



IAC-FH-AR-V2

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

Appeal Number: AA/05351/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 24th June 2014, 10th October, 2014,
19th August, 2015, 14th October, 2015,
23rd November 2015 and on 25th
January, 2016**

**Determination & Reasons Promulgated
On 5th February 2016**

Before

Upper Tribunal Judge Chalkley

Between

**MRS P K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr A M Ahluwalia, Solicitor's Clerk from Jein Solicitors

(Hearing on 24th June, 2014)

Ms J Rothwell of Counsel

*(Hearings on 10th October, 2014, 19th August, 2015, 14th October, 2015,
23rd November 2015 and 25th January, 2016)*

For the Respondent:

Ms S L Ong, a Senior Home Office Presenting Officer

(Hearing on 24th June, 2014)

Mr T Melvin, a Senior Home Office Presenting Officer

*(Hearings on 10th October, 2014, 19th August, 2015, 14th October, 2015,
23rd November, 2015 and on 25th January 2016)*

Direction Regarding Anonymity
Rule 45(4)(1) Asylum and Immigration Tribunal (Procedure) Rules 2005

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

DETERMINATION AND REASONS

1. The appellant was born on 22nd September, 1983 and is a citizen of Sri Lanka. She appeals the decision of the respondent, taken on 10th May, 2012, to give directions for her removal from the United Kingdom, following the refusal of her claim for recognition as a refugee.

Immigration history

2. The appellant first sought leave to enter the United Kingdom in 2008, as a student, but her application was refused. A similar application was granted on 29th August, 2009, when she was granted a visa valid until 28th May, 2012. She entered the United Kingdom first on 18th January, 2010.
3. The appellant returned to Sri Lanka on 13th January, 2011, in order to marry and then she returned to the United Kingdom on 1st February, 2011. She claimed asylum on 12th April, 2012.

Basis of the appellant's claim

4. When refusing the appellant's claim for asylum, the respondent wrote a "Reasons for Refusal" Letter addressed to the appellant and dated 10th May, 2012. At paragraph 9 of the letter, the Secretary of State sets out her understanding of the appellant's claim. While not encompassing the whole of the appellant's claim, (it does not of course deal with the appellant's *sur place* activities), I believe it will be helpful if I set it out in full:-

"9. In these documents you claim that:

- (a) You are a Sri Lankan of Tamil ethnicity (SIQ1.7).
- (b) You first became involved with the LTTE (Liberation Tigers of Tamil Eelam) in 1995 (AIRQ10). You supported them because they were fighting for Tamils (AIRQ11). You would attend meetings (AIRQ12), put up notices, go on processions and protests (AIRQ13).
- (c) You have never fought in support of the LTTE (AIRQ14, 15).
- (d) You attended protests at the University of Jaffna:
 - (i) On 30th September 2005 (AIRQ33).

- (ii) On 24th November 2005 and you made a speech (AIRQ26, 27, 19).
- (iii) On 5th July 2006 (AIRQ14).
- (iv) On 19th August 2008 (AIRQ19, 20).
- (v) On 12th February 2009 (AIRQ22, 23).
- (e) You did not organise these events (AIRQ23, 32, 36), however you did travel to other areas to invite people to attend the celebration on 30th September 2005 (AIRQ37).
- (f) In 2004 your husband completed 4-5 months of basic LTTE training (AIRQ183-185).
- (g) In 2005 you were called for an enquiry by the Criminal Investigation Department (CID) (AIRQ51), but you were released immediately (AIRQ52) with the held of the GS (Grama Sevaka) AIRQ47, 48, 49).
- (h) In 2005 your brother was arrested for working with the LTTE and was released on reporting conditions (AIRQ133, 134). He was not ill-treated during detention (AIRQ189).
- (i) In December your husband was taken for questioning and released (AIRQ180). He was not arrested again after 2005 (AIRQ198) although he was involved in University activities (AIRQ201).
- (j) In December 2005 there was propaganda at your University and people arrived and were shot by the army. You have not claimed to have been part of this event (AIRQ78, 79).
- (k) You were arrested in February 2006 (AIRQ77) when the army came to your university (AIRQ78) following an incident on 20th December 2005 (AIRQ79, 80, 81). You were held in detention for two days (AIRQ86). Although you were not required to sign anything (AIRQ87) you were beaten on your legs (AIRQ88) and questioned (AIRQ89). There were no conditions attached to your release but you were told that if you were arrested again they would shoot your family (AIRQ91).
- (l) You were sexually abused during your detention (AIRQ52).
Alternatively, they said if you had sex with them they would release you (AIRQ88) however, the Grama Sevaka and another person got involved and you were released (AIRQ293).
- (m) On 13th June 2007 the army came to your family home to arrest your brother and hit your father. Your father subsequently died of a heart attack (AIRQ76, 112, 113, 114, 129).
- (n) You do not know why they wanted to take your brother for questioning at this time (AIRQ138). They did not come again to arrest him and he continued to report weekly (AIRQ138, 139 and 140).

- (o) On 13th August, 2007 your uncle was shot dead (AIRQ76, 99). You believe that this was because he was living in an army controlled area and had been accommodating LTTE members (AIRQ103).
- (p) In 2008 you were with your friend when she was shot (AIRQ93), however you believe that they were aiming to kill you (AIRQ94, 95) because of the threats they made on your life in 2006 (AIRQ96).
- (q) In 2008 the army took your ID card and tore it up because your hair was in plaits (AIRQ153, 159). You had to apply for a new one (AIRQ153). You were not beaten (AIRQ160).
- (r) On 7th October 2009 your brother (P) was shot by mistake (SIQ6.6, AIR162, 163 and 164). He had not been involved with the LTTE (AIRQ166). You were not expecting your brother to be shot (AIRQ310).
- (s) You started making arrangements to come to the UK in August 2008 (AIRQ217). Your mother wanted you to leave Sri Lanka after your brother [P] died (AIRQ216).
- (t) Your brother (PK) left Sri Lanka after your other brother (P) was killed in 2009 (AIRQ21, 209).
- (u) You left Sri Lanka alone on your own passport with a visa to the UK on 18th January 2010, arriving at Heathrow Airport on the same day.
- (v) You returned to Sri Lanka alone in 2011 to get married (SIQ2.1). You were married on 20th January 2011 (AIRQ240). You left for Colombo on the same day (AIRQ247).
- (w) You left Sri Lanka alone on your own passport with a Visa to the UK on 1st February 2011 arriving at Gatwick Airport on the same day.
- (x) Your house in Sri Lanka was first visited by the authorities in February 2011 and they came between 4 and 5 times (AIRQ257,Q258). Your husband was required to report which he did (AIRQ259) but he went missing in June 2011 (AIRQ260). You believe he was detained by the CID (AIRQ299).
- (y) His abduction has not been reported to the police (AIRQ285, 286).
- (z) In September 2011 the CID came to your mother's house and made enquiries about you (SIQ5.2)."

Appeal history

5. The history of the appellant's appeal is by no means entirely clear to me. I believe that following the Secretary of State's refusal, the appellant appealed to the First-tier Tribunal and her appeal was heard first by First-tier Tribunal Judge A W Khan in July 2012. Again, it is not entirely clear, but I believe that following promulgation of the determination of First-tier Tribunal Judge Khan, the appellant challenged the judge's determination in the Upper Tribunal and at a hearing on 4th March, 2013

First-tier Tribunal Judge M A Hall, sitting as a Deputy Judge of the Upper Tribunal, set aside the determination of First-tier Tribunal Judge Khan. I believe then that the matter was remitted to the First-tier Tribunal for hearing afresh.

6. On 12th March, 2014, the appeal was heard by First-tier Tribunal Judge Grimmett. Judge Grimmett found that the appellant's evidence about events prior to her leaving Sri Lanka in early 2010, was very largely consistent and detailed. It was accepted that the appellant was involved in putting up notices and attending demonstrations at university and the judge found that she was satisfied that both the appellant and her brother were involved in demonstrations, that she had been consistent about. The judge noted that the appellant had claimed that her brother had been working for the LTTE in 2005 prior to Jaffna coming under the control of the army and that the appellant had produced a photograph of her brother with the political leader of the LTTE, Tamilchevan, which was not being disputed by the respondent.
7. Judge Grimmett was also satisfied that the appellant's father had died following an incident when the authorities came looking for her elder brother. The description the appellant gave of the event was, recorded Judge Grimmett, *"very detailed and her explanation for why the army did not actually take her brother with them on that day, namely that they were all screaming has the ring of truth about it."* Judge Grimmett accepted that the appellant was a supporter of the LTTE on a low level and that her brother carried out some similar activities to her and that both of them and their family were known to the authorities over a lengthy period prior to her departure.
8. Judge Grimmett also found that the applicant had been detained, because the evidence she gave about the circumstances of both detentions was very detailed. She was not satisfied that there was any inconsistency and noted that the appellant had not attempted to embellish the 2005 incident. Judge Grimmett noted that the medical evidence supported the appellant's claim to have been beaten on both legs, because the scarring was consistent with it. She found herself satisfied that the appellant was detained and ill-treated in 2006.
9. The judge was also satisfied that that the appellant's uncle was killed by the army as a result of LTTE activities. Judge Grimmett said:-

"The appellant does not say that the army came looking for him [her uncle] at her home or that his wife or children were ever hurt as a result of her uncle's activities. She does say however that after her uncle was killed his son took a stick and hit the army and they tried to shoot him. That information was volunteered by [the appellant] and once again seems to me to be a comment unlikely to be made up by her on the spur of the moment were the account not true and if the uncle's son was willing to seek retribution in such a way it is likely in my view that he believed his father had been killed by the army."
10. Judge Grimmett said that she, *"was therefore satisfied that the army were aware of the whole family, particularly bearing in mind that the appellant says at Q105 that the army were occupying their house and they had to move out"*. However Judge Grimmett went on to make further findings and as a result dismissed the appellant's appeal.

