



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08330/2012

THE IMMIGRATION ACTS

Heard at Field House
On 30 March 2017

Decision & Reasons Promulgated
On 26 June 2017

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

T K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Jones, Counsel instructed by the Tamil Welfare Association
For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born in 1984. She arrived in the UK on 3 April 2012, entering on the basis of a visit visa, valid until 24 August 2012. She claimed asylum on 26 July 2012, having made an appointment to do so on 26 June 2012.

2. Her asylum claim was refused and a decision made on 25 August 2012 to remove her to Sri Lanka. She appealed against that decision and her appeal initially came before First-tier Tribunal Judge Easterman (“the FtJ”) in October 2012 and whereby he dismissed the appeal on asylum, humanitarian protection and human rights grounds.
3. The FtJ’s decision was set aside by a Judge of the Upper Tribunal and the appeal then came before Deputy Upper Tribunal Judge Hall (“the DUTJ”) on 17 May and 20 September 2013. He too dismissed the appeal on all grounds.
4. Ultimately, after an appeal to the Court of Appeal, following agreement between the parties Underhill LJ allowed the appellant’s appeal and set aside the decision of the DUTJ. He ordered that the appeal be listed for further hearing in the Upper Tribunal with preserved findings of fact as specified in the Statement of Reasons before the court. Thus, the appeal came before me.
5. It is as well at this stage to set out those preserved findings. Although at first sight it appears that there is some slight ambiguity as to what those preserved findings are, there was agreement on the issue before me. The Statement of Reasons states at [16] that the accepted facts found by the DUTJ are to be found at [11], [61], [62], [63], [64], [66] and [69]. At [11] the DUTJ himself referred to [81], [83] and [86] of the FtJ’s decision, summarising what could be described as the positive credibility findings.
6. Thus, the preserved findings are as follows, with references in square brackets to the decision of the DUTJ:
 - (i) The appellant was arrested, detained and mistreated as claimed. The appellant’s brother was known by an LTTE name, and the evidence in relation to the older brother being killed is accepted. The appellant has scarring which is consistent with being caused in the way that she claimed [11].
 - (ii) The appellant is of Tamil ethnicity. She encountered no serious difficulties in Sri Lanka until 27 December 2011 when she was arrested, detained for six days, and tortured. She was released following payment of a bribe [61].
 - (iii) The appellant had two brothers who fought for the LTTE. One was killed in February 2008 and the other has not been heard from since he joined the LTTE in 2008 [62].
 - (iv) The death of the appellant’s brother has been published in an LTTE newspaper and his obituary notice was downloaded from the internet in May 2013 [63].
 - (v) A medical report prepared by Mr Martin confirms that the appellant has scars, and that her injuries were caused in the way that she has claimed [64].
 - (vi) The appellant travelled to Colombo following her release and with the assistance of an agent she applied for and was granted a visa enabling her to visit the UK. The visa was valid until 24 August 2012 [66].
 - (vii) The appellant supported the LTTE but she was not a member of that organisation and her support was limited to the activities described in her asylum interview, attending

events such as Black Tigers Day and Heroes Day. She may have made some flags for those events as she claimed [69].

