Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07292/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 November 2015	**On 4 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR JOE NELSON ANTON ARRIYARATNAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Jesurum of Counsel
For the Respondent: Ms Emma Savage, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the adjourned hearing of the appellant's appeal against the decision of the First-tier Tribunal to dismiss his appeal.

Background

2. The appellant is a Sri Lankan national born on 7 October 1980.

3. The appellant applied for entry clearance to the UK as a student on 30 September 2002. This was granted and he entered the UK pursuant to that leave. On 4 August 2005 he sought further leave to remain as this was granted to 31 October 2006. Further extensions were obtained to his student visa until 31 March 2010 but he returned to Sri Lanka on 3 November 2009 and came back to the UK on 24 December 2009. A further three and a half years elapsed before the appellant contacted the Asylum Support Unit of the respondent and requested an appointment. On 18 March 2013 he claimed asylum. On 19 April 2013 he was interviewed.

4. On 4 September 2014 the respondent rejected his application as she did not accept the appellant had given a credible account. She also considered the appellant's claim that he had established a family or private life in the UK but rejected that application also.

The Appeal Proceedings

5. The appellant appealed the refusal of his asylum and human rights claim on 24 September 2014. The appellant's appeal came before Immigration Judge Lawrence ("the Immigration Judge") sitting at Hatton Cross on 9 March 2015.

6. In his decision the Immigration Judge found that the appellant suffered from colitis and related conditions. He rejected the suggestion the appellant had a condition known as sinus or any other physical injury as a consequence of torture in 1997. The Immigration Judge rejected two medical reports, one from Professor Lingham, a doctor with expertise in preparing medico-legal reports on victims of torture including torture in Sri Lanka, and one from Dr Lawrence, a general adult psychiatrist.

7. The appellant appealed the decision to dismiss his appeal on asylum and human rights grounds to the Upper Tribunal claiming that the Immigration Judge appeared to draw on his own experience as a doctor or healthcare professional rather than reach a proper finding based on the medical evidence presented before him.

8. The appellant was given permission to appeal by Judge of the First-tier Tribunal Astle. Judge Astle considered that the Immigration Judge "superimposed his own knowledge of the cause of the sinus". It was arguable that the Immigration Judge had not treated the medical evidence properly, including the evidence of Professor Lingham who said that the appellant had given a "highly consistent" account. Accordingly, permission to appeal was granted. Standard directions were sent out stating that no new evidence would be allowed before the Upper Tribunal unless it was served 21 days after directions were sent on 28 April 2015 setting out all the material to be relied on. Any failure to serve such evidence would result in a refusal to admit that evidence.

9. Subsequently, on 8 May 2015, the respondent submitted a response under Rule 24 stating that the appeal was opposed.

10. The appeal to the Upper Tribunal was first listed on Friday 11 September 2015. On that day I found a material error of law in the assessment of the medical evidence and the adverse credibility findings consequent thereon by the FTT. Accordingly, it was necessary to fix a further hearing with a time estimate of three hours and 20 October was allocated at the hearing on 11 September 2015.

11. Unfortunately, when I attended on 20 October 2015 the case for the respondent had not been fully prepared. This was due, in part, to the fact that the respondent, despite being represented at the hearing on 11 September 2015, did not appear to be clear as to the purpose of the hearing of 20 October 2015. One of the reasons for the adjournment had been to give the respondent the opportunity, if so advised, to apply to cross-examine the medical experts and for both parties to file any updating evidence. However, the respondent confirmed that she did not wish to call any evidence of her own or cross-examine the medical experts.

The Adjourned Hearing

12. At the adjourned hearing on 30 November 2015 both parties were represented. Mr Jesurum initially wanted to clarify the extent to which the decision of the FTT could stand in the light of the fact that the findings on the medical evidence were unsatisfactory. Helpfully, Ms Savage, who appeared for the respondent at the adjourned hearing, conceded that the adverse credibility findings could not stand in the light of the incorrect analysis of the medical evidence by the Immigration Judge. I therefore decided to approach the medical evidence afresh and from the appellant himself through an interpreter before making appropriate findings, including any relating to credit.

