to the floor, and they kicked him with booted feet and threatened to kill him if he did not admit his LTTE connection. They asked him about Tamil boys. He explained that he had studied with Tamil boys and he knew them when he was in Sri Lanka. They continued to interrogate him, and another person brought in a wooden stick and hit him on the head and his back. They would not believe him. As he was explaining this to Dr Lawrence, he started to sweat and developed an increased heart rate and an increased respiration rate. These were the physical signs of PTSD, which were very hard to simulate. He was left for an hour, before they returned again and asked him again about his LTTE connections while beating him some more.

17. He was left without food or water and held overnight. In the morning there was more interrogation. Four of them used wooden sticks to beat him. Then the leader came in and said he would take him with him. His hands were tied behind his back, and he was blindfolded again and he was made to lie down in the vehicle. They drove for some time. When he was removed from the vehicle, he saw his father's car. He explained that his father was a Muslim member of the provincial council. The leader spoke to his father for ten minutes. Afterwards they allowed him to go to his father's vehicle. He was told that his father had paid 15 lakhs, the equivalent of between £7,000 and £8,000, for his release. His father then sent him in a different vehicle to Colombo. He had suffered bruising which was all gone now, but his left shoulder was still stiff and uncomfortable and he felt that it sometimes locked in position. He had returned to the UK at the earliest possible opportunity.
18. On 15 June 2014 lots of Muslim businesses were attacked and burnt out in Sri Lanka by the Sinhalese population. He went to a protest about this on 18 June 2014 here in London. He told Dr Lawrence that a photograph was taken of him as he led the protest and this was sent to his father in Sri Lanka together with a death threat, threatening him with death if he should ever try to return to Sri Lanka. Since his father had told him about this death threat, he said he could not concentrate, and he felt angry, and he had no interest in life and because he could not concentrate he had resigned from his employer.
19. His father was a DEPO inspector before becoming a member of the provincial Parliament. The patient was the second of seven children. His older brother aged 29 was married with one child in Sri Lanka. He had four younger brothers, including one aged 23 and one aged 17. One of his younger siblings was studying and living at home with his parents. The patient came from a wealthy family.
20. His total score on the Beck depression inventory was 53. This was typical of severe depression. His total score on the impact of events scale was 89. This was very high and entirely consistent with PTSD. He had been asked if it was possible the patient was simulating his symptoms and he thought it was unlikely. It is possible to pretend to have a particular symptom but very difficult to simulate a complete syndrome in that a syndrome contains a pattern of symptoms which all have to match and many of which are not intuitively obvious. Moreover, the patient's symptoms were consistent over time and place, as his GP had independently diagnosed depression.

*The documents from Sri Lanka submitted in support of the claim*

21. The appellant attended a substantive asylum interview on 31 October 2014, where he spoke through a Tamil interpreter. He submitted a large number of documents in support of his asylum claim. They included:
  1. An extract from the information book of Akkraipattu Police Station dated 23 June 2014.

2. An undated letter on the letterhead of Bodu Bala Sena ("BBS") which the appellant said had been sent to his father in his capacity as Minister of Road Developments, Eastern Province
  3. A letter from the Grama Niladhari's office, Addlaichani Divisional Secretary's Division, dated 7 July 2014.
  4. A letter dated 8 July 2014 from the appellant's father, on a letterhead describing him as an MPC and also as the Minister of Road Development, Irrigation, Housing and Construction, Rural Electrification and Water Supply, Eastern Province.
  5. A photograph which the appellant said was of him attending a demonstration in London against the BBS (E6).
22. Following the asylum interview, the appellant also supplied a court summons. The summons dated 17 February 2014 had purportedly been issued by a magistrate at the district/magistrates' court in Acraipattu on information received from the officer in charge (OIC) at Acraipattu police station. The appellant was named as the accused person, and the particulars of the alleged offence were aiding and abetting terrorist activities. The appellant was asked to attend court on 30 April 2014 at 9am to answer the complaint made against him, "a copy of which is annexed hereto, together with a list of the names and addresses that are witnesses for the prosecution" and to be dealt with according to the law. He was informed that if he wished to call any witnesses who were unwilling to attend, he should apply at once to the court for a summons to compel him to return.
23. In the letter dated 8 July 2014, the appellant's father said that he was now facing a threat to his life from the BBS, an extremist organisation sponsored by the army intelligence unit and top government officials of Sri Lanka. His son had been abducted on 14 and 15 January 2014 and tortured by the Sri Lankan army on suspicion of having connection with Tamil youths. He had got him released after paying 15 lakhs through a TMVP member. After getting treatment in secret at the residence of a doctor, who was his friend, his son left for the UK. He had tried his best to get his son released from the false allegations, but to no avail. Hence he was often searched by the police, and the court had also issued an order (warrant) in this regard. The BBS threatened him and son's life, alleging that his son had participated in a demonstration staged on 18 June 2014 against a series of acts of violence committed against Sri Lankan Muslims in Sri Lanka. He had made a complaint at Acraipattu Police Station on 23 June 2014 regarding the threat posed to him and his son. But he had been forced to withdraw this complaint as a result of pressure from top government officers. This clearly showed the connection between BBS and top government officers.
24. In the letter dated 7 July 2014 the Grama Niladhari certified that the appellant was having political and religious threats of killing in Sri Lanka. These threats were done

by the Buddhist extremist group known as the BBS, due to his father's political stand and by the security forces as well.