11. Dissatisfied with the determination, the appellant sought and obtained permission to appeal to the Upper Tribunal. The grounds upon which permission to appeal was sought suggested that the judge erred in law in failing to take account of material evidence in failing to consider the implications of the appellant's continued support of Tamil separatism.

Hearing on 24th June, 2014

12. The matter came for hearing before me first on 24 June, 2014. It was suggested on behalf of the appellant that the judge had failed to consider page 51 of the appellant's bundle, being a letter from a Sri Lankan MP. The judge had said at paragraph 30 of her determination that there was no recent evidence of any interest in the family, but failed to consider what the member of parliament had said in that letter. Neither had there been any consideration of the letter from the member of parliament at pages 77 and 78 of the appellant's second bundle, thus making Judge Grimmett's findings that the appellant was of no further interest flawed.
13. There was no consideration as to whether or not she might have been on a watch list, since she had been arrested within a week of her return. It was also suggested that there had been a failure to appreciate key elements of her claim, namely that students from Jaffna University had been and are viewed by the Sri Lankan authorities as those who stand for Tamil nationalism. The background evidence and the letter from Mr Kajendrem, General Secretary, Tamil National People's Front and former MP, dated 15th March, 2012 and background evidence about him and Jaffna University confirmed that students at Jaffna University were viewed as Tamil nationalists and LTTE members. To suggest simply that the appellant had attended "a few demos" shows a misunderstanding of the evidence, it was suggested.
14. Judge Grimmett found inconsistencies in the evidence as to what had happened to the appellant's husband after the appellant's return to the United Kingdom. However, the grounds pointed out that the judge had not taken into account a letter from the appellant's mother contained within the bundle.
15. For the respondent, Ms Ong accepted that the determination could not stand. The appellant's representative told me that the matter should be heard afresh again, but indicated that there were no findings that should be preserved. He told me that the matter would need to be adjourned so that it could be heard afresh during the course of a whole day.

Preserved Findings

16. It is appropriate for me to point out at this stage that I believe that the findings made by Ms Grimmett to which I have made reference at paragraphs 6 and 10 above should be preserved, contrary to the submission of Mr A M Ahluwalia . They are not infected by the errors and are findings in the appellant's favour.

The Hearing on 10th October, 2014

17. Mr Melvin told me that at 9:30 this morning he had received a bundle of documents on behalf of the appellant consisting of 271 pages. He explained that he had not had the opportunity of properly reading and digesting this bundle. He could not be confident that even if I were to adjourn the matter for two hours that he would have been able to read the bundle in that time. He invited me to adjourn to a further date.
18. Ms Rothwell was in no position to oppose the application. She indicated that she had only yesterday received the bundle and only this morning received the latest statement from the appellant. There was no one present from the appellant's solicitors to explain why the bundle had not been served earlier.

Hearing on 19th August, 2015

19. The matter next came for hearing before me on 19th August, 2015. On that occasion Ms Rothwell had been put in an impossible position. She had just received a lengthy psychiatric report which appeared to have been completed some weeks earlier but had only just been delivered to her. Neither Mr Melvin nor I had been given copies of this report.
20. Ms Rothwell explained that the appellant had been undergoing counselling and the report was from a psychologist who had been treating the appellant. She could not explain why the document had not been served earlier but agreed that the appellant had not been best served by her solicitors.
21. I expressed concern that the appellant was a privately funded appellant who appeared to have been let down not once, but twice, by incompetent solicitors. Ms Rothwell indicated that she would offer to take over the matter on a pro bono basis if necessary.
22. I directed that properly indexed and paginated bundles with relevant materials be served and filed at least ten days before the adjourned hearing and that one properly signed statement be prepared for each of the witnesses. The matter was adjourned.

Hearing on 14th October, 2015

23. When the matter came for hearing before me again on 14th October, the directions had been ignored. Again, the appellant appeared to have been let down by her solicitors.
24. Statements which had been in the appellant's bundle unsigned now appeared to be signed, but did not bear any endorsement by a qualified interpreter to confirm that they had been read back to the appellant in her own language and that the appellant had confirmed that she fully understood and agreed with the contents.
25. I explained to the appellant that ordinarily it would be possible for her to adopt, as part of her evidence before me, her written witness statements. I went on to explain, however, that she should only adopt the statements if she was entirely satisfied that

what she had said in each of them was completely true and accurate. The reason for this was that if she adopted the statement as part of her evidence and then later, in cross-examination, she contradicted something that was said in her statement, that may cause me to believe that she was not telling the truth. The appellant said that she could not remember what she had said in any of the statements.

26. I indicated to Ms Rothwell that in the circumstances I was not prepared to allow the witness to adopt her statement because of the danger of her subsequently contradicting something that she may have said in the statement. That may cause me to make an adverse finding of credibility.

Appellant's oral evidence

Evidence-in-Chief

27. I ensured that the interpreter and the appellant both understood each other. I told the appellant that she should listen carefully to the questions and tell me if she failed to understand anything. She confirmed her full names, date of birth and address.
28. In evidence-in-chief the appellant said that on 12th April, 2012, she had a short screening interview which she signed. She had told the truth during that interview and wished to rely on the record of it. She had another interview on 2nd May, 2012 and she signed that interview. She told the truth at that interview as well, but she said she could not remember anything.
29. The appellant started to explain that she could not return to her village because her family had been harassed. Her mother is still having to report to the police station. [At this stage the appellant became extremely distressed and the matter was adjourned briefly].
30. On resuming the hearing Ms Rothwell suggested that the appellant's aunt should give evidence first, because she had travelled from Coventry and the appellant was particularly anxious to avoid the aunt having to make a second trip. The appellant confirmed that she was fit enough to carry on. I asked her why she needed protection. In answer to questions put to her by Ms Rothwell the appellant told me that while she was in Sri Lanka she had been arrested on two occasions. She said, "*...they blamed us and accused us of working against the Government*".
31. The appellant told me that she was first arrested in 2005. She had been arranging a Pongu Tamil programme at Jaffna University with Tamil people from the Tamil area. She invited her village school people and university people to the event. Pongu Tamil Day is a protest day against the Government when Tamil people gather to protest.
32. The appellant confirmed that she had been a student at the university. She had been there between 2004 to 2008 or 2009. The appellant said she could not remember. She became involved in Pongu Tamil, because she was interested in their rights and she invited people from her home district to attend the event. All the university students

invited local people. It was a particularly big event in 2005 although there were smaller events at the university. It was the 2005 event that was the big one. The appellant's brother [PK] and university friends from her village helped to arrange it.

33. The appellant told me that she thought she was arrested in September 2005, some four or five days after Pongu Tamil. She was arrested at home by the army in uniform and by CID officers. She thought there were two or three people. They took her to their office by truck. She said that she was threatened and accused of supporting the LTTE. The soldiers spoke Sinhalese. They asked her to sign a piece of paper. The appellant asked what was written on the paper and they and they abused her by using bad language, so she signed the piece of paper. The abuse she suffered was all verbal abuse. She was held for four or five hours and then was allowed to go after the intervention of the Grama Sevaka ("GS"). The GS was employed by the Government in the area. The area was controlled by the Government and so the GS had an office and people approached him if they had any needs, for example if they needed a passport he would give a character letter. He is a Tamil.
34. After four or five hours the GS came to the place where she had been held by the army and promised the army commander that she would not do anything against the Government and asked him to release her. He knew that she was being held there, because her parents had approached him on her behalf.
35. The appellant had been at home when she was arrested with her parents and brothers and so they had witnessed it.
36. Following her release, the appellant went back to university as usual and attended lectures. She became involved in organising Black Tiger events. Black Tigers are suicide Tamil Tigers. A remembrance day was held for the suicide Tigers.
37. The appellant said that she next came to the attention of the authorities in 2006. At the end of 2005, a popular protest had taken place. The Jaffna MP and lecturers from University attended. Everyone carried banners, but the army started firing. One of the lecturers was admitted to hospital along with two or three students as well. The appellant said that she was at the front of the demonstration. The girls were all put at the front. The authorities attended at her home and arrested her. This was in February 2006, some two to two and a half months after the demonstration had taken place.
38. One of the officers told her that the army had details about her. She was arrested and taken to a big army camp. This was not the same army camp that she had been to previously.
39. The appellant became very distressed and told me that she did not want to say what had happened to her in the camp.
40. In answer to sympathetic questioning put by Counsel the appellant explained that she was blindfolded when she was taken from her home and she was loaded into a

van. She was aware that she had been taken out of the van and was then forced to sit, still blindfolded. Her hands were tied behind her. Someone pulled her hair and dragged her and another was holding her arms. She was placed in a room while still being blindfolded for a while. Later she saw four or five people. She was sitting on a chair and these people were discussing something between themselves. One of them had grabbed hold of her breasts, others started pulling her clothes off. They started touching her. One of her legs was free and she moved her legs but it was beaten with a stick. She felt a burning irritation. She was hit on one of her cheeks. The men kept asking her whether she was supporting the LTTE and they kept hitting her. They did this all night long. Eventually she was left alone but could not cope with the pain. Eventually because she was so tired she fell asleep.