7. It is also to be noted that the respondent has now agreed to grant the appellant leave to remain as the partner of a person, SM, with limited leave as a refugee. It is not apparent that the appellant had, as at the date of hearing, received confirmation of the grant of leave to remain, although it was agreed by the parties that it was expected. No issue arises in terms of Section 104(4A) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") (appeal abandoned if an appellant is granted leave) because in the first place it is not apparent that leave has actually yet been granted. In the second place, by letter dated 27 January 2017 the appellant's representatives confirmed that the appellant wished to pursue her asylum/protection claim, thus bringing into play s.104(4B) of the 2002 Act (notification of intention to pursue the appeal).
8. In addition to the material previously before the Tribunal a further bundle consisting of 128 pages was relied on on behalf of the appellant. On the day of the hearing, I was provided with an additional witness statement from the appellant dated 29 March 2017.
9. I heard initial submissions from the parties when the issue of the additional witness statement came to the fore. The question arose as to whether at a Case Management Review ("CMR") on 12 January 2017 before the President of the Upper Tribunal, directions had been made to the effect that the resumed hearing would be on the basis of submissions only, with no further evidence to be called. Neither party was able to refer me to any written directions that were made following that hearing, and there was some divergence of view as to the effect of the oral directions that were given. Ultimately, I concluded that it was not apparent that the President had directed that the fresh hearing proceed by way of submissions only.
10. However, Mr Parkinson, understandably, objected to the admission in evidence of the appellant's additional witness statement on the basis of its late production, and having regard to the fact that there was no application made under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 for that evidence to be admitted.
11. In the circumstances, I directed Ms Jones to prepare a notice, in manuscript, pursuant to rule 15(2A) which I then considered. Notwithstanding the very unsatisfactory circumstances in which it was sought to rely on the additional evidence, I decided to allow its admission having regard to rule 2, and the fact that it was not clear that the President had directed that the appeal proceed by way of submissions only. I also took into account the lengthy history of the proceedings and that the appeal had first come before the First-tier Tribunal as long ago as 2012 and that this was a protection claim. I considered that it was in the interests of justice to admit the evidence so that I had all possible information before me so as to ensure a just determination of the appeal.
12. Mr Parkinson having indicated that he would wish to cross-examine the appellant on a particular part of her witness statement, she gave oral evidence.

The oral evidence

13. The appellant adopted the additional witness statement of 29 March 2017. She was asked in particular about paragraph 4 of that witness statement. It reads as follows:

“My mother previously informed me that unknown men called at her house in Valvettithurai (Jaffna) enquiring about me and my two (2) younger brothers – [P] and [T] who were LTTE fighters. The men came in civilian clothing and they spoke to my mother because she was the one at home when the men visited. My mother told me that she believes that the men are from CID from the government. I cannot remember the exact date when this visit took place but I believe that my mother informed me about the visit sometime last year”.
14. In cross-examination Mr Parkinson asked when the appellant’s mother informed her of unknown men calling at her home. The appellant said that it was in 2016 and that it was in that year also that the men came to her home. She was unable to remember either when the men are said to have come to her mother’s home, or when she was told about it.
15. She said that her mother was asked about one of her brothers who was missing and the other one who is deceased. They also asked about her, the appellant. The brother who is missing is called [T]. He went missing in 2009, during the war. Her other brother died in 2008.
16. She had had no contact with her brother who went missing after he joined the LTTE. They tried but without success. He joined the LTTE in 2008 after her other brother died in the same year.
17. The authorities were aware of her brother’s death. She agreed that it was eight years after his death that the men made enquiries about him. As to what questions her mother was asked, she said that her mother did not tell her too much, just that they asked about hers and the other brother’s (or other brothers’) whereabouts. Her mother told her that she said to them that she could not give them any information as she had none to give. She told them that they were not there. As to whether her mother told them that her brother had been dead for the last eight years, she said that her mother did not divulge any information about her brother being in the LTTE. She feared that she might encounter problems if she did so. She did not say that she had not seen the other brother for seven years.
18. In answer to my questions she said that she had not mentioned those events (the visit) previously because it had only happened in 2016.

Submissions

19. The following is a summary of the parties’ submissions, including those submissions made before the appellant gave oral evidence.
20. Mr Parkinson relied on the respondent’s skeleton argument. It was submitted that the appellant was unable to establish that there was a real risk of persecution on

return to Sri Lanka. She had been completely inactive for five years. Given the approach of the Sri Lankan authorities, it is inconceivable that she would be at risk.