25. The undated letter purporting to emanate from the BBS informed the appellant's father that they were in receipt of information confirming that he was organising an anti-Sinhala Buddhist armed Muslim group. This had been further established by a communiqué issued by him against Buddhist organisations and by the fact that a protest rally was organised by his traitorous second son (the appellant) in front of the Prime Minister's office in the United Kingdom on 18 June 2014. It was no secret that, through the leadership of his traitorous son, Jihad organisations in western countries were trying to establish an anti-Buddhist Muslim armed group. They promised the death of his traitorous son as soon as he stepped onto the island. They did not need to mention they were capable of carrying out these promises as a Buddhist organisation, as they enjoyed the government's protection. They had collected all the information they needed. To prove their allegation they were attaching photographs of his son attending the rally organised by him in London. They were giving him this notice as a lesson to everyone who took part in anti-Buddhist activities. By doing so, his son had invited the death of his whole family.
26. In a letter dated 10 July 2014 Mr Imam, who described himself as an attorney at law in Colombo, and an ex member of Parliament, said that the appellant's father was his client, and that a photograph of the appellant taking a prominent part in the demonstration of 18 June 2014 had appeared in the local papers, as well as on social media, "with proper identification." Furthermore, his client was vociferously critical of the dastardly violence of BBS, and alleged that security forces and top government officials were behind the incidents. So not only his client, but also his son, had become prime targets of anti-Muslim sentiment in Sri Lanka.

*Questions and Answers in the Substantive Asylum Interview*

27. In interview, the appellant said he was a Tamil speaking Muslim. When he went back to Sri Lanka on 31 December 2013, he was planning to stay there for three weeks. He was asked whether he knew why he had been kidnapped. He said they wanted him to admit that he had links to the LTTE. They accused him of returning to Sri Lanka with money to provide the LTTE. He denied this. Then they mentioned some of his Tamil friends, and asked him what connection he had with them. He told them that he had studied with him when he was young. He did not know whether the Tamil friends with whom he had been having tea had links with the LTTE. He was the only person who was kidnapped. They took his fingerprints, also photographs of him, and they also told him to sign a piece of blank white paper. He was not charged with anything on his release. After he came here, an arrest warrant (i.e. a court summons) was sent by the court. One of the three friends he was having tea with he had last seen in 2012. The other two he had not met for a long time.
28. He had injuries as a result of the ill-treatment he had received in detention, but they were healed. He had not reported the kidnapping to the police, because he feared being arrested again. He found out about the arrest warrant when his father told

him about it on 23 June 2014. He was asked what the charge on the warrant was. He said he only saw a copy of it. He said he had connection with terrorist organisations. He was asked if he had the warrant now. He said it was on its way, it had been sent by DHL. His father had been given the warrant/summons and told that he should appear in court. He was asked whether the police had followed up the warrant. He answered yes, his father had told him they had come to look for him continuously.

29. His father had told him that the army had come to look for him before he left Sri Lanka. When the army came to the family home, his father was not there so they talked to his brother. They asked his brother about his whereabouts. His father had told him he had received the letter from the BBS on 23 June 2014. Nothing had happened to his family since the BBS letter had been received, except that his brother had been harassed by the army. They asked his brother if he had returned to Sri Lanka. The appellant was asked if the army had made any threats towards him or his family. He said they told his brother that if they did not hand him over, they would be arrested. He was asked whether the family had heard from the BBS since receiving the threatening letter. His father had told him that he had received some threatening phone calls saying that they were going to kill both of them (his father and him). They did not say who they were over the phone, and they did not make any demands.
30. He was asked why he had not mentioned the BBS in his screening interview. He said he had mentioned it to them but the interpreter had told him not to tell everything in detail but to make it short.
31. He was asked where he had got the photographs of him at the protest. He said he had got them from Sri Lanka with the letters. The BBS had sent the photographs with the letters. He did not know how the BBS had got the photographs.
32. He was asked about the protests on 18 June 2014. He said all the Sri Lankan Muslims in the UK united and took a decision they should tell the Prime Minister about the Aluthgama riots. They wanted the international community to be aware of the situation in Sri Lanka. He had heard about the protests from one of his friends, and he just took part in it.
33. He was asked whether he had considered claiming asylum when he returned to the UK after he was kidnapped. He answered no because his father advised him not to tell anyone what had happened because it would cause problems to his life. He had not been involved in organising the protests against the BBS. It was put to him that, given he was a Muslim and that the LTTE was a Hindu Tamil group, he would not be suspected of being involved in the LTTE. He said that lots of Muslim people would join the LTTE. Also, he had some Tamil friends.