41. The men had undressed her. They had sexually touched her. They tried to have sex with her but she was passing urine. She woke up in the same room where she had passed urine. She heard the door open and she was covered with piles of cloth.
42. The soldiers did not hurt her again. They said that there was a big officer coming. They threatened her again and said that if she ever did anything again she would be shot. They spoke in Sinhalese and left. Later she was untied and told to dress. She was blindfolded again and then taken to another place. When she was unblindfolded she saw her mother, father and GS who had come to make enquiries about her and she was released. She then went home.
43. Throughout that part of her evidence the appellant was terribly distressed in the way in which Dr Shaw in her report (see below) suggested she might be.
44. The appellant said that for some two weeks or so she did not go to university. Eventually she did. She confirmed that she had not been arrested since that time.
45. Her younger brother, PK, is in France. He was involved in Pongu Tamil. He is a refugee in France. The appellant said that she does not like to communicate with him. She has an older brother who lives in Coventry. One of her younger brothers was shot dead and another brother lives with her mother in Sri Lanka. One day, when her younger brother was riding his motorcycle, he was shot dead. This was in 2009. The army shot him. The family had been told that the army had shot her brother by people who saw the incident. The army had actually been aiming at the brother who now lives in France. He went to France in 2009. The army thought that he was a member of the LTTE.
46. The brother living in Sri Lanka suffers with depression. The army keep making enquiries at the family home and he is scared. He thinks that the army will come and shoot him.
47. The appellant's father is dead. He died in 2007 when the army came to arrest the appellant's brother who now lives in France. Her father who only had one leg, was sitting in his wheelchair and pleading for the soldiers not to arrest his son. One of the soldiers hit her father with a gun and knocked him to the ground where he then suffered a heart attack.

48. The army used to come to make enquiries but not that often. It was whenever they wanted. Once in 2005 her brother had helped Tsunami victims by fundraising. He was asked by the army if he was supporting the LTTE. He had been photographed as part of a group giving a birthday party to the leader of the LTTE. This photograph had been published in a newspaper and the army had found it. The gift which had been presented was presented by all the student leaders in the Jaffna area.
49. The appellant thought that there were many other times when the army had come to her home, but she could not remember. In 2007, following her father's death, her uncle was shot dead by the army. He was S. He was shot by the CID. He had supported the LTTE and allowed LTTE members to stay at his property. His widow still lives in Sri Lanka. When David Cameron, the Prime Minister visited Sri Lanka to attend a United Nations Conference the appellant's mother and aunt presented a petition. The appellant gave me the name of her aunt. Last year an uncle's brother and sister were both arrested by the army. This was in March 2014. Her uncle was married to the appellant's mother's sister.
50. The appellant's mother was asked for a statement by the Sri Lankan authorities. She was asked to attend the police station and confirm in a statement that the appellant was not in Sri Lanka, but was living in the United Kingdom and acting against the army. Her mother was asked to confirm that own her sister and brother-in-law's children were in the United Kingdom and that the appellant had joined them.
51. I then adjourned for lunch. Following the lunch adjournment the appellant continued with her evidence. She confirmed that she was married and had been married on 20th January, 2011. She first came to the United Kingdom in January 2010 in order to study. When she left Sri Lanka she was frightened to live there and following her brother's death she had tried to obtain a student visa to leave.
52. The appellant studied at CLT College in Bow Road. She studied English. She returned to Sri Lanka in 2011 in order to marry. It was a love marriage. She met her husband at the University of Jaffna in 2004. He had been involved in Pongu Tamil. He is SJ. The appellant went back to Sri Lanka to marry him because she had fallen too much in love with him and he had received other marriage proposals. Her family knew that she loved him but they were opposed to her marrying him because he also had problems with the army with one of his friends having been shot dead and another having been forced to go to Switzerland. SJ and the student who had been shot dead were room mates.
53. Her husband's family did not approve of his marriage to her, because of her problems with the Sri Lankan Army. She went back to Sri Lanka to marry him because she loved him.
54. On her return she had no difficulties at the airport. The CID officers attended at her home during the course of the wedding ceremony about a week after the appellant's return. They told her mother, who was at home at the time, that they wanted her to hand the appellant over to them. The appellant was actually attending the marriage

certification and her mother had returned home to prepare for the wedding reception party. Her mother phoned the appellant and told her not to go to the house. Instead the appellant returned to Colombo with her husband. She had no problems in Colombo and stayed, "in a safe place". When she left to come back to the United Kingdom she used her own passports and again had no difficulties at the airport.

55. The appellant said that she advised her husband to stay in Colombo for a further two weeks. She believes that he is now living in India. He went back to his village and was asked about the appellant and taken for interview. He was made to report and one day when reporting he disappeared. This was in June 2011. He was reporting from February 2011 until June 2011.
56. The appellant said that she assumed that SJ had been arrested. His parents and the appellant's parents tried to locate him. In 2012 the appellant's mother wrote a letter to the appellant's aunt saying that her husband had been in a camp. He had been located by an agent. Land was sold and money was sent to the appellant's mother so that the appellant could secure his release. The appellant believes that he is now living in India. The appellant's mother had explained this to the lady the appellant lives with and with whom the appellant's mother regularly speaks. The agent said that he would take her husband and take him to a safe place. The appellant has not spoken to her husband at all. She has now been told that he is in India, but she has no idea where. She has not had any contact with his parents.
57. The photographs at pages 82 to 90 of her bundle show her taking part in demonstrations in the United Kingdom, 93 and 94 are different pictures, and she could not remember where 95 was taken. 99 relates to the UK student branch of the Jaffna University which has contributed funds to poor children in the Jaffna area.
58. The appellant confirmed that she had seen Dr Martin in June 2012 and that during her interview she had told him the truth. She was referred to page 147 and confirmed that she had caused her pregnancy to be terminated. She said that she could not carry the baby with her husband still having problems. The author of the letter at page 54 was a neighbour of her parents.
59. If the appellant were to return to Sri Lanka now she believes that she would be murdered.

The Hearing on 23rd November 2014

Cross-Examination by Mr Melvin

60. In answer to questions put to her by Mr Melvin, the appellant confirmed that since 2006 she has not been detained by the Sri Lankan authorities. She added that she had reduced her involvement with LTTE after her friend died and after she had decided to come to the United Kingdom.
61. When she returned to Jaffna University after the last detention, she discovered that other girls had been arrested, but she did not discover what had happened to them.

Many people were detained by the authorities and ill-treated, but, she added, most were shot.

62. In 2010 and 2011, the appellant did not employ an agent to bribe airport staff when she flew. She asked a Sinhalese speaking Tamil to help her leave in 2011. He is a friend who lives in Colombia. He came to the airport with her, but he did not pay a bribe.
63. The appellant confirmed that as far as she is aware, her mother has not been given any court papers or summonses relating to the appellant, but the appellant confirmed that she has not instructed a lawyer in Sri Lanka to make enquiries and check whether she is the subject of any court proceedings. The appellant explained that she does not speak to her mother, because her mother is suffering already, because of the appellant. Her mother believes that her telephone is tapped by the authorities. The appellant added that she does not want to cause any further difficulties for her mother. If neighbours were to go to the army it might well cause problems for her mother.
64. During Prime Minister Cameron's visit to Sri Lanka her mother presented a petition to the Prime Minister and was threatened. Her mother mentions this in the letter.
65. When SJ's mother was arrested a complaint was made to the authorities. The appellant does not know whether SJ's family have made any complaint about his disappearance. The appellant said that she has not made any complaint because she is also concerned about her brother who still lives in Sri Lanka.
66. SJ made his application for a visa to join the appellant as a student in 2011. He started reporting to the Sri Lankan authorities in February 2011. At that time he had a passport. He had applied for a passport in January or February. His application for a visa was refused.
67. The appellant denied that the account she was giving was false. She said that she waited another year before claiming asylum. SJ was arrested in March 2010. The appellant said she became fed up, by which I understood her to mean that she became depressed. She again said that she had not claimed asylum earlier because she was fed up. She spoke to her aunt but did not listen to the advice her aunt gave her to claim asylum.
68. SJ did not appeal against the refusal of entry clearance. The appellant said that she only had five months left on her visa and could not therefore appeal.
69. The last time she spoke to SJ was before he was arrested in 2011. Family members (the appellant's and SJ's) paid large sums to secure his release.
70. When asked where her husband was, the appellant said that she is told that he is in India but she really does not know. She said that she was not able to look after herself. She thought it possible that her husband might well be under the control of an agent. Her landlady (being the lady with whom she currently lives and to whom

her mother telephones) said that after JK had settled down he would call for her. She said she did not know his status, assuming he is in India. She knows nothing at all about him.

