Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/04995/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 25 June 2018	**On 9 August 2018**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M T M N
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present and not represented
For the Respondent: Mr J Kandola, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. It is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

DECISION

BACKGROUND

1. The Appellant is a national of Sri Lanka. He appeals against the Respondent's decision dated 11 March 2015 giving directions for the Appellant's removal to Sri

Lanka pursuant to section 10 Immigration and Asylum Act 1999 and refusing his protection and human rights claims.

2. The Appellant's appeal against the Respondent's decision was initially dismissed by First-tier Tribunal Judge Andonian by a decision promulgated on 13 July 2016. The Appellant appealed that decision in relation to the protection claim only. As such, Article 8 ECHR is not in issue except insofar as that arises in relation to the Appellant's medical condition. Judge Andonian's decision was set aside by Deputy Upper Tribunal Judge McClure by decision dated 2 September 2016 on the basis that it disclosed an error of law. The appeal was remitted to the First-tier Tribunal.

3. By a decision promulgated on 15 August 2017, the Appellant's appeal was allowed by First-tier Tribunal Judge Kaler on asylum and Article 3 grounds. By a decision promulgated on 19 February 2018, I set aside that decision on appeal by the Respondent on the basis that it contained material errors of law. My decision is appended to this decision for ease of reference. The Appellant was not present nor represented on that occasion. I determined that the appeal should remain in this Tribunal and gave directions for a further resumed hearing to re-make the decision.

4. The appeal came before me again on 10 April 2018. Again, neither the Appellant nor his representatives attended. I could not be sure that the Appellant himself had notice of the hearing if in fact his solicitors were no longer instructed. Accordingly, I adjourned that hearing for a further fourteen days. My adjournment decision promulgated on 25 April 2018 is also appended to this decision as it deals also with one substantive evidential issue which I will come to in due course.

5. By an e mail dated 26 April 2018, the Appellant's solicitors, Jein solicitors, informed the Tribunal that they have lost contact with the Appellant and therefore no longer have instructions. That was confirmed also by a letter dated 25 May 2018. The Appellant has not informed the Tribunal that he now acts in person or that he has changed solicitors and accordingly the solicitors continue to be notified of the hearing. However, since they do not have instructions, understandably, they did not attend the hearing. I was though satisfied on this occasion that the Appellant had been notified of the hearing date. He did not attend nor seek an adjournment or write to explain his absence. Accordingly, I determined that it was in the interests of justice that I should proceed to determine the appeal. I heard brief submissions from Mr Kandola but I have otherwise determined the appeal on the papers before me.

LEGAL FRAMEWORK

6. In order to be recognised as a refugee an appellant must show that he has a well-founded fear of persecution for one of five reasons set out in Article 1(A) of the 1951 Refugee Convention ie for reasons of race, religion, nationality, membership of a particular social group or political opinion. The 1951 Convention is interpreted in European law through Council Directive 2004/84/EC ("the Qualification

Directive"). The Qualification Directive is incorporated in UK law through The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and the Immigration Rules ("the Rules").

7. Section 8 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("Section 8") provides that the behaviour of an applicant for asylum may be damaging to his credibility if he exhibits behaviour which is designed or is likely to conceal information, mislead or obstruct or delay the handling or resolution of his claim or the taking of a decision in relation to that claim. Those behaviours include where a person fails to make an asylum claim before being notified of an immigration decision or being arrested.

8. Article 3 of the 1950 European Convention on Human Rights prohibits torture, inhuman or degrading treatment. It is an absolute right from which there can be no derogation. An appellant must show that there are substantial grounds for believing that there is a real risk that the consequence of removal would violate his rights under Article 3.

9. In relation to the issue of whether Article 3 ECHR is breached based on the Appellant's medical condition, the test is also one of whether there is a real risk of serious harm contrary to Article 3. There is a high threshold. Based on the ECtHR Grand Chamber decision of N v UK [2008] ECHR 453 and the House of Lords' judgment in the same case, in GS (India) v Secretary of State for the Home Department [2015] EWCA Civ 40, Laws LJ concluded that cases where a breach of Article 3 would be found were confined to so-called "death bed" cases ([66] in GS). Although the Grand Chamber has potentially extended the category of cases which may be described as "very exceptional" in Paposhvili v Belgium [2016] ECHR 1113, I remain bound by GS (India) and N. In any event, the Grand Chamber made clear in Paposhvili that the threshold remains a high one ([183] of the judgment: "substantial grounds have been shown for believing that [there is] a real risk").

10. Similarly, in relation to whether the Appellant can succeed in establishing a claim that the risk to him of committing suicide breaches Article 3 ECHR, the threshold is a high one. Whether the Appellant's subjective fear (if accepted as credible) is one which is objectively well-founded is a factor material to the risk but not determinative. The effectiveness of any mechanisms in the receiving State to counter the risk is also relevant. The risk of suicide has to be causatively connected with removal. The risk of suicide must be considered at the stages prior to removal, during removal and after removal and if there exists a risk in the UK, the assessment of risk may involve a comparison between the risk to the Appellant if he remains in the UK and that which would arise if he is removed (see J v Secretary of State for the Home Department [2005] EWCA Civ 629 – "J").