### **The Reasons for Refusal**

34. On 24 November 2014 the Secretary of State gave her reasons for refusing to recognise the appellant as a refugee, or as otherwise requiring international human rights protection. The documents he had submitted in support of his asylum claim



had been considered in accordance with the guidance given in **Tanveer Ahmed**. Due to discrepancies in his account, it was not accepted that he had been arrested and detained in Sri Lanka in January 2014. Forged documents were easily obtained in Sri Lanka, and it was not accepted an arrest warrant had been issued against him or that he had been summoned to attend court in Sri Lanka. He provided three photographs depicting him at a protest in the UK in June 2014, and in the light of this evidence it was accepted that he had attended a protest in the UK in June 2014 as claimed. In support of his claim that his father was a provincial council member, he had provided several newspaper clippings in which he claimed his father had been quoted. But he had not provided evidence to substantiate the claim that the man quoted in the newspaper articles was indeed his father. On the topic of threats from BBS, it was noted that he had made no mention of such threats during his screening interview. He had confirmed at the outset of his asylum interview that the screening interview record was accurate. He claimed to be the main target of the BBS, but his own case was that his father had been openly campaigning against the BBS in the media. Therefore it was not clear why he would be the main target of these threats, given that his father's activities were of a higher profile than his. It was noted he had not submitted the newspaper articles which allegedly showed his photograph appearing in local papers, despite being able to submit newspaper articles regarding his father which were published in 2013 and 2014. It was not accepted that his family had been threatened by the BBS as he had claimed. Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 had been considered. He had claimed asylum more than five months after he re-entered the UK, just five weeks before his leave as a highly skilled migrant was due to expire. He had thus lived in the UK for more than five months after his claimed problems began, and it was considered he had failed to take advantage of a reasonable opportunity to claim asylum, and this damaged his credibility.

35. The psychiatric report from Dr Lawrence was noted. Whilst the medical report may or may not give an opinion on his psychological condition being consistent with his story, it could not be considered in isolation and could not normally be regarded as providing by itself a clear and independent corroboration of his account of the events which had led to him being diagnosed with depression and PTSD.
36. On the topic of risk on return, even if it was to be accepted that he had been arrested by the authorities, which it was not, it was noted that case law acknowledged that the Sri Lankan authorities were only interested in those who had a significant role in post-conflict Tamil separatism. The conflict with the LTTE ended in May 2009, and he had never supported or assisted the LTTE in any way. So the authorities would not suspect him of having been involved with the LTTE after the end of the civil war. He would not be on a stop list or wanted list, and he would be able to return to Sri Lanka safely.

### **The Hearing before, and the Decision of, the First-tier Tribunal**

37. The appellant's appeal came before Judge Cheales sitting in the First-tier Tribunal in Birmingham on 27 January 2015. In his subsequent decision, Judge Cheales recorded

that some documents were served on the morning of the hearing. The appellant had apparently been sent these documents by way of an attachment to an email, but the email had not been produced. The documents included two appointment letters evidencing the appointment of the appellant's father as a Minister in 2008 and 2012. The appellant adopted as his evidence-in-chief a witness statement signed by him on 20 January 2015. Because of his father's influence, he managed to escape from the country using his own passport. He wished to amend his answers in the interview record on the topic of an arrest warrant. He had not provided a copy of an arrest warrant. He had produced the original summons which was issued against him by the court. He had never mentioned that there was an arrest warrant. He believed this was an interpreting mistake. He had decided to claim asylum because of the threats from the BBS, and after his father's warning given to him on 23 June 2014. There was no Presenting Officer representing the Secretary of State, and the appellant was thus not cross-examined.

38. The judge's findings were set out in paragraphs [20] onwards. There was evidence before him that the appellant's father was a prominent politician and that the appellant came from a wealthy family. Most of his siblings were studying or living at or near his home. He did not find it credible that the appellant would himself be targeted for attack. When the appellant went to Sri Lanka he was not threatened by the BBS, and although his father had received threats, nothing had happened to him or any other members of his family. Nor did he accept that the army would believe that the appellant had returned to Sri Lanka to encourage and lend support to the LTTE. The appellant's explanation for his father not being attacked was because he had an armed guard and there would be an international outcry if he was attacked. But the appellant's father was not a member of the national Parliament; he only held a provincial position. It would be perfectly possible for any armed group to target the appellant's father or any other member of the family. It could not be the case the appellant was targeted merely because he had friends who were Tamils. He took into account the fact that the doctor did not believe the appellant was simulating his symptoms. However there might be many causes for his depression. He did not find credible the appellant's explanation for not claiming asylum earlier. The judge concluded at paragraph [28] that, taking all the evidence into the account, he could not be satisfied that the account was credible. Although he accepted the appellant came from a wealthy family and his father was a prominent politician, he could not accept that the appellant was kidnapped or that he would be targeted on return. As the appellant had no involvement with the LTTE nor had he himself been opposed to BBS, there would be no reason for the authorities to think he would have any involvement with any separatist or terrorist group.