71. The appellant confirmed that she is not a member of any Tamil group in the United Kingdom but she does act as a volunteer for Tamil Heroes' Day. In November each year a Tamil Heroes' Day is celebrated and the appellant assists the British Tamil Forum. She was asked if she had any corroborative evidence and said that she did not.
72. The appellant confirmed that she had not give any media interview and had not written anything for publication in the press. She has signed a petition for people in Sri Lanka. She does not use the internet.
73. The appellant confirms that she has seen Dr Swan. The appellant has read Dr Swan's report. In the report Dr Swan says that the appellant's husband is still missing. The appellant explained that she had told Dr Swan that she did not know where her husband was. Dr Swan makes no mention of the fact that I helped to secure his release.
74. The appellant told me that she had been told that her husband was in India in 2012.
75. The appellant agreed that she had been admitted to hospital last year. She was in hospital for two days. She was suffering from a temperature and a rash on her upper arm. Recently, the appellant attended hospital for numbness.
76. In 2014 the appellant was hospitalised after drinking bleach.
77. Mr Melvin referred the appellant to the letter dated 30th April, 2014 written by Selvarajah Kajendren, general secretary, Tamil National People's Front. The appellant confirmed that this letter does not mention the disappearance of the appellant's husband, SJ. The appellant agreed but said she did not know why. I believe that it might be because it appears that the letter was written in response to a request by SJ (*see the last paragraph on the first page*).
78. Mr Melvin asked the appellant where she obtained the "receipt in respect of persons arrested under emergency Regulations or the Prevention of Terrorism Act". She explained that this related to the brother of her uncle, S. She obtained it from her aunt.
79. Mr Melvin asked where and when the photographs which appeared at page 82 of the appellant's bundle had been taken. The appellant explained that they had been taken in 2012 in Whitehall. The photographs at page 91 in the bundle were taken during the course of a long march in London in 2013 and appear on the Tamil Guardian website and the photograph of the appellant appearing on page 93 was taken in Whitehall. The photographs in 94 were taken during Tamil Heroes' Day and that at 96 was taken somewhere in London.

80. The appellant confirmed that she made small contributions to the University of Jaffna student funds. Her family have no links to anyone in the leadership of the LTTE.
81. At that stage and before re-examination by Ms Rothwell, I agreed to hear the oral evidence of the appellant's aunt to save her having to reappear at a later date. Ms Rothwell was content to re-examine the appellant at an adjourned hearing.

Oral Evidence of MS

Evidence in Chief

82. MS confirmed that she was born on 11th June, 1970 and lived in Coventry. She explained that the appellant is the witness's sister's daughter. The witness came to the United Kingdom in 2000. The appellant stayed with her after her arrival until 2003. The appellant is married. Her husband is JS. The appellant was married in Sri Lanka. The witness does not know where the appellant's husband is. The witness explained that she had heard from her sister that he was in jail or in custody. She had once been told that JK had been released but she did not know where he is.
83. The witness told me that her sister, the appellant's aunt, had paid a bribe through an agent to secure SJ's release. The witness said that she sent some money but she had no idea where the appellant obtained the rest from. The witness said that she had sent around 2,000 lakh. Her sister wrote a letter to her which is at page 37 (the translation is at page 36 of the bundle). In the letter the appellant's mother told her sister that an agent was demanding 10 lakhs to free SJ from custody. The appellant's mother says in her letter that she made enquiries with the help of a lawyer but the army denied holding him, saying that there was no such person. The lawyer had advised her that the army were hiding the appellant's husband and that the agent wanted 7 lakhs as a deposit and while she had arranged to sell land for 3 lakhs she asked the witness for the balance. The letter concludes that payment of money will save the life of SJ and ensure the marital life of the appellant.
84. In the letter the appellant's mother explains to the witness that she could not describe this during a telephone conversation because her lines are tapped by the army. It asked that if she wishes to call the appellant's mother she telephones the neighbour next-door.
85. The witness explained that she had sent money to her sister through a friend. She was asked later for more money to secure his release.
86. The appellant now lives in London. The witness confirmed that she was very worried about the appellant and her state of health. Once recently she tried to commit suicide by drinking bleach.
87. The appellant has in the past been ill at a time when she was taking medication. The lady with whom the appellant lives knows that she is on medication.

Cross-Examination by Mr Melvin

88. The witness confirmed that the appellant had lived with her in Coventry. The witness said that the appellant was a student. She stopped living with the witness after the witness herself had started work. As a result the witness told me that she had asked a friend to accommodate the appellant in London. This is the lady with whom the appellant now lives. Previously the appellant had commuted to college in London from Coventry three days per week.
89. The witness agreed that she had visited Sri Lanka last year. She visited family members. She did not visit her sister, the appellant's mother, because she was there only to visit her husband's relatives.
90. The witness rarely speaks to her sister because she is so nervous. She complains that her telephone lines are tapped. The last time the appellant spoke to the neighbour was six or seven months ago and she asked if her sister was alright. The witness explained that she did not have time to wait for the next-door neighbour to go and ask.
91. The witness had paid around £3,000 to secure SJ's release. The witness told me that she knew nothing about his whereabouts only that she had been told he had been released. A friend of the witnesses explained that she had found SJ living in a temple in India in Tamil Nadu. The witness explained she did not know exactly where he lived.
92. The witness's friend had not wanted to tell the witness anything about the appellant's husband because it would only cause problems. She thought that the friend had seen SJ in Tiruchy.
93. The witness explained that her friend had bumped into someone who looked very similar to the appellant's husband. She had told the witness that she had only ever seen him in a photograph in Sri Lanka but it looked very similar to him. She did not approach him.
94. Her sister's neighbour is called Sandia.
95. The witness again confirmed that during her visit to Sri Lanka she did not go to Jaffna.
96. The matter was adjourned until 23rd November.

Hearing on 23rd November

97. I ensured that the appellant and interpreter both understood each other. I told them that if either of them had any difficulties they should tell me.
98. I explained to the representatives that I was proposing to read my Record of Proceedings from the hearing on 19th August. I asked them if they could please make

notes so that when I have completed reading my Record of Proceedings they could tell me whether they had any alterations, corrections or amendments to propose.

99. I read aloud my Record of proceedings whereupon Ms Rothwell indicated several very minor alterations and amendments. Mr Melvin had no objections to any of them. They both told me they were happy to proceed.

Further oral evidence of the appellant

Re-Examination of the Appellant

100. Counsel referred the appellant to documents contained within her bundle. At page 47 was a letter written by Sivagnanam Shritharan MP. It was an undated letter which had been written concerning the appellant's mother-in-law. It explains that the appellant's father-in-law contacted the Member of Parliament on 3rd September, 2012 when he became aware that his wife, the appellant's mother-in-law, had been taken into custody by the Sri Lankan authorities.
101. The Member of Parliament spoke to the officer in charge of the police station at Nelliady and was questioned as to the whereabouts and activities of her son, SJ who was described as having escaped from the Sri Lankan authority's detention.
102. The letter from the Member of Parliament said that the police officer he spoke to had told him that the appellant's mother-in-law's son and the appellant were both LTTE members. The Member of Parliament intervened in the unlawful detention of the appellant's mother-in-law and on 6th September, 2012 she was released on condition that she sign on at the police station every other week. The Member of Parliament reported that he had been told by the appellant's father-in-law that during her period of detention, his wife was interrogated by the Sri Lankan authorities both as to the whereabouts of the appellant's husband and as to the whereabouts of the appellant.
103. The witness confirmed that the document at page 57 was an affidavit made by the widow of S.
104. I pointed out to Ms Rothwell that there was nothing in this "affidavit" to indicate that the deponent could read and understand English or had been read back the affidavit in her own language and that she was happy with its contents. I warned Counsel that it appeared to be a document on which I would not be able to place very much weight.
105. Ms Rothwell then referred the appellant to the document at page 61 of the bundle and said that this was the birth certificate of a sister of S who herself had been arrested. The document at page 66 was the birth certificate of the brother of S and the document at page 77 was the "receipt in respect of persons arrested under Emergency Regulations of the Prevention of Terrorism Act" which related to S.
106. The appellant confirmed that she was arrested in 2006 and that after the death of her friend, Sumathi, the appellant feared that her life was at risk. Sumathi had been shot

by the army while the two of them had been standing near a bus stop. The appellant said that she believed that the Sri Lankan Army had actually meant to shoot the appellant.