11. Whether the Appellant is able to succeed based on his medical claim and/or the risk that he will commit suicide if returned is also capable of engaging Article 8 ECHR and, in particular, the question whether there are "very significant obstacles" to the Appellant's integration in Sri Lanka (paragraph 276ADE(1)(vi) of

the Rules). Again, though, the threshold is a high one. As Sales LJ (as he then was) said in Secretary of State v Kamara [2016] EWCA Civ 813, the issue is whether "… the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

12. The burden of proof is on the Appellant to establish his claim and that there is a real risk that he will be subjected to persecution or serious harm and/or that there are very significant obstacles to his integration in Sri Lanka. The assessment of risk must be considered at the date of the hearing before me.

THE APPELLANT'S PROTECTION CLAIM

Summary

13. The Appellant is a Sri Lanka national. He is a Muslim who (now) claims also that he is of Tamil ethnicity. His immigration history is set out at [2] to [4] of my decision promulgated on 19 February 2018 and I do not therefore repeat that. There is one issue relating to the chronology there set out which is central to the Appellant's claim and with which I need to deal as part of the evidence in this case namely whether the Appellant did in fact travel to Sri Lanka as he claims between 9 April 2008 and 3 May 2008 as he says he did. The Respondent disbelieved that claim based on evidence of a passport found in his possession which did not show exit and entry dates as claimed.

14. The assertion that the Appellant was in Sri Lanka between those dates is essential to his claim to fear persecution on return because the Appellant says that this is when he was detained by the Sri Lankan authorities on suspicion of having rented his house to a person linked with the LTTE and that one of the occupants had carried out a bomb blast on 25 April 2008. He has later said that he is also suspected of being more involved in the bombing by way of financing those responsible. The Appellant claims to have been detained on 27 April 2008 and held until 2 May 2008 when he was released following payment of a bribe and returned to the UK on the following day. The Appellant claims to have suffered torture during that period of detention at the hands of the Sri Lankan authorities.

15. When he returned to the UK, the Appellant still held leave to remain as a student. That leave was extended to 30 July 2011. Thereafter he overstayed. When he was encountered on 22 June 2012, removal directions were set. He then claimed asylum on 24 July 2012.

16. The Appellant claims still to be at risk on return as the Sri Lankan authorities came looking for him on 10 January 2009 and, when they could not find him, took his brother.

17. By way of background to the core protection claim, the Appellant also said that his father was kidnapped in Sri Lanka in December 2003 but later released. The Appellant claims that his father continued to receive threats after his release and later died of a heart attack. The Appellant (or possibly his uncle) continued his father's business after his father's death on 17 March 2004. The Appellant has also latterly claimed that his father was a LTTE supporter who also assisted that group.

The Respondent's Reasons for Refusal

18. The Respondent accepts that the Appellant is a national of Sri Lankan. He does not accept that the Appellant is of Tamil ethnicity but says rather that he is a Muslim who speaks the Tamil (and also Sinhalese) language. The Respondent rejected the Appellant's claim that his father was kidnapped or detained, that the Appellant was himself detained and tortured or that the Sri Lankan authorities had been looking for the Appellant in 2009.

19. The Respondent relied on Section 8 as damaging to the Appellant's credibility. The Respondent points to the fact that the Appellant had only claimed asylum after being notified of his liability to removal and has also admitted to obtaining a counterfeit work permit in order to work (illegally) in the UK.

20. The Respondent also pointed to inconsistencies in the Appellant's account as undermining his claim. Further, the Respondent drew attention to the country guidance in GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 ("GJ and others"). The Respondent rejected the Appellant's claim that he was of interest to the authorities on the basis that his account is not consistent with the categories of person there said to be at risk on return to Sri Lanka.

21. The Respondent considered the medical evidence said to show that the Appellant is suffering from mental health problems. At that stage, the Appellant had not produced any medical reports evidencing his condition. In any event, the Respondent rejected the medical claim as being of sufficient severity to give rise to a breach of Article 3 ECHR on return and drew attention to material said to show that Sri Lanka has facilities to deal with mental illness.

Evidence

22. The documents before the Tribunal for consideration in this appeal are:
    (a) The Respondent's bundle of documents including the interview record and a "reasons for refusal" letter dated 9 March 2015 as well as the Appellant's grounds of appeal;
    (b) The Appellant's bundles prepared for the First-tier Tribunal hearing which consist of a bundle A running to 169 pages and which includes the Appellant's witness statement dated 28 June 2016, various medical reports and a country expert report as well as other evidential documents, a bundle C which includes further medical evidence and a skeleton argument prepared for the First-tier Tribunal hearing and dated 6 August 2017. The covering letter lodging Bundle A suggests

that there should be an additional bundle of background material but that is not on the file. I note however that this was also the position before Judge Kaler (see [2] of her decision) and it appears from Bundle A that this also includes relevant background material;

(c) Updated medical evidence dated 28 July 2017 and 2 August 2017;
(d) Sundry documents relating to the Appellant's passport;
(e) The country guidance decision of GJ and others.

Appellant's Witness Evidence

23. The Appellant's own evidence consists of the following:
    - Letter dated 26 July 2012 setting out claim for asylum;
    - Answers in screening interview: 3 August 2012;
    - Statement of Evidence Form: Combined Interview and NINO application: 27 February 2015;
    - Witness Statement dated 28 June 2016

24. There is a significant inconsistency between what is said by the Appellant in his initial claim as set out in his letter dated 26 July 2012 and screening interview on the one hand and the account given by him when interviewed substantively on 27 February 2015 and his statement thereafter on the other. It is therefore necessary to set out fully the basis for the initial claim.