### **The Reasons for Finding an Error of Law**

39. The appellant was granted permission to appeal to the Upper Tribunal, and a hearing to determine whether an error of law was made out took place before a panel consisting of Lord Matthews and Upper Tribunal Judge Smith at Field House on 30 July 2015. In a decision promulgated on 6 August 2015, UTJ Smith gave the panel's

reasons for finding that an error of law was made out. Paragraphs [9] to [19] of the error of law decision are set out below:

**“Submissions**

9. In short summary, the Appellant’s grounds are as follows. Ground 1 concerns the failure to consider the risk to the Appellant as a result of his father’s enmity with BBS and the personal threat to the Appellant contained in the BBS letter. Ground 2 concerns failure to consider or make findings about the documents which are referred to at [7] above. Ground 3 attacks the Judge’s findings in relation to the events in January 2014 on the basis that they are based on impermissible and unfounded considerations of implausibility. Ground 4 attacks the Judge’s failure to consider the background objective evidence. Ground 5 challenges the Judge’s findings in relation to the summons and arrest warrant as failing properly to consider the Appellant’s evidence in that regard. Ground 6 challenges the Judge’s findings on credibility relating to the Appellant’s late claim for asylum.
10. Ms Dogra’s very helpful submissions focussed on the Judge’s failure to consider documents although she made clear that she pursued all grounds. In particular, she said, the Judge had failed to consider the documents before her as to the arrest in January 2014, particularly the summons, the threat to the Appellant arising from the BBS letter to the Appellant’s father and the other documents listed at [7] above. For example, we were taken to what the Judge said at [23] of the Decision in relation to the BBS letter. Having said that the father had been sent a letter from BBS, from which we infer that the Judge accepted that the letter was sent, the Judge went on to say that it was not credible that the Appellant would be targeted without saying why that was, given the contents of the letter. We were also shown what was said about the summons and we drew attention to the fact that the Judge, for some reason, seems to have assumed at [28] that the summons was a ‘witness summons’ when it was patently clear from the document that it is a Summons directed to an accused person (assuming it is genuine). There is no reference to the letters to which we refer at [7] above although, as we pointed out to Ms Dogra, those are of limited assistance in judging the Appellant’s credibility since one emanates from his father and the rest appear to be based on what his father has told others. There is, therefore, only one source of corroboration and that is the Appellant’s own father, who might be expected to support the Appellant’s version of events.
11. Ms Dogra made brief submissions in reply on the other grounds. As Ms Dogra pointed out, whilst it was accepted that the Appellant had no LTTE profile or involvement, the risk arose from imputed opinion based on the fact of attendance at the demonstration. She submitted that it was this and the BBS’s interest in the Appellant arising from that attendance which put the Appellant at risk on return. In relation to background evidence, we pointed out that this could only become relevant if the threat from BBS was believed and so was linked with Ground 1. We were not impressed with Ground 6, and Ms Dogra rightly accepted that this was not her strongest ground. It was obviously open to the Judge to take account of the lateness of the claim for asylum, particularly since the Appellant relied on events in January 2014 but did not claim asylum immediately on return. His attempt to explain this away was not accepted by the Judge at [27] and that is a sufficient finding. It was not the central focus of the Judge’s findings on credibility.

12. Mr Clarke submitted that the BBS letter was dealt with at [21] and [23] of the Decision. He was not able, though, to answer our question whether the comments at [23] were an acceptance by the Judge that the letter had been sent and, if so, why it was not accepted as credible that the Appellant was targeted by BBS. He submitted that the Appellant has no LTTE profile or involvement against BBS, he is in the UK and claimed asylum late. In the circumstances, it was unsurprising that the Judge found his claim to be at risk to be incredible. He conceded that the documents we refer to at [7] above were not mentioned with the exception of the summons and he accepted that the Judge had erred in referring to the summons as a 'witness summons' but pointed out that elsewhere in the Decision, the Judge had referred to it only as a summons. He submitted though that the case must have been put on the basis that it was a witness summons for the Judge to have made that reference. The other documents take the Appellant no further as the Appellant's father simply mirrors the Appellant's case and the other documents simply repeat that. In any event, the Judge at [20] refers to 'all the evidence' having been considered.
13. In relation to Ground 3, Mr Clarke submitted that the Judge was entitled to say what she did, bearing in mind the lack of any LTTE profile, that his family were in Sri Lanka but had not been targeted, that he had attended only one protest and that he had made his asylum claim late. The reason for the arrest in January 2014 was based on what the Appellant had said about this, namely that he had been asked about his four Tamil friends. The BBS threat was not raised at the interview and in any event sufficiency of protection may be an issue even if the Appellant is at risk from them. He accepted that the background evidence may then be relevant. The issue, though, would be whether the BBS has the willingness and capability to target the Appellant. He pointed out that in spite of the father's enmity with BBS, he has not been the target of any attack. Mr Clarke submitted in any event that the Judge had made findings with reasons at [20] to [28] and had explained why he had concluded that the Appellant would not be at risk from the authorities or BBS. That was a logical conclusion. The Judge was entitled to rely on the late claim for asylum and to findings of fact that this damaged his credibility, particularly since he claimed to fear the authorities as a result of an event in January 2014 and it was not credible that he would not then claim asylum immediately on return.