107. The appellant agreed that there was no recent documentation from her mother which would assist the Tribunal. She explained that she had not wanted to ask her mother and cause her to worry. Her mother occasionally speaks to the appellant's landlady. The appellant explained that her mother suffers because of the appellant.
108. The appellant's husband applied to come to the United Kingdom confidentially. He had been reporting to the army camp but because his life was at risk in Sri Lanka he had asked to come to the United Kingdom. He did it without anybody knowing.
109. The appellant explained that she had obtained the letter from Selvarajah Kajendren via her aunt, the widow of S.

Submissions

110. Mr Melvin drew my attention to the fact that he had prepared brief written submissions. I told him that I had already read them and found them very helpful. He told me that all the documents submitted on behalf of the appellant were challenged. It was not accepted by the Secretary of State that the appellant was credible but even if, looking at her claim at its very highest, she still does not come within the risk categories identified by the *Tribunal in CJ and Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)*.
111. Mr Melvin suggested that the appellant does not have a significant role in the diaspora; *CG* makes it perfectly clear that much more is required before someone falls within a risk category.
112. Even taking at its very highest the appellant cannot qualify for recognition as a refugee. She would need to demonstrate significant involvement in the United Kingdom. The majority of Tamils have links with the LTTE and this is made clear in country guidance. There needs to be something additional to demonstrate that an appellant has close links. Even a photograph of the appellant's husband presenting a present to the leader of the LTTE would be insufficient to cause her to be at risk.
113. So far as the documentation is concerned, he drew my attention to the fact that the witness statement at page 13 was not signed. (I had already warned Ms Rothwell that I would not place any weight on unsigned statements in the appellant's bundle because it was not clear who had prepared them and it was certainly not clear whether the person to whom the statements related had ever seen them and approved the contents.)
114. Again Mr Melvin drew my attention to the unsigned statement at pages 14 to 22 and told me I should place no weight on it.

115. In respect of the document from the general secretary of the Tamil National Peoples' Front, apart from being 3½ years old it was issued before the appellant made her claim but made no mention at all of her husband's arrest or abduction. He invited me to treat that document with caution. So far as the letter from the Sri Lankan member of parliament is concerned (page 47 of the bundle) it is quite clear that the author of the letter is writing not from his own experience but from what he had been told by the appellant's father-in-law about his wife's situation. There was no additional evidence and we do not know what happened. The appellant can shed little light as to her husband or his family. She has offered no explanation as to why she is not in contact with his family.
116. The appellant's aunt gave evidence and confirmed the arrest of the appellant's husband in June 2011. She said that she had sent money to Sri Lanka to help secure his release but she was vague in her evidence. She was vague about the appellant's husband being in India. Even though the appellant would have been desperate for information about her husband, the appellant's aunt had not even visited the appellant's mother when she returned to Sri Lanka. She does not speak to the appellant's mother regularly on the telephone and on the last occasion she spoke she could not wait for the next-door neighbour to get her sister to the phone.
117. Referring me to a letter at page 81 of the bundle, being a letter dated 18th June, 2012 from the Faculty of Management Studies & Commerce, Students Union, University of Jaffna, Mr Melvin told me that the Secretary of State does not accept that money has been given to this organisation. No witnesses have been called and there is nothing to corroborate the payment of money and little weight should be placed on this evidence also.
118. Mr Melvin then referred me to the letter written by the appellant's mother to the appellant's aunt, an English translation of which appears at page 36 in the appellant's bundle. This appears to have been dated 4th July 2012 (the date appears 4th July, 2012). This and the letter at page 42 being a letter written by the appellant's mother to the appellant and dated 10th December, 2013 (the date appears as 10th December, 2013) are letters written by the appellant's mother, Mr Melvin suggested, simply to bolster the appellant's claim. They are intended to evidence family harassment but the only evidence of it are the letters; there is a clear lack of any evidence from either of the appellant's brothers. The appellant worked in her brother's shop in 2010. The brother has not given any evidence to show that the family cannot be harassed and given the decision in *TK Burundi* there is no reason why he could not have given evidence.
119. At page 48 of the appellant's bundle is a copy of a letter of the Human Rights Commission of Sri Lanka dealing with harassment complaint in respect of the appellant's mother and father-in-law. But that should be treated with little weight. There is nothing to indicate precisely what the complaint was about or its outcome and no evidence from the appellant or her family of making any such complaint. There is no evidence of any recent harassment by the authorities of the appellant's husband or family.

120. The letter at page 49 was issued at the request of the appellant's mother and makes no mention at all of the appellant's abduction. Again, it was written to bolster the appellant's claim. It was dictated by the mother and not written by the Justice of the Peace from his own knowledge.
121. At page 79 of the bundle was an English translation of a receipt apparently issued by the police confirming the arrest of an individual for terrorist offences and there is no evidence of the circumstances of the arrest or the charges that might have been brought in isolation, it lacks credibility. The appellant has been extremely vague about when and where photographs of her have been taken. There is no evidence to show that the appellant had any prominent or significant role in the LTTE. The affidavit appearing at page 54 and 55 is written in English and nothing to show that the deponent read and understood English before she swore the affidavit or that it was read to her in her own language and that she was happy with its contents. As it is it is not first-hand evidence. It is vague. There was no mention of the family member being arrested. None of the documents relied upon by the appellant demonstrate that she is at any real risk on her return to Sri Lanka.
122. As to her personal credibility, she was twice allowed to leave Sri Lanka using her own passport. She claimed that she was not assisted at the airport but if the authorities had really been remotely interested in her then she would not have been allowed to leave.
123. The appellant's claim was made some nine months after the appellant's husband was abducted and a long time after her own leave had expired. That casts doubt on her credibility. Similarly when she returned to the United Kingdom she was interviewed at length by an Immigration Officer. That, Mr Melvin suggested would have been the opportunity for her to claim asylum. Her passport was retained whilst checks were made.
124. The appellant's husband was placed on reporting restrictions in February 2011, but, according to the appellant, he travelled to Colombo in April 2011, to obtain a visa. It is unlikely that on reporting restrictions he could have been able to travel to Colombo. It is simply not credible.
125. The appellant's evidence as to her husband is vague at its best. He is thought to be in India but the evidence is vague. There is little evidence about the appellant's husband being abducted, there is no evidence of any complaints having been made and nothing from the Human Rights Commission. The whole concept of the husband's detention is lacking in any direct or corroborative evidence.
126. During the appellant's asylum interview she indicated in answer to questions 3.19 and 3.20 that she could not relocate to Colombo. Her husband was released in 2012 but there is no evidence that the authorities were subsequently interested in him. Given his release on payment of a bribe he clearly was of no further interest. No document showing that the appellant is being sought by the authorities has been produced by her. There are no arrest warrants or summonses and if they existed

then copies would have been made available to lawyers in Sri Lanka on her behalf. The appellant has a brother in Coventry and no reason why he could not have been brought to give evidence in support of the appellant. The appellant's mother apparently speaks to the appellant's landlady but again there is no evidence from the landlady.

127. As to the appellant's sur place claim, again, her evidence is vague. He suggested that I should not accept that she organises any events. No-one has attended to support the appellant's claims of assisting with the Heroes' Day. There is no corroborative evidence that the appellant assists any organisation in the United Kingdom and no evidence for example that she has ever written an internet blog or taken part in fundraising or any evidence to show that she would be at any risk. So far as the medical evidence is concerned, Dr Martin merely suggests that the injuries are consistent with the appellant's account but the scarring cannot be dated objectively beyond a period of six months and so while the injuries may be consistent with the appellant's account that does not mean that they were caused in the way the appellant describes. So far as Dr Swan is concerned she is not a doctor or consultant or psychiatrist. She is not qualified to make diagnosis of PTSD or a risk of suicide. There is no record of Dr Swan ever having previously given expert evidence to the Upper Tribunal or to a court. She does not hold a medical degree and ordinarily one would expect to see a list of the documents on which she relied in order to base their opinion. There is no evidence that in preparing the report she was aware of any such documents such as interview records or statements. It appears that Dr Swan was not told that the appellant's husband is in India. That appears to be evidence which has been deliberately withheld. The expert assesses a low risk of suicide but the report itself cannot be trusted. Evidence has been withheld from the expert.
128. The government of Sri Lanka is concerned with future threats rather than past involvement with the LTTE and so any involvement would need to be demonstrated to a significant extent. There is no evidence that there is any outstanding arrest warrant or summons. There is no evidence of the presence of the appellant's name on a watch list and she says she has no links to any members of the LTTE. It is not accepted that she was an activist. The appeal should be dismissed.
129. When Mr Melvin completed his submissions I enquired of Ms Rothwell what her view was in relation to the allegation that the clinical psychologist who had prepared an extensive report was not qualified to make a diagnosis of PTSD.
130. Ms Rothwell pointed out that the author of the report is actually currently treating the appellant. She had been referred to the doctor having been diagnosed with PTSD. Ms Rothwell suggested that if I were to grant a short adjournment she would be in a position to provide evidence that the appellant was suffering from PTSD which would satisfy Mr Melvin. She agreed to serve such evidence on Mr Melvin as well as the Tribunal in advance of the adjourned hearing.