25. The Appellant's letter dated 26 July 2012 reads as follows:

> "I got problem in Sri Lanka because I came to UK for save my life. In 2003 my father kidnap by unknown person. They ask money from him and he give the money and he got release by them. Some few month he got phone calls by them asking money. He got sick and he died by [heart attack]. He was a gem business. That time I'm involve with his business. I was scared to stay in Sri Lanka and I came to UK by agent in 11/09/2005. In 2008 I went holiday to Sri Lanka and they kidnap me on 20/04/2008. And they ask money from my brother Ls 5000000/=. And I got release by them. I was sent leave in my country. I came back to UK 2008 May 03."

26. At his screening interview, in answer to the question "What was your reason for coming to the UK?" the Appellant said this:

> "In LKA 30/12/2003 some unknown people came and ask for money. My father didn't give the money and they kidnapped my father. My brother gave money to the people who have kidnapped my father and then after one week they let him go. Then after that my father received threatening [??]. After that my father had heart attack and died. I was carrying on with my father's business and I was [??]"

27. I pause to observe that those two accounts are broadly consistent and suggest that the Appellant has feared for his position in Sri Lanka since 2003 because his father was targeted for money due to his position as a businessman and that the Appellant had taken over that business. The Appellant went on to add during his screening interview that the "unknown people" had kidnapped his brother and the Appellant therefore feared that they might kill him.

28. The Appellant was asked whether he was wanted by any law enforcement authority in any country ([5.2]). He answered that he was not. He was also asked if he had ever been detained as a suspected terrorist ([5.4]). Again, he answered "No".

29. In relation to other questions, the Appellant described his race or ethnicity as "Muslim" ([1.7]) and his religion as "Islam" ([1.8]). He said that his primary languages were "Tamil, Sinhala and some English". The interview was conducted in Tamil. The Appellant said that he had lost his passport ([2.3]). He said he did not have any medical conditions ([3.1]).

30. The Appellant was not substantively interviewed until 27 February 2015. The Appellant did not attend his first interview on 10 October 2012 because he said he was unwell. The Appellant was on temporary release and it appears from the Respondent's decision letter that he was not tracked down until January 2014 when he was found illegally working. The Appellant did not attend interview on 4 December 2014 or 19 February 2015 as he said he was unwell.

31. At the interview on 27 February 2015, the Appellant described his ethnicity as "Tamil speaking Muslim". He claimed to have no contact with his family in Sri Lanka. That family includes his mother, brother, four maternal uncles and two paternal uncles. He did not know the whereabouts of his mother or brother. He said that three of his maternal uncles were in Pananthura and one in Colombo. His paternal uncles lived in Ehaliyaguda. Until about eighteen months previously, his mother had contacted him and he had contact with one of his paternal uncles ("H") but had lost contact.

32. For the first time, at [A28], the Appellant said that he feared the Sri Lankan authorities and that they would murder him. He went on to explain that this fear arose from events when he returned to Sri Lanka to see his mother on 9 April 2008, returning to the UK on 3 May 2008. He said that four people came to his house and asked for him. They said they were from the "TID". They accused him of renting out a house he owned to LTTE supporters who had carried out a bomb attack. He says that they thought he was involved with the bomb blast. That bomb attack was said to have happened in Colombo on 25 April 2008. He later clarified that it was in Kelaniya ([A126]). He said that sixteen people were said to have been killed.

33. The Appellant says that, when interviewed by the "TID", he denied that he had rented out the property to these people and told those detaining him that "KP" who is the accountant for his father's business was responsible for renting out that property. He said at [A116] that KP had not been taken away for questioning.

34. The Appellant says he does not know to where he was taken because he was blindfolded. He says that his accusers did not believe his story. He says he was beaten on the first, second and fourth day of his detention. First, he was slapped, then beaten under his feet with a pole and his hands were submerged in hot water. He says he was kicked in his chest and his feet were trampled. He says that he

suffered burning injuries to his right fingers and his right ring finger was beaten with a stick; he still found it difficult to bend that finger. He was also injured so badly on the bottom of his feet that he could not place them on the ground ([A60]). He also mentioned that he was subjected to sexual abuse.

35. The Appellant says that he was detained for a week and then his paternal uncle "H" used his influence to get the Appellant released. He paid a bribe of 70 lakhs. The Appellant says that he was taken by car to where his uncle's car was waiting and he was transferred to his uncle. He says that those detaining him told him to leave the country as his life would be in danger and that his uncle should send him back to the country where he had come from ([A75]). He confirmed at [A77]) that he understood that those who detained him were encouraging him to return to the UK.

36. The Appellant then added that his brother had been taken away by the authorities on 10 January 2009. He said that the authorities had come for the Appellant but because he was not there, they had taken his brother instead. He claimed that his brother had not been seen since. He said at [A112] that he assumed that the authorities were still interested in him in 2009 because they still thought he was the person who had rented the house to the bombers.

37. The Appellant was then asked why he had originally come to the UK in 2005. He repeated the claim that it was unsafe for him to stay in Sri Lanka following his father's death and he was brought to the UK with the help of a Muslim agent. For the first time, he connected his father's detention in 2003 with the Sri Lankan authorities. He said at [A86] that the authorities arrested his father for "LTTE links". He said that those links were because his father had a Tamil business partner. In the course of that answer, the Appellant also said that he was educated in a school attended by many Tamil boys who were his classmates.

38. The Appellant went on to describe how "CID" officers had taken his father away and after four days he was released but had suffered injuries. The Appellant said that his uncle [H] had told the Appellant that his father would be released because he did not have any problems. The Appellant did not know how his father was released but thought it may have been due to [H]'s influence. The Appellant says that his mother was concerned for his safety because he had too much contact with his Tamil friends.