#### **Error of Law Decision and reasons**

14. After consideration of the grounds of appeal and oral submissions, we indicated at the hearing that we were satisfied that the Decision involved the making of an error of law and that we would provide brief reasons in writing, which we now do.
15. The Judge failed to engage with the documents. She did have regard to the summons but, as we note above, for some reason indicated in her findings that this was a witness summons when it was clear on its face that it was a summons to an accused person. If that document were found to be genuine, then that would clearly indicate an interest in the Appellant by the authorities. If the Judge accepted that the letter from BBS was genuine, as she may have done at [23] (as we note above) then it is difficult to see why she would not have found credible the Appellant's risk from BBS and potentially a risk from the authorities on that account (as to which the background evidence may well be relevant). We do not think that the other documents at [7] add much weight to the Appellant's

case but they should at least have been considered and the Judge should have said what she made of them.

16. As indicated above, we were not impressed by Ground 6 but, of course, if the Appellant is found credible as to risk then the fact that he did not claim asylum until late in the day would not be sufficient to find him not credible generally, particularly if he offers a reasonable explanation for that failure.
17. In the circumstances, we are persuaded that the Judge has erred in her consideration of the Appellant's case and we find that the case will need to be re-heard afresh with no findings preserved. We note that there is no challenge in the grounds to the findings on the medical evidence at [26] and we note also that the medical documentation in the bundle since that report appears to suggest that the Appellant's symptoms may have subsided but we do not preclude argument on that issue if it has any continued relevance at the hearing.
18. We invited submissions from the parties on the re-making of the decision. We were persuaded that the matter could remain in this Tribunal notwithstanding the need for the re-hearing of evidence. We make directions below for the re-hearing.

#### **DECISION AND DIRECTIONS**

19. The First-tier Tribunal decision did involve the making of an error on a point of law in relation to the failure to consider the documents produced by the Appellant and thereby the failure properly to consider the claimed risk to him by the authorities in Sri Lanka and from the BBS. "

#### **The Resumed Hearing in the Upper Tribunal**

40. At the resumed hearing before me to re-make the decision, the appellant gave oral evidence through a Tamil interpreter whom he clearly understood. He adopted as his evidence-in-chief the same witness statement as he had adopted before the First-tier Tribunal. There were three documents loose in my file which I arranged to have copied and about which, at my invitation, the appellant was questioned by Ms Dogra. The appellant identified two of them as being colour photocopies of his father's appointments to his Ministerial post in 2008 and 2012 respectively. On each occasion he was appointed by Rear Admiral Mohan Wijewickrama, the Governor of Eastern Province. The third document was identified by the appellant as being a photograph of him and the rest of his family. I infer that it was taken at the wedding of his older brother.
41. In cross-examination he was asked who abducted him on 14 January 2014. He said his father told him it was the army. It was put to him that his father was not there. He answered they looked like security. The question was repeated, and he said a friend of his father spoke to an army chief and got him released. He had not gone to the police after his release as he was scared. He delayed claiming asylum as his father had told him to lie low until his problems were resolved. He was asked why he had therefore attended a demonstration in June 2014. He said it was his right to participate in a demonstration about the atrocities committed against Muslims. He did not realise it would lead to a problem. It was put to him that he had spent six months raising his profile and obtaining false evidence to substantiate a future

asylum claim. The appellant denied this. Some of the documents he supplied were originals, including the summons. After reviewing the documents which he had on file, Mr Whitwell confirmed this and produced the summons for my inspection.

42. In his closing submissions, Mr Whitwell invited me to dismiss the appeal for the reasons given in the reasons for refusal letter. In reply, Ms Dogra relied on the skeleton argument that had been placed before the First-tier Tribunal by Amanda Walker of Counsel. She drew my attention in particular to page 29 of the skeleton, where Ms Walker submitted that the appellant would not be able to seek adequate protection from the state, in response to threats made by the BBS. As confirmed in the respondent's own Operational Guidance Note in Sri Lanka issued July 2013, senior members of the government were closely affiliated with the BBS and as such the BBS was able to act with impunity.