13. Having established the ambit of the hearing, it was ascertained that there were two bundles- a respondent's and an appellant's bundle. In addition to bundles referred to I had a core documents sent out to me in advance of the hearing. References to page numbers are to those in the bundle of documents filed by the appellant at the Tribunal on 27 November 2015 unless it is stated otherwise.

14. I heard evidence in chief from the appellant, who confirmed that he lived at the address on the Tribunal file and that his witness statement was true. In addition to his first witness statement (at A1–8) he had also prepared a supplemental statement at (B1–4). Mr Jesurum asked several supplemental questions. The appellant said that he had not seen his GP to complain of the torture giving rise to severe injuries to his rectum because his GP had been Sinhalese with good connections to the Sri Lankan government. He said that as an ordinary person he feared that if he told his GP this would only increase his risk if he returned to Sri Lanka. I asked

him why it was not possible to find a substitute GP but the appellant appeared to consider the whole practice would be under the control of his own GP.

15. The appellant said that his father had been killed by the army because he had been doing business in Vivuniya. The LTTE extorted money from him as a trader. When the army found out they were "furious" and his father was shot for collecting money. His sister had been arrested on suspicion of selling goods to the LTTE. Within a few days of this incident on 25 October 2005, when the appellant's mother was returning from hospital, she found the appellant's sister unconscious with bruises on her. The appellant's sister was taken to hospital where she was pronounced dead. The cause of death was certified as being "electric shock". The appellant was asked in what way the circumstances were "suspicious". He said that there was "no evidence" that she died of electric shock that at the time neighbours had seen Sri Lankan soldiers entering her house. After seeing this, the neighbours stayed indoors for their own protection. The appellant's sister's husband's name was Mohammed Ali Rajai, although there was more than one spelling of his name. In particular, I was referred to documents at A32 and A34. A police report was prepared (see A34). However, the appellant was told that his brother-in-law, his sister's husband, was missing. The appellant's mother had last had contact with the authorities on 4 September 2012. She had made a complaint to the Human Rights Commission in Vivuniya (see A11–12).

16. The appellant was then asked why he had not claimed asylum before 2013. He said that he had not claimed asylum in 2009 on his return to the UK because "Everybody had advised him not to claim asylum at that time." The civil war had come to an end and therefore he was worried he might be sent back to Sri Lanka. The appellant had a valid student visa and therefore decided to renew it further. He also had to renew his Sri Lankan passport which was due to expire in 2010. He said that he had been scared of going to the Sri Lankan High Commission to do this.

17. The appellant then said that in January or February 2010 an unknown armed group had gone to his mother's house and searched the property. The appellant also said that his mother was questioned about the appellant's whereabouts. The appellant was asked why this had not stimulated him to go to the UK authorities and ask for help. The appellant said that he was minded to "run away" from the problem but when he learned of his mother's problems again in 2012 he accepted that he had still not claimed asylum. At this point it was explained that the visa had expired in March 2010. The only explanation for this further delay was a deterioration in the appellant's physical and mental health between September 2012 and March 2013, when he finally claimed asylum. He decided having consulted a Tamil charity which explained the "situation" to finally make a claim and to tell the Home Office the "whole story".

18. In cross-examination the appellant accepted that his sister, who was to give evidence, had come to the UK in 2001 and claimed asylum. He