39. When asked why he had said nothing of the claim of detention and torture in 2008 when he first claimed asylum, the Appellant firstly said that the interviewing officer who screened him said there was not enough space to write it down and that he would get a chance to give a full account during the substantive interview. When asked why he did not include this claim in his letter dated 26 July 2012, he said this was because he was afraid to mention it because he thought he would be deported. The screening interview was about one week after that letter by which time the Appellant was no longer claiming to be afraid to mention it.

40. The interviewing officer also asked why the Appellant had referred to "unknown people" in his screening interview rather than the authorities ([Q102]) to which the Appellant again replied that it was because he was scared to speak about this. That is obviously inconsistent with his answer to [Q95] where he said he had mentioned it but it was not written down (as the interviewer points out at [Q103].

41. In terms of his exit from Sri Lanka, the Appellant said that he left with the assistance of his uncle, using his own passport. He said that there was a person with his uncle who guided him through the airport, introduced the Appellant as his son at the counter and went with him to the boarding hall. The Appellant says he was able to walk very slowly and that the wounds to the bottom of his feet had been treated at a clinic between his release on 2 May 2008 and departure on 3 May 2008. He could not remember the name of the clinic and has produced no documents in that regard.

42. The Appellant said that he was not involved in politics in Sri Lanka. He said he had attended protests in the UK. There are some photographs in the bundle. He did not remember the year or date of the protests.

43. In terms of his medical condition, the Appellant said that he had been diagnosed with a condition but did not know the name of it. At this time he was living with a Portuguese friend. He also had a Hungarian girlfriend. He had been in the relationship for five to six months at that time. She lived in Manchester but he did not want to go and visit her there as he did not like leaving the house. She therefore visited him. The Appellant admitted having worked, using a counterfeit work permit. He said he had stopped studying in 2009. Someone at the mosque had obtained the permit for him.

44. The Appellant has provided one quite full witness statement dated 28 June 2016 for the First-tier Tribunal hearing. In that statement, he describes himself as a "Tamil speaking Muslim". He says that, although his religion is Islam, he has "always considered [himself] as a Tamil because [his] mother tongue is Tamil language and [he] was grown up with Tamil people".

45. The Appellant goes on to describe his background in Sri Lanka. He says that his family were relatively wealthy and owned a lot of properties. He has provided a number of documents relating to the sale and purchase of land, on the face of it by his father. He says that his father went into business with a Tamil man. As a result of growing up and being educated with Tamils, he learnt about their history from these friends and his parents. He says as a result of the discrimination suffered also by Muslims, his parents began to support the Tamil struggle. He mentions the conflict which arose between the Muslims and Tamils but says that this was resolved.

46. For the first time, at [5] of his statement, the Appellant says that his father "also clandestinely supplied the LTTE with leather products such as shoes and belts, which they use for military purpose".

47. The account of his father's arrest at [7] of the statement is broadly consistent with his account at substantive interview (save that the date is wrongly given as 2013 not 2003; I place no weight on that discrepancy). The Appellant does though say that it was his brother and not his uncle [H] who bribed officers to get his father out of detention. Given that the Appellant claimed at interview that he did not know how his father was released and claims that his brother disappeared in January 2009 so that he could not have asked his brother in the interim, this inconsistency is unexplained.

48. The Appellant's account of why and how he came to the UK in 2005 is broadly consistent. However, he now says that he was brought to the UK with the help of a student recruitment agent. That differs from his earlier account of being assisted to leave with a Muslim agent (with the inference that he was helped to leave because of the interest of the authorities). Since he has to accept that he entered as a student, the introduction of the agent as a "student recruitment agent" appears designed to overcome what would otherwise be a discrepancy.

49. The Appellant says that when he came to the UK as a student, he continued to express support for the Tamil cause by taking part in protests and demonstrations.

50. The Appellant says that by 2008, he did not consider that he would be at risk and did not encounter any problems with the authorities because they were not interested in him at that time (which appears somewhat inconsistent with his claim to have been at risk from them since 2003/2005 because of his father's LTTE links).

51. The Appellant now says that the bomb blast occurred at "Piliyandala Bus Stop near Kelaniya". He says that twenty-six people were killed and about fifty wounded. He says that he heard about this on the news and did not travel thereafter to avoid any problems. It is unclear why the Appellant would expect any problems if, as he says, he did not consider the authorities to have any interest in him when he came to Sri Lanka openly through the airport on his own passport only a few days earlier. The Appellant of course denies that he had any involvement with the bombing or the bombers and had no reason to think that the authorities would hold him responsible at that time.

52. The Appellant's account of his detention and ill-treatment is broadly consistent with what he said at substantive interview. He has though expanded somewhat. He says that he was told that it was his house that was rented to the bombers, but the authorities did not show him any evidence of this. He says that he admitted it was one of his properties. In order to admit this, he must have been told the address of the property but has not mentioned that. He says, for the first time, that he was also accused of funding the attack and working for the LTTE in the UK.

53. The Appellant also says, apparently for the first time, that he was made to sign a document which was written in Sinhalese which he thought must be a confession. Since the Appellant said in his screening interview that he also speaks Sinhalese, it

is surprising that he did not know the nature of this document and only guessed it was a confession.

54. The Appellant's account of how he left the country is, again, broadly consistent with the substantive interview. He says that the person he was with (arranged by his uncle [H]) appeared to have influence, that this person accompanied him through the airport and that his passport was stamped and not swiped. The Appellant says that his feet were still hurting but he took painkillers. He did not claim asylum on entry as he did not wish to do so and he was very unwell. He did not bother to do so afterwards as he had a valid visa and felt safe.