Hearing on 25th January, 2016

131. I advised the parties that I had received from Miss Rothwell a copy of a letter dated 14th January, 2016 from Dr Alison Hauenstein-Swan and the letter of 13th January, 2015 from Dr F Jabbar, consultant psychiatrist to the appellant's general medical practitioner.
132. Miss Rothwell pointed out that the letter from the consultant psychiatrist addressed to the appellant's doctor referred to a diagnosis having been made of PTSD. She could not assist me by telling me whether it was that psychiatrist's diagnosis or not.
133. Both representatives agreed that they had no objection to my looking at and taking into account the 2014 US State Department Report on Country Practices in Sri Lanka. I explained that there was little up-to-date information before me other than press reports and a Medical Foundation Report.
134. Before I invited Miss Rothwell to make her submissions I indicated that on going through the papers I was not able to find the date when the appellant terminated her pregnancy. Miss Rothwell told me that this was on 16th March, 2011 before the appellant's husband had been detained (which was in June 2011) and before he was refused leave to enter the United Kingdom.
135. The appellant was recalled briefly to give further evidence.

Further Evidence of the Appellant

136. In answer to questions put to her by Miss Rothwell the appellant told me that she took a tablet to terminate her pregnancy. She decided to terminate her pregnancy because her husband had been arrested and was required to report to the Sri Lankan authorities. At the time she was staying with and relying on her aunt for support. She was crying and not eating and her aunt asked her, "How can you look after your baby when you are in this state?" and she decided that she was too upset to have a child.
137. There was no re-examination.

Submission on behalf of the appellant

138. I then heard submissions from Miss Rothwell. She reminded me that the burden of proof in asylum claims is low, much lower, she suggested, than the civil standard. She invited me to consider the appellant's asylum interview and she asked me to note that it was very largely consistent with the evidence that the appellant had given to the Tribunal. The appellant has not embellished her account as suggested by the Secretary of State.
139. Counsel urged me to find the appellant to be an honest and credible witness whose word can be relied upon.

140. She referred me briefly to Dr Martin's medical report and subsequently to the report of Dr Shaw. Dr Martin's report corroborated large parts of the appellant's account but now, with the findings made by Judge Grimmett, Dr Martin's report was largely academic.
141. Miss Rothwell reminded me of the submissions of Mr Melvin concerning the diagnosis of PTSD. The report of Dr Swan of April 2015 is a report which should be given careful consideration. Dr Swan is very clearly a highly specialised clinical psychologist working for an organisation devoted to psycho-trauma and its treatment. Whilst Dr Swan is not herself qualified to diagnose PTSD, the appellant was very clearly referred by her GP to the psycho-trauma unit and Dr Swan is familiar with treating people with PTSD.
142. Counsel asked me to bear in mind that the letter of 13th January, 2015 was a letter sent to the appellant's own doctor by a consultant psychiatrist and in the heading of that letter reference is made to "Diagnosis: post traumatic stress disorder ICD-10 F53.1". The fact that Dr Jabbar, consultant psychiatrist would write that about a patient in a letter to the patient's medical practitioner does suggest that she has been properly diagnosed by a psychiatrist as suffering from PTSD.
143. Miss Rothwell also drew my attention to a letter at page 144 of the appellant's bundle which is a letter from a consultant liaison psychiatrist, Dr Krisanu Ray addressed to the Forum Health Centre referring to the appellant and asking if her general medical practitioner could prescribe Mirtazapine 15 mg and Promethazine 50 mg for the appellant. In that letter Dr Ray tells her GP,
- "I am satisfied when I reviewed her today that she was not suicidal or psychotic but likely suffers from depression and post traumatic stress disorder. She has a number of psycho-socio problems and has been referred to the local CMHT for urgent follow up."
144. That letter was written in April 2014. Whilst there may not be a medical report containing a proper diagnosis of PTSD, the evidence before me, she suggested, suggested that there was a real likelihood that the appellant is suffering from depression and post traumatic stress disorder. She asked me to give weight to the reports of Dr Swan.
145. She reminded me that Mr Melvin had urged me to find that the documents the appellant had supplied could not be relied upon. She asked me to take account of the letter at page 47 of the appellant's bundle from Mr Shriritharan which deals with the arrest and detention of the appellant's mother-in-law. That was a genuine letter. As far as the appellant was aware, all these letters that she had submitted were genuine.
146. Miss Rothwell also asked me to bear in mind that the war ended in the spring of 2009 and yet many of the events which occurred took place after May 2009.

147. So far as the appellant's United Kingdom activities are concerned, the objective evidence suggests that the authorities in Sri Lanka are very likely to have identified the appellant as one who regularly takes part in demonstrations supporting the Tamil cause.
148. Miss Rothwell asked me to find that in the alternative that the appellant would be at risk of Article 3 breach.
149. Mr Melvin handed to me and relied on *SS (Sri Lanka)* [2012] EWCA Civ 155 and on *KH (Afghanistan) v Secretary of State for the Home Department* [2009] EWCA Civ 1345 as well as *GS (India) and Others v Secretary of State for the Home Department* [2015] EWCA Civ 40. He drew my attention to the fact that leading questions were put to the psychologist by the appellant's solicitors and little weight should be placed on her report because she is simply not qualified to make a diagnosis of PTSD. There are no detailed medical reports from anybody else who is qualified to undertake a diagnosis. The letter of 13 January 2015 should have been disclosed earlier but there is nothing to indicate that the diagnosis was made by the author of the letter himself. The medication appears to be for depression.
150. Dr Swan seems to believe that the appellant's problems relate to the lack of her immigration status. He suggested that very limited weight should be placed on the report and pointed out that the appellant had no mental health issues prior to receiving the second refusal of her asylum claim. As to Dr Swan's report, there is no evidence of her having been given a copy of the earlier determinations after the dismissal of the appellant's appeal. He suggested that there was simply no merit in the appeal. The appellant was not credible. The medical evidence was unreliable and the appeal should be dismissed.
151. Responding briefly Miss Rothwell told me that the letter written by Dr Swan of 13th January, 2015 was written to the appellant's own general medical practitioner and no one had been earlier aware of it. It was not a case of having obtained and simply chosen not to disclose evidence. As soon as the letter came to light it was disclosed.
152. I reserved my determination.

Determination

The Law

153. In asylum appeals the burden of proof is on the appellant to show that returning her to Sri Lanka will expose her to a **real risk** of persecution for one of the five grounds recognised by the 1951 Refugee Convention or to a breach of his protected human rights. The question of whether a person has a well-founded fear of persecution for a Convention reason has to be looked at in the round in the light of all the relevant circumstances and judged against the situation as at the time of the appeal. In human rights appeals, if it is established that there will be an interference with the appellant's human rights and the relevant Article permits, then it is for the respondent to establish that the interference is justified.

154. The standard of proof in asylum appeals as regards to both the likelihood of persecution and the establishment of past and future risks, is **a real risk**. In *Kacaj v Secretary of State for the Home Department* (01/TH/0634*) it was held by the Immigration Appeal Tribunal that the standard of proof in human rights appeals is the same as that in asylum appeals.

Background country situation

155. The most recent background country information I have been supplied with appears to be the 28th August 2014 Country Information and Guidance, which I am familiar with. Section 2 gives a reasonably clear view of recent events in Sri Lanka with end of the civil war in spring 2009.

156. One thing is clear from the report; many human rights abuses committed during the conflict still remain to be full and carefully examined. ("Many international and national observers criticised the *Lessons Learnt and Reconciliation* Committee report, for not adequately addressing accountability for crimes committed by the government and LTTE during the final months of the conflict and for exonerating the government wrongdoing")(*Paragraph 2.1.6*).

157. I noted paragraph 2.2.5 of the report and the fact that the Prevention of Terrorism Act is still in regular use and that "Torture and other ill-treatment of persons in custody by security forces has been a widespread problem **both during and since the armed conflict**." [My emphasis] Indeed, the British High Commission reported in similar terms (*see Paragraph 2.28*).