therefore accepted that he knew of the right to claim asylum throughout his period in the UK. It was also put to him that in 2002 he had already been detained. The appellant maintained that he would be "in trouble" if he advanced such a claim so he decided to remain on a student visa. The appellant said he had gone back to Sri Lanka in 2009 because the war was over and because he believed that his mother was unwell. He explained that he had treatment on the NHS but did not find it quick and therefore decided to get medical attention back home. He explained that consultants could be engaged at modest cost in Sri Lanka. At this point in the proceedings the appellant decided to produce a number of documents which had not previously been disclosed. These broadly confirmed that he had medical attention in Sri Lanka between November and December 2009. The appellant explained that these appointments had been at Mannar Hospital. The appellant said that there were not given details of his treatment at the hands of the authorities at his medical appointments, because he believed that he would have to register a complaint. The appellant explained that he did not wish to give a detailed explanation for his injuries to the Sri Lankan medical professionals in fear that this would be seen as a complaint against the authorities. However, he had referred the doctors in Sri Lanka to his NHS records. The appellant was also asked about his earlier medical treatment. He said that after the torture incident in 1997 he had been admitted to hospital for five days. This was in Mannar. The appellant was asked whether he had any evidence of that attendance. He confirmed that he did not, which was consistent with his answer to question 80 in interview. He expanded on his earlier answers by explaining that if he were to report that the injury was sustained as a result of police or army action it would be necessary to make a formal complaint. The appellant also feared that he might be sent back to the detention centre if the doctors to whom he reported decided to keep a record of it.

19. The appellant was then asked about his medical history. He was concerned that if he told another doctor about his treatment at the hands of the authorities in Sri Lanka that doctor would report it to the authorities. However, when he saw Dr Lingham he had made his asylum claim. The appellant had registered with a new GP on arriving into the UK in 2002. However, he was worried about his GP's connection with the Sri Lankan government.

20. At this point I was referred to document B5 in the appellant's bundle which states that the Executive Committee of the APSL, presumably a body or organisation that supports Sri Lanka, included both the appellant's doctor and also the Sri Lankan High Commissioner to the UK. This, it was claimed by the appellant, fuelled his suspicions as to the connection between his GP and the Sri Lankan government.

21. The appellant was then asked about the treatment he had been given for his injuries. He said that he had been maltreated in 2009 but the majority of the injuries subsided. These included some swelling and some injuries incurred by forcing a pencil between his fingers. He was also beaten up.

22. The appellant then went on to explain his symptoms of PTSD. The appellant was asked when he first suffered psychiatric or psychological problems. He said that he had been treated in Sri Lanka after the incident in 1997 but, I assume, that was for physical injuries. In 2002 when he came to the UK he had "forgotten everything". He attended a doctor in 2009 complaining of headaches. He was referred to an ear, nose and throat (ENT) specialist. He was prescribed Amitriptyline, an anti-depressant drug. The appellant said that his helped him sleep. When he returned to Sri Lanka in 2009 he was prescribed the same or similar medication there. However, his mental health deteriorated after 2012, when the appellant learned of an incident involving his mother. The appellant found that Amitriptyline stopped helping and he decided to obtain a report from a medico-legal expert into his depression in 2015. He confirmed he had no treatment for depression or psychological illness before 2015.

23. At this point the appellant was asked about a letter in his bundle of documents (at A15). This refers to the death of his father. However, it was put to the appellant that there was no mention in that document to the fact that his father had been killed by the authorities.

24. The appellant said that Father De Silva had known his family for a long time. The appellant accepted that Father De Silva would have been aware of the appellant's detention by the authorities. The appellant could not explain why he had made no mention of this in his letter. The appellant said that he did not wish Father De Silva to say anything about the appellant's detention or the circumstances in which his father was killed because he feared this would come to the attention of the authorities. It was then pointed out that in the following letter (A16 in the same bundle) Reverend Navratnam from the same church had referred to the arrest of the Appellant in 1997, his detention at an army camp and adverse health consequences consequent thereon having been "tortured mercilessly". The appellant explained that the letter from Reverend Navratnam had been written in 2014. By that year the appellant was in a "better place" and did not fear the authorities to the same degree he had previously. It was put to the appellant that he had failed to mention to Reverend Navratnam that he had been detained in 2002 and 2009 as well as in 1997. The appellant's response was that the Reverend Navratnam had "not been involved at those stages".