21. In relation to the further evidence in the appellant's witness statement and her oral evidence, it was submitted that little weight should be attached to it. That evidence was produced at the last moment but relates to matters from some time in 2016. Given the significance of the issue, it was not credible that the appellant would not be able to say when the two men apparently came to her mother's house or when she was told about it by her mother. It was unlikely, given that there was a death certificate and the appellant's brother had died eight years earlier, that the appellant's mother would not have told that to the men that visited. Likewise in respect of the brother who had been missing for seven years.
22. It is clear that the Sri Lankan authorities have a sophisticated intelligence network. The appellant left legitimately with a visa and had done nothing whilst in the UK to give her a profile. There is nothing to indicate that there would be any continuing interest in her.
23. Ms Jones submitted that all the preserved credibility findings are positive, there being nothing adverse. The core of her account was accepted. One brother is deceased and another brother is missing. The appellant herself was detained and tortured.
24. The appellant's additional evidence is not decisive but it is consistent with her claim that her mother would be greatly in fear of any enquiries in relation to her children's associations with the LTTE. Her additional evidence was important as it brackets the appellant with her brothers. In that context I was referred to aspects of the appellant's asylum interview.
25. Paragraph 339K of the Rules was relevant. In *GJ and others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 00319 (IAC) it refers to a shift in focus by the Sri Lankan authorities. If a person, like the appellant, was arrested in 2011, that would have been done on the basis of intelligence. On the other hand, although the authorities have a sophisticated intelligence network, that does not always mean that they are correct (in terms of the appellant having been inactive in the UK). Although the appellant is not in fact a risk to the Sri Lankan State, she may be perceived as such.
26. Furthermore, her partner is a recognised refugee, having been granted leave to remain as a refugee on 12 November 2013. The appellant could be questioned about him on return. That is a factor that would create a heightened risk for her. In this context I was referred to the decision in *MP and NT v Secretary of State for the Home Department* [2014] EWCA Civ 829, in particular at [11]. The respondent was wrong to seek to compare the appellant with the appellant NT, who was detained in 2002. This appellant was detained nine years later and two years after the end of the civil war.
27. The appellant would additionally be at risk as a single female head of household, having regard to the decision in *PP (Sri Lanka) v Secretary of State for the Home*

Department [2014] EWCA Civ 1828. It is true that, theoretically, she could go to Colombo but on return she would need to provide an address in her home area. It would be unduly harsh to expect her to live alone in Colombo. It was also submitted that it would be unduly harsh for her to live alone and separated from her husband and child. It was accepted however, that the primary submissions were in relation to *GJ and others*.

28. In response to the specific point about the asserted risk to the appellant as the spouse of a refugee, Mr Parkinson submitted that the basis upon which her partner was granted refugee status is not known. His claim may have been based on matters arising prior to the decision in *GJ and others*. There would be no obligation on the appellant to respond to any questions about her partner. It is not even clear as to why she would be questioned. *GJ and others* does not say that she would. There is no evidence that she is on a watch list. She was released on payment of a bribe and has no profile. There was no reasonable likelihood that she would be asked questions. This was a matter that was speculative and unsubstantiated. There was no evidence from her husband about his status.
29. Finally, Ms Jones submitted that the appellant could not be expected to tell lies (in relation to her partner). The fact that she was released on payment of a bribe did not mean that she would not be of any interest. She would be recorded as having escaped as indicated in *GJ and others* at [146]. It was accepted however, that being recorded as an escapee would not be sufficient if a person was detained before the end of the civil war.

Post-hearing submissions

30. Following the hearing, and after a further review of the documentary evidence before me, it was apparent that there was a need to obtain the First-tier Tribunal's written decision in the appeal of the appellant's partner, SM, which had not been provided. Following my having obtained that decision, I sent further directions to the parties for the filing and service of further submissions in relation to it. Both parties filed submissions in response to those directions. They can be summarised as follows.
31. The respondent's submissions refer to the decision in SM's appeal having been promulgated on 26 June 2013, before promulgation of *GJ and others*, and that First-tier Tribunal Judge Adio properly had regard to the then country guidance of *TK (Tamils - LP updated) Sri Lanka CG* [2009] UKAIT 00049. SM's claim was that he was arrested in 2001 by the Sri Lankan army because his sister was involved with LTTE individuals, and those individuals used to come to their home. He was detained until 27 February 2002 when he was released after the peace talks. He was then arrested by the EPDP in Vavuniya, having been forced to work as a driver for the LTTE between July 2006 and October 2008. He was detained for five months until his release on payment of a bribe. He was subsequently detained by the Sri Lankan army in Colombo in April 2009, held for a month and then released, again on

payment of a bribe. Although he was released on reporting conditions, he reported twice and left the country assisted by an agent.