55. Following his return, the Appellant says that he continued to attend his college and successfully completed his diploma in 2009. After that he applied to another college for a diploma in computing and applied for further leave which was granted on 30 October 2009.

56. The Appellant says thereafter that he started to have bad dreams and flashbacks and could not sleep but did not want to discuss this with the doctor or his friends and he did not want to disclose the sexual abuse. He says that he tried to self-medicate using alcohol and partying. He became unable to concentrate on his studies and began to get depressed and to neglect himself.

57. When the Appellant became an overstayer, he says he wanted to return to Sri Lanka, but his mother said that it was not safe. He says that this made him depressed. He asked friends what to do. He was told that he could not claim asylum because he had overstayed and that his claim would not succeed as he is a Muslim. He therefore decided to stay until the authorities had lost interest. It is at this point that he obtained a passport with a forged visa which he used to work (see decision promulgated on 19 February 2018 annexed hereto for background).
58. The Appellant was encountered in the UK and detained on 22 June 2012. Those arresting him found and confiscated the passport which contained the forged visa. The Appellant says he was unable at that time to find his own passport. He was then detained for removal. His removal was stopped by way of a judicial review. The Appellant says that he did not tell his solicitor about what happened to him in Sri Lanka because he did not want to mention the sexual abuse. He therefore wrote a letter himself which he says was not accurate or detailed because he is not fluent in English.

59. The Appellant repeats his assertion that he did not give all details of his claim when screened because the interviewer was in a rush and unwilling to write everything down. He also says he was worried about disclosure of his details.

60. The Appellant admits that he continued to work after he was released on this occasion. He says that since his detention, his mental health has worsened, particularly since detention brought back memories of what happened to him in Sri Lanka, and that he did not receive appropriate treatment in spite of requests.

61. The Appellant has included limited evidence about his relationship with his Hungarian girlfriend who he says he met at a counselling session at IAPT. It is not clear why she would attend a session in London when he told the interviewer that she lives in Manchester. There is no mention of that fact when he speaks of the development of their relationship. He says that they began to live together in June or July 2014 which is also inconsistent with his account at interview that she lived in Manchester and he only saw her when she came to visit him. He says that he intends to marry her. There is no evidence that he has done so.

62. The Appellant's account of what happened to his brother is also broadly consistent with what was said at interview. The Appellant says that his mother and uncle have tried to trace his brother but in vain. It appears therefore that the Appellant has resumed contact with his family in Sri Lanka.

63. The Appellant says for the first time that his mother has complained to the Human Rights Commission ("HRC") in Sri Lanka about the disappearance of his brother. He also says for the first time that the Sri Lankan authorities continue to harass her by visiting her from time to time. She says that they ask about the Appellant and demand that she stop looking for the Appellant's brother. The Appellant says that the authorities visited her again in September 2013 and she was forced to change her contact details and move into hiding, that he lost contact with her for about eighteen months (which is consistent with what he said in interview) but that he has managed to resume contact but that they cannot speak freely because of concern that the authorities are monitoring phones.

64. The Appellant provides evidence about his mental state. In addition to what I have already recorded on this subject, he says that his mental health deterioriated following refusal of his asylum claim on 9 March 2015. He says he wants to end his life. He also refers to being prescribed medication and receiving counselling. He says that the only reason he remains alive is his girlfriend who looks after him. He also attends demonstrations and political events in the UK which he says helps him to vent his anger.

Medical Evidence

65. The Appellant relies on the following reports:
    - Psychiatric reports of Dr Saleh Dhumad dated 24 December 2015 and 25 June 2016
    - Psychiatric assessment by Barnet Assessment Service dated 26 October 2015
    - Various medical reports from the Appellant's GP

    In addition, I have a copy of the Appellant's medical notes.

66. I begin with the reports of Dr Dhumad since those are the more comprehensive assessments. The first was written following an interview on 13 March 2015. It appears that the date on the report may be incorrect as it suggests that Dr Dhumad wrote the report nearly nine months later. He refers in his second report to the first being dated 10 April 2015 which would be more consistent. The second report is

based on an interview on 20 June 2016. The interview for the first report lasted two hours; the length of the second interview is not stated. I note that the second report makes mention of a report of Dr Frank Arnold dated 4 December 2015 which I do not appear to have before me. From what is said about that report by Dr Dhumad however, the conclusion in that report appears to concur with Dr Dhumad's own assessment. I note that Dr Dhumad does not appear to have had sight of a full copy of the Appellant's medical notes.

67. Dr Dhumad's first report concludes that the Appellant's presentation "is consistent with a diagnosis of Severe Depressive Episode with somatic symptoms". The symptoms noted are low mood, lethargy, suicidal feelings, feelings of hopelessness, inability to sleep, poor appetite and concentration. Dr Dhumad also concludes that the Appellant suffers from Post-Traumatic Stress Disorder ("PTSD") symptoms such as "avoidance, flashbacks and nightmare". In Dr Dhumad's opinion, the Appellant meets the criteria for diagnosis of that condition.

68. In terms of causation, Dr Dhumad notes that the Appellant has given a history of exposure to traumatic incidents in terms of arrest and torture. He goes on to say that "[h]is mental disorder and current symptoms have been worsened by the fear of deportation and worry about his life". In the opinion of Dr Dhumad, the nature of his symptoms "is consistent with psychological reaction to extreme traumatic events". That conclusion is broadly repeated in the second report.