25. The appellant was then asked about the disappearance of his brother-in-law. He said that in 2005 his sister disappeared and that her husband had been released shortly afterwards. It was believed that the appellant's brother-in-law was accused of selling goods to the LTTE. He was arrested by the Sri Lankan Army two days before being sentenced to death, he believed, on 25 October 2005. The appellant "did not know" what happened to him after that. The circumstances of his disappearance were suspicious and a complaint was made to the Human Rights Commission. However, his sister's death was not reported. The army would "find out" who had reported it and he feared that there would be retaliation.

26. In re-examination the appellant was taken to a photograph at B10 in his bundle which shows his GP with the Sri Lankan High Commissioner. This, the appellant contended, supported his fears about that individual.

27. Mrs Sabitha Thayaparan was then called to give evidence.

28. Having adopted her witness statement as being true Mrs Thayaparan then significantly added to its contents in examination-in-chief. She stated that at paragraph 2 where she referred to an "incident" this was in 1993. There were other incidents in 1997 which, apparently, she had omitted to mention when she prepared her witness statement. She was asked when she found out about the incident in which her brother was taken away by men in civilian clothing in 2009. She said she had found out about the incident on "the same day" because her father had telephoned her on the day of the arrest to tell her about it. She did not speak to her mother directly but had learned the information from a priest. She had wanted to avoid any problems of her own and had therefore avoided contacting her mother. She was referring to the incident on 12 December 2009 when a group of armed men came and abducted the appellant. She was aware of other incidents since 2009 which she had also omitted to mention in her witness statement.

29. Mrs Thayaparan went on to say that the authorities had "threatened" her mother, because her brother had "disappointed them". He had been threatened with death if he returned to Sri Lanka.

30. Mrs Thayaparan also gave evidence about an incident in 2012 when she was questioned by an armed group whilst speaking to the village "headman". The same armed group went to her house on 4 September 2012 and "threatened her". They said they were going to "kill your son".

31. Mrs Thayaparan said she had found out about the incident in 2010 via a telephone call with her mother. This is how she found out about the incident in 2012 also.

32. Mrs Thayaparan was cross-examined. She said that her brother had come to the UK in 2002 because "his life was in danger". He could not continue in higher education in Sri Lanka and therefore decided to continue his studies here. Mrs Thayaparan confirmed that she had claimed asylum in the UK, unsuccessfully. She had been to a Tamil welfare charity in the UK and got advice about that. She was asked why she did not tell her brother to claim asylum. She said that she feared that the UK "was deporting people" and she did not wish to lose him but she could not otherwise explain her brother's failure to claim asylum for several years. She was asked whether her mother had any problems in Sri Lanka. Mrs Thayaparan said she had problems in 2009. She had not told her solicitor about specific incidents. Her witness statement had been read back to her in Tamil and she could not explain why she had not made reference to incidents in 2010 and 2012 in that document. The best explanation she could give was that she believed the document had to be "brief".

33. In re-examination the appellant said she had told her brother's solicitors about the additional incidents when preparing her statement. She could not explain why her additional reference had been made to those incidents in the deposition.

34. Proceeding to submissions, the respondent submitted that there had been no claim for asylum between 2009 and 2013. In addition, the appellant had been in the UK since 2002 and had numerous opportunities to claim asylum between 2002 and 2013. Both he and his sister were plainly aware of the process by which asylum was claimed.

35. As far as the appellant's injuries were concerned, I was referred to Professor Lingham's report at C5, where he noted that there was no way of linking any scarring on the appellant with the torture he suffered whilst detained in 1997. However, it was accepted that there was a "highly consistent" clinical assessment in relation to the injuries to the appellant's internal organs. This specification meant that there were possible other causes. It was noted that the incident occurred eighteen years ago, but none of the NHS documents supported the alleged cause and that there was a physiological explanation(s) connected with his haemorrhoids. It was incredible that even where allegations of torture were concerned, they would not be discussed at all with medical professionals for such a long period of time. It was not as if the appellant's contacts with the NHS were rare. The appellant could have requested a new doctor if he did not have confidence in his existing one. The psychiatric report into PTSD and other symptoms suggested that he did not have any psychiatric history. In any event, the medical evidence of Dr Lawrence, for example, was of questionable quality. He had referred to the appellant's "self-neglect" upon examination on 5 March 2015 but, Ms Savage noted, a nurse prescriber who examined the appellant only two months later describes his self-care as "good" (see B13). The appellant had relied on letters from St Joseph's Church in Vivuniya but those were not consistent with his account either. In any event, those documents lacked detail. The appellant's explanation for not fully describing his treatment in Sri Lanka was that he did not wish his complaints to come to the attention of the authorities, but this was inconsistent with his own evidence in the form of the letter written by St Joseph's Church at A16.