### **Discussion and Findings on Re-Making**

43. There are two strands to the appellant's claim. The first is that he has been persecuted in the past, and has a well-founded fear of being persecuted again on return, on account of being wrongly perceived as an LTTE terrorist – as a consequence of which there is an outstanding warrant for his arrest due to his failure to answer a court summons to attend court on suspicion of aiding and abetting terrorist activity. The second strand of his claim, which was only introduced after his screening interview, is that the catalyst for his claiming asylum in the summer of 2014 was the receipt by his father of a threatening letter from the BBS on 23 June 2014 which had been precipitated by the appellant's attendance at a demonstration in London five days earlier, protesting against the anti-Muslim violence in Sri Lanka which had been orchestrated by the BBS.
44. The fact that this second, and arguably more potent, strand of the appellant's asylum claim was only introduced after the screening interview is *prima facie* highly damaging to the appellant's general credibility. For, on his own case, he had not been prompted to claim asylum by his alleged arrest and detention in January 2014, or because of the subsequent court summons allegedly issued to him in February 2014; but because his father had reported to him that the BBS had made a credible threat on his life should he return to Sri Lanka.
45. It is not credible that the interpreter at the screening interview told him not to mention the BBS, when he started trying to tell the interviewing officer about his fear of the BBS. The appellant saw Dr Lawrence before the screening interview and told him that his symptoms had been precipitated by a death threat made to his father following his recent attendance at a protest. Given Dr Lawrence's diagnosis of depression and PTSD, it is necessary to consider whether the appellant's mental state might provide an explanation for the appellant making no mention at the screening interview of the death threat allegedly made against him by the BBS.
46. Although Dr Lawrence's report has independent probative value, I do not consider that the diagnosis furnishes a credible explanation for the appellant not mentioning the alleged threat posed to him by the BBS in his screening interview as part of the

reason, indeed the main reason, as to why he feared returning to Sri Lanka. It is apparent from Dr Lawrence's report that the appellant presented as a reliable narrator, who was not suffering from any cognitive impairment or problems in recollection. If he was genuinely terrified of what the BBS might do to him on return to Sri Lanka, it is not credible that he would not have articulated this fear when asked to explain, albeit briefly, his reasons for not being able to return to Sri Lanka.

47. With regard to the first strand of the appellant's claim it is convenient at this stage to refer to the country guidance given in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319**. This country guidance replaces all existing country guidance on Sri Lanka, and it includes the following headline guidance:

- “(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 .... 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 ...
  - (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 ....
  - (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."

- 48. The appellant's account of being detained and ill-treated for suspected involvement in ongoing efforts to revive the LTTE runs counter to the country guidance and, aside from the psychiatric report, is not supported by medical evidence. There is no documentary evidence of the appellant being treated by a doctor for the injuries which he allegedly sustained while in detention. If his account were true, the appellant could reasonably be expected to display the signs and symptoms of PTSD when he arrived back from Sri Lanka in January 2014. But he is not recorded as having consulted a GP before the beginning of July 2014. He also resumed his previous employment in the UK, and it is not suggested that he gave any indication to his employer or to his work colleagues that he had suffered a traumatic experience in Sri Lanka over the Christmas holidays. Indeed, it is not shown that the appellant did not return to the United Kingdom on precisely the same day as he was always scheduled to return, once his three week holiday was over.
- 49. The appellant's account of being arrested by the army runs wholly counter to the country guidance in that the appellant clearly did not have a profile which would be reasonably likely to engender a suspicion that the purpose of his return visit to Sri Lanka was to revive the LTTE rather than to be with his family for the Christmas holidays. The fact that the appellant claims to have been kidnapped on his own, while his Tamil friends were ignored by the army, only serves to further undermine the credibility of this strand of the appellant's claim.
- 50. But even if credence is given to the alleged kidnapping and interrogation, there are not substantial grounds for believing that the appellant's father would be able to secure the appellant's release through payment of a bribe if the army continued to suspect that the appellant was a terrorist. Further, it is not credible that, his father having allegedly secured his release through intervention at a high level (securing his son's release with the agreement of an army chief), the army would have been seeking to re-arrest the appellant within a matter of days of his release.