69. Dr Dhumad has considered the risk of suicide if the Appellant is returned to Sri Lanka. In his first report, he notes that the Appellant's depression, PTSD and hopelessness about his safety and future in Sri Lanka gives rise to a risk of suicide if removed. At that time, the Appellant's main protective factors were said to be the Appellant's girlfriend and mother. In the opinion of Dr Dhumad, the threat of removal "will trigger a significant deterioration in [the Appellant's] mental suffering" and will increase the suicide risk. Dr Dhumad does not believe that the risk can be minimised within the removal process.

70. It is worthy of note at this point that the Appellant apparently attempted suicide by an overdose of medication on 18 July 2017. Following that episode, he was admitted as a voluntary patient for treatment from 18 to 29 July 2017. As a result, his solicitors indicated that he would not be able to give evidence at his appeal hearing on 7 August 2017. According to the report from the local mental health NHS Trust, he was discharged on 28 July 2017 on the basis that he no longer had suicidal thoughts and his PTSD symptoms appeared to have improved.

71. By way of treatment for the Appellant's condition, Dr Dhumad recommends antidepressant medication and counselling. He opines however that the Appellant's mental health condition is unlikely to improve "without a safe resolution of his fear". In his second report, Dr Dhumad notes that the Appellant "has good insight into his condition and has been compliant with medication, and psychological therapy". In spite of the treatment which Dr Dhumad understands the Appellant to have undergone, in his second report, Dr Dhumad notes that the

Appellant's condition has deteriorated. He repeats his conclusion that the Appellant's condition is unlikely to improve without treatment and "safe resolution of his fear".

72. Dr Dhumad was asked in both reports to deal with the Appellant's fitness to attend hearings and give evidence. In both reports, Dr Dhumad confirms that the Appellant is fit to give evidence but, due to his poor concentration, may struggle under cross-examination and advises that the Appellant is given extra time and regular breaks.

73. Dr Dhumad was asked to comment on the Appellant's participation in pro-Tamil demonstrations in the UK. Dr Dhumad considered that this is a healthy way for the Appellant to express his anger towards the Sri Lankan authorities and to meet like-minded people and other victims. Dr Dhumad considers such attendance to be therapeutic.

74. Dr Dhumad was asked whether it is possible that the Appellant is malingering. He rejects that suggestion. He points out that he has considered not only the account given by the Appellant but has also examined the symptoms which the Appellant reports and his emotional reactions during the interviews. He has also considered the opinions of other medical professionals. Dr Dhumad opines that it is "extremely difficult to feign a full-blown mental illness (as opposed to individual symptoms)."

75. I turn then to the evidence from the local Mental Health NHS Trust, beginning with a report dated 26 October 2015. That is written by Dr J Ish-Horowicz who saw the Appellant in the Psychiatric Outpatients' Clinic on 26 October 2015, that is some six months after Dr Dhumad's first interview. The report notes that the Appellant was referred from IAPT who considered that they could not offer the Appellant Cognitive Behavioural Therapy for his PTSD because the Appellant was suffering from "severe depression and self-neglect".

76. The Appellant's report to Dr Ish-Horowicz is that he has suffered with nightmares since 2011. He considered that "his current symptoms" had been triggered by his arrest and immigration detention in the UK in 2011. This in fact occurred in 2012. The Appellant reports that his condition had worsened in the past year and he could no longer cope.

77. I note that the Appellant reported to Dr Ish-Horowicz that he suffered so much from anxiety that he avoided leaving the house. He says that there are "no activities that he enjoys doing", "he does not have any friends and does not go out". The Appellant is said to have reported that "he does not go out socially as he has no motivation, feels too tired and does not enjoy being around people". That is inconsistent with what is reported to Dr Dhumad about attendance at pro-Tamil demonstrations and also includes no mention of the Appellant's girlfriend who he told Dr Dhumad was a protective influence against his suicidal feelings.

78. It appears from Dr Ish-Horowicz's report that he did have access to the Appellant's medical notes as he records that the Appellant is taking anti-depressant medication as prescribed by his GP and "is not previously known to secondary mental health services".

79. There are some inconsistences in the Appellant's account to Dr Ish-Horowicz compared with his other accounts in addition to those noted at [77] above.

80. First, he says that he suffered a head injury when tortured by the Sri Lankan authorities. That has never been mentioned elsewhere.

81. Second, he again reports that his father died of a heart attack which the Appellant feels was "due to the stress of his arrest and mistreatment". As I also note at [118] below, that is inconsistent with the independent evidence of the cause of the Appellant's father's death.

82. Third, he says that his brother helped him to leave Sri Lanka in 2008 whereas elsewhere he has said that it was his uncle who assisted him.

83. Fourth, if, as Dr Ish-Horowicz records the Appellant as saying, the Appellant was unable to study following his return due to his distress at the events in Sri Lanka it is somewhat surprising that he was able to convince the Home Office to give him further leave to remain as a student in October 2009. In order to do so, he would also have to persuade an educational establishment that he genuinely intended to study. In the Appellant's favour on this point, though, I do note that there is no evidence of any qualifications obtained after 2008 and the Appellant told the officer during his screening interview that he had not studied since 2009. On the other hand, that the Appellant says he was unable to do anything due to his mental health condition after his return is inconsistent with having been found to be working in 2012 and having worked between his release in 2012 and when he was arrested again in January 2014 (see [20] of the Appellant's witness statement dated 28 June 2016).