36. The appellant's claim did not succeed even on the low standard of proof which applied. Even if the appellant had been tortured in 1997, which was disputed, there is no evidence that the appellant remained of interest to the authorities in 2009 and therefore the detention in that year was disputed also. The appellant's sister had mentioned things for the first time at the hearing. I was referred to the case of **GJ [2013] UKUT 00319** for an up-to-date analysis of the risk factors in a Tamil case. The authorities in Sri Lanka now adopted a more targeted approach and were not concerned necessarily with historic acts of terrorism.

37. I then heard from Mr Jesurum who said that the case of **GJ** and the latest Country of Origin Information Report, the date of which he was unable to

be precise about and a copy of which he was unable to produce, made it abundantly clear that "they" (meaning the Sri Lankan government) "torture people". It was submitted you were likely to get "unreliable evidence" in this type of case. I understood this to mean that those subject to torture are likely to be reluctant to come forward with clear evidence of their experiences. The fact that the appellant was not a member of the LTTE did not prevent him being tortured as claimed. He claims that there were incidents as recent as 2010 and there had been a further incident involving his family in 2012.

38. In relation to the medical evidence, Mr Jesurum submitted that the respondent could have obtained her own evidence, indeed had a recent opportunity to do so. She could have asked questions of any of the medical experts. However, she had chosen not to do this either. Both subjectively and objectively the appellant was depressed and his diagnosis was consistent with his alleged ill-treatment. It was understood why the appellant was reluctant to speak about his past treatment. Professor Lingham had considered other possible causes but overall the appellant's account appeared plausible. The symptoms from which the appellant suffered to his internal organs were not to be confused with his external haemorrhoids. He had been questioned extensively about the chronology of events but, overall, the appellant had not been seriously damages in cross examination and his account was consistent.

39. As far as factors under Section 8 of the Asylum (Treatment of Claimants, etc.) Act 2004 were concerned, the appellant had naturally feared ill-treatment if he came forward with an explanation which might come to the attention of the Sri Lankan authorities. It was clearly preferable for the appellant to come to the UK as a student and avoid this risk. He was concerned that he may be forcibly returned to Sri Lanka.

40. I allowed Mr Jesurum some additional time to take instructions on the appellant's sister's witness statement and the fact that there were significant additions to it despite an opportunity being given to the parties to update their evidence in advance of the adjourned hearing before the Upper Tribunal. His instructions were that Mrs Thayaparan had not been in touch with the solicitors.

41. I allowed Ms Savage a further comment on these matters. She said that in her view these matters had been raised at the last minute and the bundle had only been submitted a week before the hearing. No proper explanation had been given for the absence of important pieces of evidence from the witness statement prepared by the appellant's sister.

42. At the end of the hearing I reserved my decision, having found a material error of law on the last occasion, as to how ultimately to dispose of this appeal.

Discussion

43. At the outset of the adjourned hearing before the Upper Tribunal I determined that it was appropriate, having set aside the findings as to the medical evidence, to also set aside the adverse credibility findings of the Immigration Judge. Any other findings of fact, however, remain.

44. The key issues as far as credibility is concerned are:

    (1) Whether the appellant has given an adequate explanation for the delay of eleven years between his arrival into the UK in 2002 and 2013 when he finally submitted a claim for asylum/human rights protection?