32. Judge Adio's decision does not indicate that SM had any involvement in diaspora activities in the UK. No submissions were made to Judge Adio relating to any such activities and no findings to that effect were made by him.
33. The respondent's submissions contend that if SM's appeal had been considered in the light of *GJ and others*, as opposed to *TK*, the outcome may well have been different. It is submitted that it was difficult to see how SM would have been found to be at risk on return with reference to *GJ and others*. Accordingly, the fact that SM's appeal was allowed and he was found to be credible does not assist this appellant in her asylum appeal.
34. On behalf of the appellant it is submitted that SM's appeal would have been allowed even with reference to *GJ and others*. He would come under the risk category of those who are, or are perceived to be, a threat to the integrity of Sri Lanka because they are, or are perceived to have, a significant role in relation to post-conflict Tamil separatism.
35. Reference is again made to the decision in *MP and NT*. Following that decision, involvement in diaspora activities is not a necessary factor for inclusion in the first risk category in *GJ and others*.
36. The appellant's written submissions provide a more detailed summary of the basis of SM's claim and the findings of fact made by Judge Adio. It is submitted that his history brings him within the UNHCR's Eligibility Guidelines in relation to Sri Lanka, dated 21 December 2012. It is submitted that SM's recorded escape from detention and breach of his bail conditions would also increase the risk arising from the perception that he is a terrorist sympathiser.
37. It is submitted that there was a real risk that the Sri Lankan authorities would perceive the appellant and her partner as together forming a new LTTE-supporting family unit. Information about the appellant would, if not already known, be established during her interview or monitoring on return. The appellant could not be expected to lie about her marriage to SM in order to avoid persecution, nor can she be expected to lie about her own and her original family's support for the LTTE.
38. There were cumulative risk factors which apply to the appellant, not only relating to her own personal circumstances and previous adverse interest by the authorities but as a result of her association with her husband.

Conclusions

39. There is, to some degree, an air of unreality in the determination of a protection claim in relation to this appellant given that it seems that she will be granted leave to remain on Article 8 grounds in terms of her family life with her partner, SM, a recognised refugee. The unreality of the situation is particularly sharply focused in

terms of the contention that the appellant would be at risk on return as a single female head of household. The hypothetical situation contemplated is that the appellant would be returning to Sri Lanka on her own, without her partner, and (according to her latest witness statement) with her daughter, born on 8 August 2014.

40. Nevertheless, that is the basis upon which her protection claim is to be assessed.

41. The current country guidance, from *GJ and others*, is as follows:

- (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."*

42. On behalf of the appellant the risk category said to apply to her is contained in (7)(a) of the guidance, that is, individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state etc.

43. It is accepted on behalf of the appellant that she is not in fact a threat to the integrity of Sri Lanka as a state. It is also the case that she does not claim to have been involved in post-conflict Tamil separatism. She has not undertaken 'diaspora activities'. It is contended however, that the risk to her is in terms of how she will be perceived by the Sri Lankan authorities.

44. Furthermore, as was said in *MP and NT* (the Court of Appeal decision in *GJ and Others*), at [50], diaspora activism is not the only basis upon which a returning Tamil might be regarded as posing a current or future threat to the Sri Lankan state, although that would usually be the principle basis. It was said that there may be other, untypical, cases where the evidence shows particular grounds for concluding that the Sri Lankan government might regard an individual as posing a current

threat to the integrity of Sri Lanka as a single state even in the absence of evidence that the person has been involved in diaspora activism.