51. Although the appellant has produced what purports to be an original of the court summons which he says was served in February 2014, the document lacks both internal and external credibility. The document lacks internal credibility as the appellant was not detained and questioned by the local police, and in any event the local police did not have any evidence (on his own account) that he was aiding and abetting terrorist activity. Moreover, the summons should have been accompanied by another document setting out the detailed case against the appellant, and the witnesses who were going to be called for the prosecution. But this accompanying document has not been produced.
52. The appellant's father claims to have made efforts to get the false allegations against his son set aside. But he has not produced any documentary evidence of this. If the summons were genuine, the overwhelming likelihood is that the father would have instructed an advocate to apply to the court to strike out the case against the son, relying on exculpatory evidence from him in the form of an affidavit, or at least to make representations at the hearing scheduled for 30 April 2014 so as to prevent a warrant for the appellant's arrest being issued for what would otherwise (absent such representations) be perceived as a contumelious disobedience of a court summons. There is not even any correspondence showing that the court was informed that the appellant could not attend the scheduled hearing as he was outside the jurisdiction.
53. The document lacks external credibility for another reason, which is that its genesis runs counter to the background information cited by the respondent in the refusal letter from paragraphs 50 onwards. The background information states that a suspect would be produced before a magistrate and a court summons issued *after* the suspect is released on bail. Given that the appellant claims to have been released from unofficial detention upon payment of a bribe, it is not credible that subsequently he would have been issued with a court summons out of the blue.
54. On the topic of whether a court summons can be obtained fraudulently, a court official in Vavuniya said yes they could be, and the Sri Lankan police service information services room also said yes. A lawyer in Colombo also said yes, but added it was a criminal offence and he did not see why someone would take such a risk. But from the appellant's perspective, there would be no reason to believe that the deployment of false official documents in an asylum appeal would be likely to lead to him being prosecuted in Sri Lanka, and there is nothing in the background evidence which indicates that the potential risk of prosecution is anything other than purely theoretical or extremely remote.
55. On the question of how many summonses are issued before a warrant for arrest is issued, two of the three sources consulted by the British High Commission (the Sri Lankan police and a lawyer in Colombo) told them that a warrant of arrest was issued if a person failed to appear after a summons had been served on three occasions. So if court proceedings were genuinely being pursued against the appellant in Sri Lanka, it is reasonable to expect that two further summonses would have been issued for him to attend court. The fact that no further summonses have

been produced, or indeed are alleged to have been issued, tends to support the respondent's claim that the summons which has been produced is bogus. Their absence is also consistent with the proceedings having been discontinued.

56. An item on the BBS on the trackingterrorism.org website (appellant's bundle pages 79 to 80) explains that BBS translates as the Buddhist powerfuls. It is a radical Sinhalese Buddhist nationalist organisation based in Colombo that was formed during 2012. It seeks the enforcement of Buddhist predominance in Sri Lanka. It has organised various campaigns against the country's minority Muslim and Christian communities which according to the organisation pose a threat to Sri Lanka's Sinhalese-Buddhist identity. The BBS engages in hate speech and attacks against minority religions. Allegations persist that the BBS enjoys a close relationship with the Sri Lankan government and has been seemingly immune from prosecution. These allegations mainly relate to the Sri Lankan President's brother who is regarded as a patron of the BBS. During March 2013 he officiated at the opening of a BBS cultural centre at the port city of Galle, currently used as a training centre by the BBS. The BBS's mission is to save the Sinhala race by means of non-violent and violent attacks on places of worship. At rallies, monks claim Muslims are out to recruit children, marry Buddhist women and divide the country. Their extremist ideology is seen in violent attacks, calls for the boycotts of Muslim owned businesses and properties, bans on head scarves and halal foods and derogatory language to describe Muslim imams.
57. On 27 June 2014 the New York Times reported that hate mongering Buddhist extremists from Sri Lanka had set off the country's worst wave of anti-Muslim violence in years. A bloody rampage on June 15 in and near the southern city of Aluthgama left four Muslims dead, at least 78 people injured, and Muslims' homes and businesses destroyed. The attacks followed an anti-Muslim rally organised by the BBS. The author commented that the latest round of attacks against one of Sri Lanka's minorities communities underscored the urgent need to shed a bright light on the relationship between the hard line BBS, Sri Lankan security forces and the Rajapaksas.
58. Following global condemnation of his government's inability to rein in the BBS and prevent the June 2014 attacks, President Rajapaksa toured the afflicted area, whilst his government promised the United Nations Human Rights Council it would conduct an investigation and bring the perpetrators to justice.
59. The New York Times commented that the President had good reason to be concerned and to act. Among other things, the violence threatened Sri Lanka's recovering tourism industry and business development directly tied to members of his family. The violence elicited rare criticism in Sri Lanka's press of the government's failure to protect the Muslim minority.
60. On 1 July 2014 the Colombo Page, an internet newspaper, quoted the leader of the BBS as challenging the police to arrest him if he was in the wrong, instead of arresting other "innocent" Sinhala Buddhists so as to appease the Muslims in the

international community. Addressing a media briefing called in Colombo to respond to the allegations against him and his organisation by some government ministers, the hard line monk warned both the government and the opposition not to set their hands on BBS. He threatened to finish the political life of the ministers who marched against Buddhist organisations.