    (2) Whether the appellant's account is materially corroborated by the medical evidence of Professor Lingham and Dr Lawrence?

    (3) Whether in the light of these findings the extent to which the appellant would be at material risk on return to Sri Lanka?

45. Before I turn to consider these issues I will make some general points.

    General points as to credit

46. There is no requirement in asylum appeals for the applicant to corroborate his account. However, it is appropriate to look at the overall cogency of the account and explanation for any missing documentation. In this case the appellant has produced some corroboration in the form of letters from the local Catholic Church. Unfortunately, these documents do not entirely support his case in that the letter from Reverend Navratnam (at A16) only refers to incidents in 1993 and 1997 and not to all the later incidents. Unfortunately for the appellant, the absence of reference to the later incidents cannot be explained by his reluctance to reveal the details for fear of retaliation by the authorities because the Reverend Navratnam refers in detail to the 1997 incident.

47. In addition to the written evidence from the appellant's former priest, I had the benefit of oral evidence from his sister, Mrs Sabitha Thayaparan. Unfortunately, nearly all Mrs Thayaparan's evidence is either hearsay or double hearsay. Although this does not in itself prevent me having regard to her evidence it may affect the weight I attach to it and has done so in this case. Mrs Thayaparan departed significantly from her witness statement and her oral evidence providing, in my view, an embellished account to assist her brother. I am afraid I did not find Mrs Thayaparan came to the Tribunal with the intention of telling the truth. Rather, she came to the Tribunal with the intention of helping her brother out. Virtually all her evidence could have been learned second hand from other sources and I have decided to attach no weight to her evidence.

48. I found a number of features of the appellant's own evidence also to be unsatisfactory. For example, I did not find it credible that he feared his problems in Sri Lanka would "increase" if he told his doctor in the UK about the torture and abuse to which he had been subjected. Nor did I accept the hearsay evidence about his mother's house being searched in

2010 and his reasons for not claiming asylum at an earlier date than 2013 are extremely doubtful but these issues will be explored further below.

49. Bearing these general background points in mind I now turn to consider the questioned posed above in greater detail.

(1) Delay

50 It is a feature of torture allegations that the victims of torture are often late in coming forward with complaints. They are often unable to relive their horrendous experiences at the time or shortly thereafter and even then there may be a variety of reasons why they cannot recall the precise details. Is it possible that the appellant, who appeared to be an intelligent person, would be so fearful of return to Sri Lanka that he would submit a succession of student visa applications rather than advance an asylum claim. In particular, have to consider the possibility that, following the expiry of his last period of leave in March 2010, he did not feel able to submit an application for asylum until March 2013 for fear that this may increase rather than lessen the likelihood of return to Sri Lanka.

51. I find that if the appellant had suffered horrendous torture in 1997, as he claims, he would have mentioned it to somebody between 2002 and 2015, especially to a medical professional charged with keeping his confidence. His medical advisors owed him a duty of confidentiality and I do not accept that his GP, even if he was a sympathiser with the Sri Lankan government, was the only GP to whom the appellant could turn for medical attention in a city the size of London. The appellant would have been able to go to a different practice or consult a different GP. I reject the appellant's explanation for his failure to make any report of his symptoms of torture between 2002 and 2013 and do not accept he has given a truthful explanation for his failure to advance his asylum claim during this period. Furthermore, if he did suffer torture in 1997 I am satisfied that he would not have returned to Sri Lanka in 2009. On his return to the UK in late 2009, allegedly with the assistance of an agent, he would have known that he would undoubtedly have been less well protected under the limited forms of leave given to students as opposed to the more substantial and internationally recognised status of refugee that he now seeks. It is incredible that even then he did not seize the opportunity to advance such a claim but waited another three years.