45. It is worth emphasising the guidance in *GJ and others* in terms of the approach of the Sri Lankan authorities being based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. 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 government. Thus, the appellant's own background of having been persecuted by the Sri Lankan authorities is not at all determinative of her appeal. However, as always, past persecution is a relevant factor to take into account in accordance with paragraph 339K of the Immigration Rules, quite apart from authority.
46. In addition to the preserved positive findings to which I have referred at [6] above, there was further evidence from the appellant asserting relatively recent interest in her by the Sri Lankan authorities. I have also set out that evidence above. The appellant's recent witness statement in which she describes contact by the Sri Lankan security forces with her family in 2016, asking as to her whereabouts is, to reiterate, dated 29 March 2017.
47. I bear in mind the positive credibility findings which are preserved. The core of the appellant's account has previously been found to be credible. However, I do not accept that the appellant's evidence of this recent interest in her by the Sri Lankan authorities is reasonably likely to be true.
48. Although not determinative of the credibility of that evidence, it is in my view significant that the evidence is contained in a witness statement dated the day before the hearing before me. The appellant said that a visit by the people that her mother thought were from the CID was in 2016, although she could not remember when in 2016. I do not attach much significance to the fact that the appellant was unable to remember when in 2016 she was informed by her mother of the visit by the CID, but I do regard it as significant that the evidence only emerged as recently as it did. It is to be remembered that the appellant was represented by solicitors in 2016 in relation to her appeal to the Court of Appeal in respect of the decision of the DUTJ who dismissed her appeal. The skeleton argument in support of that appeal is dated 3 May 2016. In the manuscript application for permission to rely on the additional evidence before me, made at my direction on the day of the hearing, it is not suggested that that evidence was notified to the appellant's solicitors earlier than the date of her most recent witness statement. It is similarly not suggested that at the CMR that took place before the President on 12 January 2017 any further evidence from the appellant was to be adduced, suggesting again that the appellant had not notified her solicitors of those events by that date.
49. Furthermore, the appellant's evidence is that the authorities were aware of the death of her brother P, who died in 2008. The appellant's oral evidence before me was ambiguous in terms of whether the enquiries made of the appellant's mother included enquiries as to the whereabouts of the appellant's deceased brother. Of

course, such an enquiry would not be reasonably likely given the authorities' knowledge of his death and what is now accepted as the sophisticated intelligence of the Sri Lankan authorities.

50. Furthermore, although the appellant said in evidence that her mother did not tell her too much about the enquiries made by those individuals who are said to have spoken to her, the fact of the matter is that the appellant's evidence in relation to their visit, and in respect of which the burden of proof is on her, was vague in terms of what she was told by her mother.
51. In all the circumstances, I am not satisfied that the appellant has given a credible account of recent interest in her by the Sri Lankan authorities.
52. It is argued on behalf of the appellant that her association with her partner, SM, would increase the risk to her. I have summarised the post-hearing submissions in relation to Judge Adio's conclusions in his appeal. It is argued that even under *GJ and others* his appeal would still have been allowed. On behalf of the respondent it is contended that not only would SM's appeal not have been successful under current country guidance, her association with him would not create or enhance any risk to her.
53. The appellant's skeleton argument in response to my directions in relation to SM's appeal, by and large, accurately summarises the findings made by Judge Adio. My summary below of Judge Adio's findings in SM's appeal however, is drawn directly from his decision. He concluded that SM's sister had joined the LTTE in 1994. The authorities in Sri Lanka were interested in SM's household. He was arrested and detained in 2001 by the authorities and released in early 2002.
54. Judge Adio found that SM had given a credible account of how the LTTE forced him to work for them and when he decided not to engage in arms training he was required to work for them as a driver. The LTTE themselves detained him in November 2006 because he refused to join arms training. He escaped from that detention and it was thereafter that he became a driver for the LTTE. That was when he returned to the house where he had been living.
55. He was accused by paramilitary organisations of having connections with the LTTE and when he was working in his uncle's shop the LTTE forced him to help them. He was arrested in October 2008 by the pro-government group PLOTE, and detained in a camp. During his detention which lasted a period of five months he was tortured. He was released in March 2009 after his uncle paid a bribe.
56. Judge Adio found at [57] that once the authorities became interested in him in 2001 "he was always going to be a target". His sister had joined the LTTE and he concluded that it was reasonable to find that the authorities would be likely to know about that. His uncle's shop and his own home "could have been noticed with the presence of LTTE members".