84. Fifth, the Appellant was arrested and detained in 2012 and not 2011.

85. Sixth, the Appellant told Dr Ish-Horowicz that his mother and brother had been displaced by the civil war in Sri Lanka. There is no mention of his brother's disappearance, which he says elsewhere was at the hands of the authorities in 2009.

86. Dr Ish-Horowicz summarises his assessment as follows:

> "This 29 year old man presents with a 1 year history of very low mood and biological features of depression. This is on a background of worsening symptoms consistent with PTSD for the last 3-4 years including nightmares, hyper-arousal, hyper-vigilance and avoidant behaviour. This is on a background of several trauma and loss events in his late teenage life and an uncertain future in the UK."

87. In terms of risk, Dr Ish-Horowicz notes the Appellant's suicidal ideation but comments that he has no active suicidal thoughts or plans and there is no history of suicidal acts or self-harm. Dr Ish-Horowicz notes that there is a risk of self-neglect. He comments that the Appellant has attended IAPT and Triage appointments and appears keen to engage with services. The diagnosis is given of severe depressive disorder and PTSD, consistent with the diagnosis of Dr Dhumad. The care plan put forward is for onward treatment of the PTSD and depression through the complex care team and increased activity and social support to encourage the Appellant to engage with others.

88. I have read and taken into account also the evidence of the Appellant's GP which is in the form of letters confirming his condition and medication. I give that evidence limited weight though as there is no underlying assessment or reason given for the diagnosis. It is not clear what expertise the Appellant's GP has in relation to mental illness.

89. I have also read through the Appellant's medical notes. Those date from 5 January 2006 to 21 June 2016. There is reference in a note dated 5 January 2009 to the Appellant having "recently travelled to Sri Lanka". That might possibly relate to the visit in 2008. There is, however, no mention of physical injuries consistent with the Appellant's account of torture.

90. There is also a record of a GP visit on 6 May 2008 (a few days after the Appellant's return from Sri Lanka) for a skin complaint. No mention is there made of any recent visit to Sri Lanka nor of any injuries sustained. On the Appellant's account, he suffered extremely severe injuries to his feet during his detention in Sri Lanka and when he left Sri Lanka could scarcely walk. It is surprising that this was not mentioned to the GP or noted by him.

91. There is a report in June 2012 of an elbow fracture to the Appellant's right arm following a fall. That might provide an alternative explanation for the problems which the Appellant says he has in his right hand which he claims were caused by ill-treatment in detention. In any event, the injury did not trigger any mention by the Appellant of previous injuries suffered to the same arm/hand. The first mention of back pain is in November 2012.

92. The first reference that I can find in the notes to any mental health problems is 13 November 2013 when the Appellant reported insomnia. In the GP's note of 27 January 2014, he records the following:

> "attended with friend/housemate. Insomnia continues now for abt 3-4 m, feels low in mood. Can't sleep without sleeping tabs. ??prev in detention centre and feels this is causing some anxiety and restlessness. Difficult to get much history. Appetite is poor. Admits to low mood. Occasional thoughts of self harm but would never act on these."

93. I appreciate that the GP reports that it was difficult to get much history from the Appellant but the above suggests that the trigger for his problems in the

Appellant's mind was his detention in the UK and not any events which he says occurred in Sri Lanka.

94. The GP records report anxiety with depression as a first incident on 24 February 2014 in the following terms:

> "has immigration problems since coming to uk asking for ??refugee, this makes him anxious all time and depressed, esp over last 2 months, and affect his sleep a lot, tried zopiclone tab but did not help, no suicide thoughts, no hallucination or delusions, smoke 10 cigarettes per day, never drink alcohol or take unlicensed drugs, lives with flat mates, single, main concern is lack of sleep, does not work."

Again, that account includes no mention of the events in Sri Lanka in 2008.

95. The Appellant was prescribed medication for his condition. It appears that some appointments may have been made for him to see a specialist team in May 2014 but that those were cancelled. The first report of a "stress related problem" is noted on 10 June 2014 with a history recorded that the Appellant is "awaiting asylum".

96. It appears that the Appellant then changed GP in June 2014 and on 2 July 2014 the following is noted:

> "when he went back to live in sri lanka in 2008 he was tortured for a week, he fled and came to England he is currently seeking asylum and is living with friends government has been reviewing his citizenship for 2 years has been given a lot of sleeping pills to help deal with the memories of his torture has also been prescribed medication for his stomach and back pain is not keen on the sleeping pills as he does not like the way it makes him feel, would like to discuss alternatives. Scored 33/70 on mental nhs wellbeing self assessment questionnaire which is a very low score, provided him with information on how to increase wellbeing based on nhs guidelines. However think discussion with dr is best due to his history all his medication is finished, discussed with [P] to see [A] today."

That is not long after the Appellant was arrested again whilst working and pending his asylum interview (which was set at that time for 4 December 2014).

97. On seeing a doctor, it is recorded that the Appellant is on medication, that his depression is still not good and that he is getting bad dreams "following torture in Sri Lanka in 2008" and has "post traumatic stress like symptoms". The doctor increased the dosage of medication and noted that the Appellant would self-refer to IAPT for counselling. There are notes of arrangements for an appointment with IAPT in August/September 2014. By 21 November 2014, the Appellant records having seen a counsellor and awaiting a further appointment. He did not attend a further appointment on 4 December 2014 because he says that he was not aware of it. There are some letters from the IAPT team in February 2015 and April 2015 but no record of any further appointment. In March 2015, the Appellant was referred to Freedom from Torture. There is a letter from that organisation dated 15 April 2015 refusing to see the Appellant due to resource problems. I do not take that into account adversely to the Appellant.