(2) The Medical Evidence

52. The appellant relies on the two medical reports referred to. It is not clear what Professor Lingham holds a professorship of. I assume he is a GP himself but with specialist experience in a large number of medical disciplines. He seems to have a special experience of preparing reports for use in the medico-legal context. I cannot ignore his wide experience but I do note that his assessment of the appellant was carried out eighteen years after the alleged torture. He relies no doubt to a large degree on the patient history and the absence of other physiological explanations. I

can find no evidence that he carried out an examination of the relevant parts of the appellant's anatomy and I am not convinced that he has specialist experience as a colorectal surgeon so as to say more than other medical professionals had said following the appellant's large number of medical consultations over the years. His report does include a detailed account of the appellant's medical history but it is not clear to me why the sinus of the rectum that he identifies is "highly consistent" with the appellant's history of trauma as opposed to being highly consistent with other medical causes. He also says (at paragraph 7) that the appellant's sinus "could have originate from the history of trauma described by the patient (which is the insertion of a bottle neck onto (sic) his rectum)". In addition, it is also possible that the appellant, who I have found to be an intelligent individual, who clearly wishes to stay in the UK, may have adapted the history of the trauma that he gave to fit his symptoms rather than the other way around. When properly analysed, Dr Lingham's report is not in any way conclusive. I find that the condition from which the appellant suffers, which is of a highly unpleasant, uncomfortable and personal kind, was consistent with a number of possible explanations. It is unnecessary to speculate about the possible explanations for the appellant's injuries; that is where Judge Lawrence fell into error.

53. As far as Dr Lawrence's evidence is concerned he describes himself as "a general adult psychiatrist". He is a member of the Royal College of Psychiatrists. He does not appear to be authorised under Section 12 of the Mental Health Act 1983. Again, he seems to have a great deal of experience of providing medico-legal evidence. It is rare in this jurisdiction for that evidence to be tested in cross –examination and that is the case of his evidence too. It is not clear from his report that he has a material amount of experience of clinical practice, certainly recent clinical practice.

54. I find it extraordinary that Dr Lawrence gives no explanation for the absence of any psychological or PTSD symptoms in the medical records between 2002 and 2015 when the appellant saw Dr Lawrence. Furthermore, Dr Lawrence diagnoses "major depressive illness in the severe range" (page 15G) as well as PTSD yet Dr Lawrence does not consider it in any way a matter of comment that the appellant did not seek any treatment for this major depressive illness over the previous thirteen years. Is it suggested that the onset of the illness had been of recent origin? If so, he does not say so. Moreover, he does not recommend any particular form of treatment and I note that besides taking some Amitriptyline, although this is not mentioned by Dr Lawrence at 15K, he does not recommend any form of treatment for this major depressive illness in the future. In addition, some of the symptoms that Dr Lawrence recognises as being typical of depressive illness, such as inadequate self-care (see page 15L) are inconsistent with what other medical professionals have said, for example, a nurse manager (Mr Williams) prepared a report in May 2015 (at B13) which described the appellant's self-care as "good".

55. It is true that some of the symptoms described by the appellant are typical of PTSD such as nightmares, difficulty in sleeping, but the diagnosis of

major depressive illness is questionable in the light of the lack of medical history or treatment. A number of the symptoms described by Dr Lawrence appeared to be based on the appellant's own history relayed to him. If the appellant suffers from a form of depression, there is no proper basis for attributing this to incidents which occurred many years before in Sri Lanka. I found the appellant to have a little difficulty in recounting the relevant events before me.

(3) Risk on return

56. The only case law referred to by the parties' representatives was the case of **GJ** (reference above). Mr Jesurum also referred me to the Country of Origin Information Report but was unable to specify the year or refer me to any particular passages within that document which was not produced.

57. I find that the case of **GJ** remains the leading authority on the risk of returning failed Tamil refugees to Sri Lanka. This also provides a great deal of background material. Both parties seem to agree that it presents an accurate up to date picture of the risks facing Tamil returnees. Among the conclusions reached in that case which appear relevant to the facts of this case are:

    (1) That the government of Sri Lanka is concerned with those who continue to pose a threat to the unitary state and not those who, historically, are alleged to have been supporters of the LTTE.