57. Two of SM's brothers fled Sri Lanka because of harassment by the Sri Lankan authorities. One of his brothers, who gave evidence before Judge Adio, had claimed asylum in the UK. He found that there was a reasonable likelihood that the authorities were interested in SM's family which led the authorities constantly to check on him, and thereafter to arrest him. His account of being arrested in 2009 was consistent with the other evidence that he had given.
58. He also found that the interest of the authorities in SM was more than random and was connected to the history of SM's family and SM himself. SM was arrested in 2009 and released on payment of a bribe. He was required to report but failed to do so and Judge Adio concluded that this would be recorded as an escape "of some sort".
59. Deciding the appeal with reference to the then country guidance in *TK*, he concluded, amongst other things, that SM had a previous record as a suspected LTTE supporter and had been detained but had failed to comply with reporting "restrictions". There was a perception therefore, that he would be regarded as someone who is not complying with bail conditions. The authorities would perceive SM as being linked to the LTTE.
60. There is plainly an air of artificiality in seeking to assess whether SM would, if his appeal were heard today on the basis of the current country guidance of *GJ and others*, be found to be a person who came within that guidance and would thus be at risk on return. Judge Adio quite properly decided the case on the basis of the country guidance as it then was, and there is no difficulty in understanding why it was that he decided to allow the appeal on the basis of the evidence before him and in the light of that guidance.
61. In the respondent's submissions, a comparison is made between SM and the appellant NT who was the second appellant in *GJ and others*. However, each case is fact specific and I do not believe that my assessment of this appellant's appeal would benefit from a comparison of SM's circumstances with that of one of the appellants in *GJ and others*. That is quite apart from the fact of the differences in their circumstances.
62. The focus for my deliberations must be the facts and circumstances of this appellant with reference to the current country guidance and background material. I can see however, that a definitive conclusion that SM would, even now, succeed in his appeal would be a significant factor in the assessment of risk to this appellant, by reason of her association with him. The converse is not the case.
63. On the basis of the information before me, and taking into account the findings in his appeal with reference to current country guidance, I cannot see that the evidence would establish that SM, *considered alone*, comes within the risk category contended for in the guidance, namely at (7)(a), being individuals who are or are perceived to be a threat to the integrity of Sri Lanka as a single state etc. The evidence does not lead to a conclusion that he is or would be 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. In this I assume that everything relevant to his circumstances has been put before me, particularly bearing in mind the opportunity for post-hearing submissions.

64. I used the expression “considered alone” in the preceding paragraph. That means that I do not however, rule out the reasonable likelihood that, considered with the appellant, his case in terms of risk may, in the hypothetical exercise of considering whether he would succeed in an appeal on the basis of existing country guidance, derive support from hers (and as explained below, hers from his).
65. As already indicated, I reject the appellant’s evidence of any recent adverse interest in her in terms of visits by security forces to her home. This puts into context the contention that the appellant would be at risk as a lone female head of household in a militarised zone. The fact is, she has her parents in Sri Lanka. There is no basis from which to conclude, in its own right absent an established risk otherwise, that the appellant would be a lone female head of household. She could live with her parents and younger sister. Accordingly, I do not consider that the decision in *PP (Sri Lanka)* assists the appellant in that respect.
66. I should also say that since the hearing of this appeal before me, the President of the Upper Tribunal gave guidance on the same issue on the remittal of the case of PP to the Upper Tribunal, now reported as *PP (female headed household; expert duties) Sri Lanka* [2017] UKUT 00117 (IAC). In that case, to summarise, he concluded that a Tamil female single head of household residing in the former conflict zone of northern and north eastern Sri Lanka, may be at risk on return in various ways by members of the security forces. Factors to be taken into account are also the subject of guidance. However, for the reasons I have given, I do not consider that this, as a distinct factor, is significant in this appellant’s case.
67. A person’s previous involvement with the LTTE, or even their family’s involvement, on its own is unlikely to lead the Sri Lankan authorities to a conclusion that such an individual would be a risk to the integrity of the Sri Lankan state. The objective of the authorities is now to identify those working for Tamil separatism and to destabilise the state, as explained in *GJ and others*. To that extent, the appellant’s reliance on her historic links with the LTTE is not a sufficient basis from which to conclude that she would be at risk on return. Past persecution is plainly a factor to be taken into account, as I have already made clear. But the decision in *GJ and others* establishes the context within which an assessment of terms of future risk in Sri Lanka is to be made with reference to past persecution.
68. In the respondent’s skeleton argument it is suggested that it is difficult to see on what basis the Sri Lankan authorities would see the appellant as a threat now, given that she does not claim to have taken part in any pro-Tamil activities since arrival in the UK. The authorities’ sophisticated intelligence would have turned up nothing that would cause her to be of further interest, it is argued.

69. However, it is also important to bear in mind the UNHCR guidelines for risk factors which in *MP and NT* are said to be relevant. This appellant is a person with former family links to the LTTE. Although historic association as I have indicated would not of itself be sufficient, the death of one of the appellant's brothers was, *relatively* recently, published in an LTTE newspaper and his obituary notice seems to have been on the internet in May 2013. That, as I understand it, is the meaning of the DUTJ's finding that his obituary notice was downloaded from the internet in May 2013, although the source of that finding was not referred to by either party before me, and it is to be remembered that he died in 2008.