158. I noted in particular paragraphs 2.3.4 and 2.3.5 and the report of embassy staff in London monitoring protestors and questioning on arrival at the airport of Tamils returning from abroad since the end of the conflict.

159. From the 2014 US State Department Report I noted in particular:

- a. There were reports that the government or its agents committed arbitrary or unlawful killings. Reliable statistics on such killings were difficult to obtain because past complainants were killed, and many families feared reprisals if they complained.

While the overall number of reported extrajudicial killings did not appear to increase from the previous year, killings and assaults on civilians by government officials were a problem.

Throughout the year numerous reports emerged regarding the killing of suspects under questionable circumstances while in police custody. According to a government official, there have been 68 such police custodial deaths in the country since the start of 2012. In October a media account listed 12 individuals killed while in police custody in 11 incidents since July 2013. On March 11, Paalan-kada Heen Malli, an alleged underworld figure, died in police custody after his arrest in the killing of a Ratnapura businessman. On May 18, Tharuka Nilan died in police

custody after his arrest for the killing of a Kurunegala police officer. On September 5, police shot and killed suspected drug dealer Lalitha Kushalya (alias Kudu Lalitha) when he briefly escaped from custody near an Athugiriya hospital. On September 28, police shot and killed Hiran Darshana (alias Kalu Chooty), who was wanted for crimes, including three murders, after he tried to escape police custody. Police accounts of the deaths of such suspects often included similar details--particularly of suspects leading police to a supposed weapons cache, followed by gunfire or a grenade explosion resulting in a suspect's death--leading observers to question their credibility.

- b. There were no official statistics regarding such disappearances, and citizens' considerable fear of reporting such incidents made reliable accounting difficult. One incomplete study of open-source media reports from March to October 2013 found at least 17 individuals abducted in 12 events, most of them in Colombo or the Northern or Eastern provinces. Among the individuals allegedly abducted were businessmen, political party activists, and one entire family. The victims of the alleged abductions were disproportionately Tamils.

In another report released in May 2013, Amnesty International (AI) stated that more than 20 alleged enforced disappearances occurred in 2012. Among the victims were political activists, businesspersons, and suspected criminals, leading observers to suspect the involvement of the government or government-allied forces in several cases.

- c. The law makes torture a punishable offense and mandates a sentence of not less than seven years' and not more than 10 years' imprisonment. There were credible reports, however, that police and security forces tortured, raped, and sexually abused citizens. The Prevention of Terrorism Act (PTA) allows courts to admit as evidence confessions extracted by torture.

In the east and north, military intelligence and other security personnel, sometimes allegedly working with paramilitaries, were responsible for the documented and undocumented detention of civilians accused of LTTE connections. Observers reported that interrogation sometimes included mistreatment or torture following detention. There were reports that authorities released detainees with a warning not to reveal information about their arrest or detention, under the threat of rearrest or death.

Human rights groups claimed that some security forces believed specific circumstances allowed torture. Several former LTTE combatants released from rehabilitation centres reported torture or mistreatment as well as sexual abuse by government officials while in rehabilitation centres. In 2012 police endorsed the incorporation of a full human rights curriculum and lesson plan developed by the OHCHR into the police training curriculum, but authorities never enacted the plan. The HRCSL provided

periodic training to police on human rights issues, but observers could not verify the quality of the training and extent of coverage.

- d. There were also reports that police harassed and extorted money or sexual favours from lesbian, gay, bisexual, and transgender (LGBT) individuals with impunity and assaulted gays and lesbians (see section 6).

There were a number of credible reports of sexual violence against women in which the alleged perpetrators were armed forces personnel, police officers, army deserters, or members of militant groups. A number of women did not lodge official complaints due to fear of retaliation (see section 6).

Human rights activists reported police and security force participation in acts of violence against women and young girls, although sources also suggested that sexual violence against men in detention was prevalent.

- e. **“Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively, and officials in all three branches of government frequently engaged in corrupt practices with impunity.

Corruption: There were continued high levels of bribery and corruption complaints against public officials, particularly divisional secretariats, police personnel, and school principals and teachers.

160. In the appellant's bundle I noted the extract of 13th August, 2015 from Colombo Mirror which carried a report of doctors' forensic reports entitled *“Tainted Piece: Torture in Sri Lanka since May 2009”*. It claimed that torture had been part of the “modus operandi” of the military, police and intelligence services in Sri Lanka for decades. He had urged the United Nations and wider international community to take “urgent action to protect the people from torture in Sri Lanka and end impunity for perpetrators”. I also read the Reuters report entitled *“Sri Lanka's Torture of Tamils Persist Despite War's End: Charity”* dated August 13th, 2015 referring to the publication of the same report and a report from Colombo Mirror of 28th July, 2015 with a report of the publication of that report.
161. Also in the bundle was a copy of the Sri Lankan Campaign for Peace and Justice Report, *“The past is present ‘post-Rajapaska torture and sexual violence in Sri Lanka’”* also relating to the same report. Unfortunately I found it to be of little assistance when compared with, for example, the US State Department Report.

Medical evidence

162. Within the appellant's bundle is the clinical psychologist's report by Dr Swan; numerous NHS reports; letters; records and notes, which on their own are not terribly helpful; a medical report by Dr A I Martin and some copy letters which were largely meaningless. I also, of course, had copies of Dr Swan's letter of 14th January,

2016 and the letter written by the clinical psychiatrist, Dr Jabbar, to the appellant's general medical practitioner, dated 13th January, 2015.

163. I have considered all this evidence thoroughly. I make no comments on the report of Dr Martin, because his report is largely a matter of record following the findings of Judge Grimmett.
164. It is clear to me that this appellant has been referred to a specialised psycho-trauma clinic, because somebody believes that the appellant is suffering from post traumatic stress disorder. I do not have a copy of the diagnosis, but the evidence before me, including, but not limited to, the letter of 13th January, 2015 from Dr Jabbar, leads me to believe that the appellant has been properly diagnosed by a psychiatrist as suffering from post traumatic stress disorder. I do not believe that Dr Jabbar would have addressed his letter to the appellant's general medical practitioner in the manner in which he had, unless he was satisfied that the appellant was suffering from PTSD, either as a result of his own diagnosis or by having read a psychiatric report and diagnosis from a colleague. It is clear also, that the appellant is suffering from depression.
165. I take the point emphasised by Mr Melvin. There is no proper diagnosis of the type that one would ordinarily expect to see, but I believe that on the evidence before me, I am entitled to accept that this appellant has been properly diagnosed with PTSD by a psychiatrist.
166. I believe that the appellant, in giving evidence to me both on 25th January and earlier, exhibited the symptoms referred to in the report and more recent letter from Dr Swan. Mr Melvin suggested that the appellant had given her evidence without difficulty. With respect to Mr Melvin, the appellant was very clearly extremely distressed both on 25th January, and earlier when she gave her evidence-in-chief. She appeared to me to be behaving in precisely the way in which Dr Swan predicted at paragraphs 7.3 and 13.1 of her report of 21st April, 2015 and paragraph 5 of her letter of 14th January, 2016. The appellant did not demonstrate a "shut down response" but was very clearly severely distressed.
167. As invited by Mr Melvin, I have considered *SS (Sri Lanka)*, *HK (Afghanistan)* and *GS (India)*, but I have concluded on the evidence before me that I am entitled to reach the conclusion I have.
168. Mr Melvin accepted that the appellant was receiving medication for depression. Had I been satisfied that this appellant was merely suffering from depression, and not PTSD, my decision would have been the same.
169. It was against this depressing background that I considered the evidence I had heard in order to put it into context.

Findings of Fact

170. In making my findings of fact I confirm that I have carefully examined all the evidence in the bundles before me and the background evidence and considered it in the round. It would be tedious to have to refer to all the documentation and the reason a document is not specifically referred to is *not* because it has not been considered. I have placed no weight at all on unsigned statements and very little weight on letters other than those from medical practitioners.