    (2) Those who are detained, nevertheless, continue to face a risk of ill-treatment or harm requiring international protection.

    (3) Those on a stop-list may be detained at the airport on arrival.

58. Turning to the facts of this case I have rejected the veracity of the appellant's account and found that the delay in advancing his claim, which is largely unsupported and uncorroborated by other evidence, causes me to reject his alleged torture and subsequent periods of detention. Even if one or more of the incidents occurred, as Ms Savage submitted, it is questionable whether he would be "at risk". He is not a person who has been a member of the LTTE or who would pose a threat to the unitary state and there is no reason why the authorities would perceive him to be such a person. I note that he has not engaged in anti-government activities since arriving into the UK and I do not accept his evidence or that of his sister about any alleged recent visits by the authorities to family members.

Findings and conclusions

59. The appellant need only prove his case is reasonably likely to be true. There must be at least credible evidence that there would be a real risk of persecution in Sri Lanka if he were now to be returned there. The appellant's case turns to a large extent on the credibility of his account. Whilst superficially there appears to be some corroboration or support for his case from other family members, medical professionals and documents

emanating from Sri Lanka, on close examination I have not found that evidence or those documents sufficient to explain why the appellant returned to Sri Lanka in 2009 having, he alleges, previously suffered horrendous torture twelve years previously. A genuine refugee suffering PTSD, depression and other symptoms would not have even considered returning there.

60. Furthermore, the appellant has not given an adequate explanation for his failure to claim asylum between 2002 and 2013. I therefore find that he failed to take advantage of a reasonable opportunity to claim asylum at the first opportunity and that this adversely affects his credibility for the purposes of Section 8 of the Asylum (Treatment of Claimants) Act 2004 is relevant and applies. The appellant was well aware of the opportunity to claim asylum in the UK I find. His sister was also aware of it because she had submitted a claim of her own. I have found the appellant to be an intelligent individual who understood that asylum would have afforded him international protection and that he would not have been returned to Sri Lanka. It was infinitely superior to the limited leave that he had and I find he was aware of this fact.

61. I find it not to be credible that the appellant would not tell any of his medical professionals about his past ill-treatment despite taking account of the fact that torture victims are reluctant to come forward in many cases. The delayed complaints only go to reinforce the view that the appellant has advanced his asylum claim at the last minute to avoid removal from the UK and not for any other reason.

62. On careful analysis I have not found that the medical evidence provides the degree of support for the appellant's case that superficially it appears to. His medical history and the lack of previous complaints and treatment tend to suggest that even if the full extent of his physical and mental illness is established it is not attributable to any past ill-treatment in Sri Lanka. I have also taken into account the extent of the expertise displayed by the respective experts when deciding what weight to attach to their evidence. I do have certain concerns in that regard which I have expressed above, particularly in relation to the psychiatric evidence.

63. I have decided to attach no weight to the hearsay evidence of the appellant's sister for the reasons I have given.

64. I have therefore concluded that the appellant's account is not credible and that he did not suffer torture and ill-treatment as he claims.

65. The appellant has not in my view established that he would be at risk on return in the light of the above findings but even if those findings were more favourable the appellant has not been a past member of the LTTE and the events he describes are now of some age and I would question, even if I had accepted his account, that he would be within an "at-risk" category. Certainly, based on my findings, he is not at risk.

Notice of Decision

66. I find that there was a material error of law in the treatment of the medical evidence by the FTT and consequent adverse credibility findings. I have set aside those findings and will now re-make that decision.

67. My decision is to dismiss the appellant's appeal against the decision of the respondent to refuse his asylum and human rights protection and that claim stands dismissed.

68. An anonymity direction was made by the FTT but the proceedings thus far in the Upper Tribunal have not been anonymised and little would be achieved by anonymising them now. Accordingly, I make no anonymity direction.

Signed Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

No fee is payable and the appellant had been unsuccessful in his appeal and I make no fee award.

Signed Date

Deputy Upper Tribunal Judge Hanbury