70. Returnees are routinely asked about LTTE links during the redocumentation process at the Sri Lankan High Commission, according to evidence recorded at [137] of *GJ and others*. That paragraph states that:

"He [Professor Rohan Gunaratna] confirmed that it was his understanding that when being re-documented for return to Sri Lanka at SLHCs abroad, applicants were routinely asked about past LTTE links. There were no detention facilities at the airport; if a returnee was of interest by reason with past or current links with known LTTE front organisations abroad, they would be invited for interview once they had returned home, rather than at the airport.

71. At [306]-[310] the following evidence is set out:

306. President Rajapaksa has stated repeatedly that the GOSL's approach to security is now intelligence-led. The security services debriefed thousands of Tamils at the end of the civil war and the GOSL has available to it sophisticated, high quality intelligence, enabling it to evaluate and assess the risk posed by particular individuals both within and without Sri Lanka.

307. Sri Lankans returning without a Sri Lankan passport will require an Emergency Travel Document for which they need to apply at the SLHC in London. Full disclosure of all relevant identity information is given in the process of obtaining a TTD. An applicant completes a lengthy disclosure form and is then interviewed at the Sri Lankan High Commission in London; the information received is sent to the Ministry of External Affairs and the Department of Immigration and Emigration in Colombo. Files are created and records verified; if the authorities agree to issue a TTD, the MEA in Colombo emails the document to the Sri Lankan High Commission in London where the TTD is stamped, a photograph added, and issued to the applicant.

308. During the re-documentation process in the United Kingdom, or at the airport on return, a forced returnee can expect to be asked about his own and his family's LTTE connections and sympathies.

309. Those with Sri Lankan passports returning on scheduled flights will be able to walk through Colombo airport without difficulty, unless their names are on a "stop" list, by reason of an outstanding Court order or arrest warrant. Those on a "watch" list are not stopped at the airport but will be monitored

and if considered to be a destabilisation risk, may be picked up from their home area.

310. There are no detention facilities at the airport. Although individuals may be interviewed at the airport by the security forces, the Sri Lankan authorities now aim to move returnees relatively quickly out of the airport and on their way to their home areas and to verify whether they have arrived there soon afterward. If the authorities have an adverse interest in an individual, he will be picked up at home, not at the airport, unless there is a "stop" notice on the airport computer system. There is no evidence that strip searches occur at the airport; the GOSL's approach is intelligence-led rather than being driven by roundups and checkpoints as it was during the civil war."

72. In the light of the foregoing, it seems to me to be at least reasonably likely that on return the appellant would be questioned and that such questioning would reveal her own background and those of her family members. Even without such questioning there is a reasonable likelihood that the process of redocumentation would establish her background in any event. She would, if not already known at the time of questioning, have to reveal her relationship with SM. It is reasonable to conclude that her brother's 'martyrdom' and the 2013 newspaper article about him would also be known to the authorities, or would be revealed by the appellant, having formed part of the background to her claim in the UK, and about which she could be expected to be asked.
73. Whilst it is accepted that the appellant is not in fact a risk to the Sri Lankan state, the combination of factors in her background and in her relationship with SM is a sufficient basis from which to conclude that she is reasonably likely to be perceived as such a risk. That conclusion is informed by the UNHCR's guidelines, albeit that those guidelines are not determinative.
74. The risk to the appellant is not established because of hers or her family's historic association with the LTTE. It is based on what could be described as a reasonably likely perception by the Sri Lankan authorities of 'persistent links' with the cause of Tamil separatism, through her family and in her association with SM, who as an individual and through his family has also been associated with that cause.
75. In all these circumstances, I am satisfied that the appellant has established to the required standard that she does face a well-founded fear of persecution for a Convention reason, namely her imputed political opinion. Accordingly, her appeal is allowed on asylum grounds. It follows that her appeal is also allowed on Article 3 grounds.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision having been set aside, the appeal is allowed on asylum grounds, and human rights grounds with reference to Article 3 of the ECHR.

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

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

Upper Tribunal Judge Kopieczek

26/06/17