61. On 10 July 2014 five Muslim ministers in the government signed a letter on behalf of the Muslim community refuting claims that there were terrorist and extremist groups within the Muslim community of Sri Lanka.
62. The appellant has brought forward credible evidence that his father is a person of considerable wealth and influence who has been a member of the provincial council of the Eastern Province in Sri Lanka since 2008. In addition, following elections in 2008 he was appointed a Minister; and, following the elections in 2012, he was re-appointed as a Minister in the same post. It is credible that the appellant's father has spoken out against the BBS as have more prominent Muslim politicians who operate at a national level.
63. My attention has not been drawn to any background evidence which indicates that Muslim politicians who speak out against the BBS have been subjected to death threats from the BBS, or that the BBS have openly made threats against members of their family. Although there is a legitimate concern that police and security forces have acquiesced in the BBS's anti-Muslim activities, the BBS has not in fact enjoyed immunity as otherwise the leader of the BBS would not have been complaining about the police arresting "innocent" followers. (It is not true that the OGN extract quoted in the skeleton argument concedes that senior members of the government are affiliated with the BBS, and so the BBS is able to operate with impunity. The OGN reports this as an allegation, not as an established fact.) Moreover, it is apparent from the same public declaration that the leader of the BBS seeks to portray the BBS as operating within the law. In short, in order to deflect growing criticism of its activities, it was important to the BBS in the summer of 2014 to present itself as a legitimate organisation pursuing legitimate goals.
64. Against this background, the letter from the BBS purportedly received by the appellant's father on 23 June 2014 is wholly lacking in credibility. It is not credible that the BBS would make an open death threat against a senior Muslim politician, who had held a Ministerial post in the Eastern Province since before the end of the civil war, so as to invite a criminal prosecution as well as national and international obloquy. It is not credible that the BBS would openly boast of having governmental protection so as to be able to commit murder with impunity, thereby causing immense embarrassment to the government both internally and internationally, and hugely strengthening the case advanced by their detractors that the BBS should be investigated and prosecuted. In a climate where national politicians and government ministers were speaking out against the BBS, and where there was widespread concern about the legality of the BBS's activities, the predictable course for the appellant's father to take, partly for his own protection and that of his family and partly to promote the cause of which he was a champion (among others), was to

publicise the open threat of murder from the BBS as widely as possible by, among other things, handing over a copy of the letter to a national newspaper for publication. Equally, having allegedly received an unequivocal death threat on BBS headed notepaper, it is not credible that the appellant's father, with his wealth and influence, would not have pursued a complaint against the BBS through the courts. It runs counter to the background evidence that the appellant's father was pressurised by top government officials to drop his complaint. For, as previously noted, some "top government officials" were speaking out against the BBS; and in response to the international outcry about events earlier in June 2014, the authorities were starting to take action against BBS activists.

65. Another reason why the purported death threat letter from the BBS lacks credibility is that, on the face of it, the death threat was triggered by the appellant's participation in an anti-BBS rally in the United Kingdom, and yet there is not a shred of evidence that the rally was reported in the Sri Lankan media, still less that the appellant was identified in the Sri Lankan media as one of the participants in the rally. On the other hand, on the appellant's case his father had been a regular and vociferous critic of the BBS in the local press, and at the date when the death threat letter was allegedly received, there was a storm of criticism of the BBS being carried by the Sri Lankan media. As the appellant was merely an attendee at the rally, there are not substantial grounds for believing that his participation in the rally would have come to the adverse attention of the Sri Lankan security forces or the BBS. But even if it had done, it is wholly incredible that the appellant's mere attendance at the rally would have been a trigger for a death threat against him and his father, particularly when his father's more prominent and longstanding criticism of the BBS had hitherto been ignored by the BBS.
66. In conclusion, the appellant has not discharged the burden of proving to the lower standard of proof that the core of his claim is true. There are not substantial grounds for believing that, when he left Sri Lanka in January 2014, he was of adverse interest to the army or the police as someone who was suspected of attempting to revive the LTTE, or that in February 2014 he was issued with a summons to attend court in April 2014 in order to answer a charge of aiding and abetting terrorism. There are also not substantial grounds for believing that he was abducted, detained and tortured in January 2014 by the army because of a false allegation made by one of his father's enemies that he was an LTTE activist; or that the appellant's attendance at an anti-BBS rally on 18 June 2015 came to the attention of the BBS in Sri Lanka with the consequence that they sent a letter on BBS headed notepaper to his father making death threats.
67. On the issue of risk on return, there are not substantial grounds for believing that the appellant is on a stop list or wanted list, or is otherwise of adverse interest to the Sri Lankan authorities or to the BBS. By the same token, there are not substantial grounds for believing that on return to Sri Lanka the appellant would face a real risk of ill-treatment of such severity as to cross the threshold of Article 3 ECHR either at the hands of the authorities or at the hands of the BBS.

68. The appellant does not pursue an Article 3 (suicide risk/mental health) claim or, with any vigour, a claim under Article 8 ECHR. Ms Dogra accepted that the appellant did not have a viable private life claim under the Rules, and she did not seek to identify any compelling circumstances which justified the appellant being granted Article 8 relief outside the Rules. She recognised that if the appellant failed in his claim for international protection, there were no compelling circumstances justifying him being granted leave to remain on Article 8 grounds. I find that the prospective removal of the appellant is proportionate to the legitimate public end sought to be achieved, namely the maintenance of firm and effective immigration controls.

**Notice of Decision**

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted: this appeal on asylum and human rights grounds is dismissed.

**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

Deputy Upper Tribunal Judge Monson

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Monson