171. I reminded myself of evidence heard by First Tier Tribunal Judge Grimmett which she found to be credible:

- It was accepted that the appellant was involved in putting up notices and attending demonstrations at university and the judge found that she was satisfied that both the appellant and her brother were involved in demonstrations, that she had been consistent about. and that the appellant had produced a photograph of her brother with the political leader of the LTTE, Tamilchevan, which was not being disputed by the respondent." (See paragraph 6 above)
- Judge Grimmett was also satisfied that the appellant's father had died following an incident when the authorities came looking for her elder brother. The description the appellant gave of the event was, recorded Judge Grimmett, "*very detailed and her explanation for why the army did not actually take her brother with them on that day, namely that they were all screaming has the ring of truth about it.*" Judge Grimmett accepted that the appellant was a supporter of the LTTE on a low level and that her brother carried out some similar activities to her and that both of them and their family were known to the authorities over a lengthy period prior to her departure. (See paragraph 7 above)
- Judge Grimmett also found that the applicant had been detained, because the evidence she gave about the circumstances of both detentions was very detailed. She was not satisfied that there was any inconsistency and noted that the appellant had not attempted to embellish the 2005 incident. Judge Grimmett noted that the medical evidence supported the appellant's claim to have been beaten on both legs, because the scaring was consistent with it. She found herself satisfied that the appellant was detained and ill-treated in 2006." (See paragraph 8 above)
- The judge was also satisfied that that the appellant's uncle was killed by the army as a result of LTTE activities. Judge Grimmett said:-

"The appellant does not say that the army came looking for him [her uncle] at her home or that his wife or children were ever hurt as a result of her uncle's activities. She does say however that after her uncle was killed his son took a stick and hit the army and they tried to shoot him. That information was volunteered by [the appellant] and once again seems to me to be a comment unlikely to be made up by her on the spur of the moment were the account not true and if the uncle's son was willing to

seek retribution in such a way it is likely in my view that he believed his father had been killed by the army." (See paragraph 9 above)"

- Judge Grimmett said that she," *was therefore satisfied that the army were aware of the whole family, particularly bearing in mind that the appellant says at Q105 that the army were occupying their house and they had to move out*". (See paragraph 8 above)

Appellant's credibility

172. Had Judge Grimmett not made those findings, then I would have done so. **I found the appellant to be a largely credible witness** despite the inconsistencies highlighted by First Tier Tribunal Judge Grimmett.

My further findings of fact

173. I make the following further findings of fact:

- a. The appellant and her husband were both students at Jaffna University, and I believe that to be significant because students at Jaffna University were, at the relevant time, viewed by the Sri Lankan authorities as amongst those who stand for Tamil nationalism, that much is clear from the letter from Mr Kejendrem, General Secretary, Tamil National People's Front and former Member of Parliament, dated 15th March 2012.
- b. For the sake of completeness, I find that the appellant's account of having been involved in Pongu Tamil Day in 2005 to be true.
- c. I have no doubt that other students at Jaffna University were aware of the appellant's political sympathies, those of her brother and of the man she married. Likewise, I believe that there is a real likelihood that the Sri Lankan authorities were also aware of her and her brother's sympathies. Given that the authorities viewed students at Jaffna University with suspicion, I have no doubt that they had informants and spies operating within the University.
- d. Again, for the avoidance of doubt, I accept the account she gave me of her arrest, the treatment to which she was subjected and her subsequent release from detention in both 2005 and in 2006. The respondent accepted that while at university the appellant attended student protests in support of the LTTE (see paragraph 29 of the respondent's letter of 10th May 2012).
- e. I am prepared to believe the appellant's account of how her friend was shot by soldiers in mistake for the appellant.
- f. I believe that the Sri Lankan authorities have made frequent calls at the appellant's house and have asked the appellant's mother for a statement as to the appellant's whereabouts.
- g. I am prepared to accept that the appellant returned to Sri Lanka in 2011 to marry the man she met at University, SJ, indeed, the respondent also accepted this (see paragraph 48 of the 10th May 2012 letter). I also accept that

CID officers went to the appellant's home looking for the appellant during her wedding and spoke to her mother who was attending to the reception arrangements. I accept that, warned by her mother, the appellant and SJ went to Colombo and later was able to leave Sri Lanka using her own passport. I accept also that the authorities have been back to see the appellant's mother and that they required her to make a statement implicating the appellant in diaspora activities in the United Kingdom.

- h. I accept that SJ eventually went back to his village and was taken for interview and asked about the appellant. He was put on reporting conditions and sometime in June 2011 he disappeared.
- i. I also accept that with the aid of money raised, the appellant's mother was able to secure the release of SJ from an army camp. Likewise I accept that his whereabouts are now unknown.
- j. I do not believe that SJ is in India. I accept that the appellant's aunt was told that he may have been seen by a friend, and I accept that the aunt and probably the appellant believed that, but I suspect that the friend was trying to be kind and give the appellant and her aunt hope. The chances that the appellant's aunt's friend should bump into a man she does not know and has never before met, in India, and recognise him as SJ is, I believe, neither plausible nor credible.
- k. No one can possibly understand how the appellant felt on learning that she was pregnant after the disappearance of her husband. I accept that she felt that she had no choice but to terminate the pregnancy. I also accept that in 2014 the appellant was hospitalised after drinking bleach.
- l. Whilst in the United Kingdom the appellant has taken part in demonstrations and marches sympathetic to the Tamil cause. She has made small donations to the University of Jaffna student funds.
- m. I found the appellant's aunt to be a credible witness. I do not think that she had been told the truth by the friend who though she saw SJ in India, but that is no reflection on the aunt's credibility.

174. I accept that the appellant has twice left Sri Lanka without challenge. I do not believe that in this appeal, that fact undermines the appellant's credibility. We cannot know what perceptions the Sri Lankan authorities may have of this appellant. They may very well have wanted her to go home in order that her movements could be monitored. Likewise, when she last left, she left behind her husband. He may very well have been detained in an attempt by the Sri Lankan authorities to tempt the appellant back to Sri Lanka. We do not know and it is pointless to speculate.

175. I also accept that it might be thought that the delay in claiming asylum undermines the appellant's claim. It is always necessary to consider all the appellant's circumstances at the time of the delay. This appellant had been in the United Kingdom with leave. That leave expired and her husband was put on reporting restrictions. She terminated her pregnancy. Her husband then failed to obtain a visa

to come to the United Kingdom and was detained. At the time she must have been going through utter turmoil. In her particular circumstances I do not believe that the delay in claiming asylum does undermine her claim.

Country Guidance.

176. Mr Melvin drew my attention to the current Country Guidance decision of *GJ and others (post-civil war: returnees) Sri Lanka* CG [2013] UKUT 319 (IAC). At Paragraph 356 of *GJ* the Upper Tribunal say this:

“356. Having considered and reviewed all the evidence, including the latest UNHCR guidance, we consider that the change in the GOSL’s approach is so significant that it is preferable to reframe the risk analysis for the present political situation in Sri Lanka. We give the following country guidance:

- (1) This determination replaces all existing country guidance on Sri Lanka.
- (2) The focus of the Sri Lankan government’s concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.
- (3) The government’s present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the ‘violation of territorial integrity’ of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
- (4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.
- (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.
- (6) There are no detention facilities at the airport. Only those whose names appear on a “stop” list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.
- (7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
 - (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.
 - (b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.

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

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

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

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

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

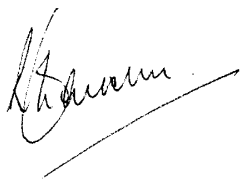
Conclusions

177. What puts many people at risk of persecution is not what they have done or are doing, but what they are *perceived* as having done or *perceived* as having prepared to do. It is impossible to put oneself into the shoes of the potential persecutor and envisage the outcome, because the potential persecutor will often not act rationally. One cannot know what perceptions the Sri Lankan authorities may have of this appellant and her family members.

178. My consideration of the evidence, including the background evidence, leads me to believe, however, that there is a real likelihood that she will be perceived as being in the category identified in paragraph 356 (3). Her whole family are known to the authorities. Her mother was spoken to by the authorities and asked to make a statement about the appellant. One younger brother, PK, fled the country and now lives as a refugee in France. Another brother has been recognised as a refugee and lives in Coventry. One brother was shot by the Sri Lankan authorities, as was an uncle. An Aunt was detained by the authorities and the appellant's mother in law was detained and is currently on reporting restrictions. We know, and I believe that there is a real likelihood that the Sri Lankan authorities will also know, that the appellant's maternal aunt is married to another refugee living in the United Kingdom. The appellant has another brother living in Sri Lanka who suffers from depression. He lives at home with his mother in fear of the authorities. His situation means that he is much less likely to attract the adverse attention of the authorities. The appellant's husband, PJ, was of interest to the authorities and was also a student with Tamil sympathies studying at Jaffna University. It is not unreasonable to assume that as far as the Sri Lankan authorities are concerned, he has disappeared.
179. I believe that the appellant does fall squarely into the category identified in paragraph 356 (7) a of *GJ and Others (Post civil war: returnees) Sri Lanka CG [2013] UKUT 000319 (IAC)*. I believe that she is perceived by the authorities in Sri Lanka to have, or to have had, a significant role in relation to post-conflict Tamil separatism within the diaspora, even though, to those who have seen and heard her give evidence, she appears to be a terribly depressed individual completely incapable of playing any, let alone any significant, role in relation to post-conflict Tamil separatism within the diaspora, likely to excite the interest of the Sri Lankan authorities. I believe that there is a very serious likelihood that if returned to Sri Lanka, the appellant will be at risk of further detention and questioning and that at that stage she will be at a real and serious risk of serious harm
180. For all these reasons I find that the appellant is entitled to be recognised as a refugee and I allow her appeal under the Refugee Convention.

Notice of Decision

The appeal is allowed accordingly. No fee is paid or payable and therefore there can be no fee award.



Upper Tribunal Judge Chalkley