98. On 20 May 2015, there is reference to a letter having been received from a counsellor which I assume is from the IAPT and that they had referred him to secondary care. By 19 June 2015, there is reference to a counsellor but that no appointment had been arranged and that counselling would be beneficial to deal with the Appellant's PTSD. There is reference to letters from Edgware Community Hospital Mental Health on 26 October 2015 (which appears to be the report from Dr Ish-Horowicz as it coincides in terms of date and the GP provides this to the Appellant in December 2015 for his appeal hearing).

99. In February 2016, there is a record that the Appellant has not heard from the complex care team (presumably following on from Dr Ish-Horowicz' report). It is noted that the complex care team contacted the GP in March 2016 to report that the Appellant was screened on 8 January 2016 and was to see a psychologist and psychiatrist but there is nothing further. On 20 June 2016, there is a record that the Appellant has an appointment with "MH" (I assume mental health) in the following week and that the Appellant "feels well in self and mood stable". That is the last relevant record in the bundle.

100. There is no evidence in the bundle that the Appellant has been receiving regular counselling and no report from any treating psychologist or psychiatrist.

101. I take into account Dr Dhumad's expertise. His report corroborates the Appellant's account to have suffered torture on the basis that Dr Dhumad accepts that the account given is consistent with the symptoms which Dr Dhumad has observed and that this is an explanation for the Appellant's symptoms of PTSD. I also take into account that Dr Dhumad does not believe that the Appellant is malingering or feigning his illness.

102. What I have found less helpful is the failure by Dr Dhumad and Dr Ish-Horowicz to explain why it is that the Appellant would only suffer from depression and PTSD from 2013/2014 if the cause of those conditions were the treatment he claims to have suffered in 2008. It may be that this is because Dr Dhumad at least appears not to be aware that the Appellant did not see his GP for any mental health problems until 2013/14. Dr Dhumad reports, for example, at [8(b)] that the Appellant told him that he went to see his GP within one week of arrival (which is accurate) and did not disclose the sexual abuse he claims to have suffered due to embarrassment. That might explain why he did not report that aspect of his ill-treatment but does not explain why he did not report his other injuries. More importantly, the impression he appears to have given Dr Dhumad as there recorded is that he did tell his GP that he was mentally unwell and was given medication the name of which he could not remember. Perhaps if he had told Dr Dhumad that he actually saw the GP to report a skin abscess, cyst and acne, Dr Dhumad might have formed a different view.

103. That Dr Dhumad has understood from what the Appellant told him that this was an ongoing problem from 2008 is underlined by what is said at [8(c)] that the

Appellant reported a deterioration of his mental health following his detention in 2012. In fact, by then, the Appellant is not recorded as having any mental health problems at all. I recognise of course that a person may not always go to a GP with mental health concerns but this is not a man who never saw a GP in that period. He attended his GP regularly. Nor can this be explained away by a reluctance to ask for help as he clearly did so from late 2013.

104. I accept that the onset of PTSD may not always be immediate (although I am provided with no medical evidence to this effect). It does though undermine the weight which I am able to give to Dr Dhumad's report insofar as it concerns causation. I will come on to deal with Dr Dhumad's assessment of suicide risk later in this decision.

105. Dr Ish-Horowicz does comment that the Appellant has had a worsening of symptoms over the past three to four years. Although that also is inconsistent with the medical notes, that would mean an onset of symptoms dating back to late 2011-2012 which is still three to four years from the events which the Appellant reports as causing his problems.

106. As Dr Ish-Horowicz remarks, the Appellant's symptoms have to be seen against a background of other trauma events in his late teenage years which may include the death of his father which occurred on 17 March 2004 when the Appellant was aged just under eighteen. In fact, the events which the Appellant attributes as causative of his problems did not occur until 2008 when he was aged nearly twenty-two years. Dr Ish-Horowicz also points to the Appellant's uncertain future as a potential factor. The Appellant was of course also arrested and detained by the UK authorities due to his lack of immigration status in 2012.

107. For completeness, I record that I have no medical evidence regarding the physical injuries which the Appellant claims to have suffered as a result of his torture. I have already noted certain aspects of the medical notes which undermine the Appellant's account at [90] to [91] above.

Expert report of Dr Chris Smith

108. Dr Smith has prepared a report which is unsigned and undated. I draw no adverse inferences from that. Dr Smith is clearly an expert in relation to Sri Lanka and his evidence has been taken into account by this Tribunal, most notably for my purposes in GJ and others.

109. Dr Smith's evidence is of particular assistance to me in relation to the plausibility of the Appellant's account from the viewpoint of a Muslim who is not necessarily of Tamil ethnicity. Dr Smith deals with this in the case summary as follows:

> "…the Appellant, is a Tamil speaking Muslim from Sri Lanka…..The Appellant considers himself to be a Tamil and at a young age became sensitised to the plight of Tamils in Sri Lanka. The Appellant's father was an LTTE sympathiser…."

110. Dr Smith sets out at [23] and [24] of his report the relationship between the LTTE and the Muslim communities which he describes as "mixed". He notes that the LTTE expelled a large number of Muslims from the North of Sri Lanka in 1990 but Muslims have traditionally been sympathetic to the Tamil cause, especially Tamil speaking Muslims and there is a considerable history of cooperation. He also points out that the LTTE would be keen to engage the help of a Muslim who would not be viewed with the same degree of suspicion as a Tamil.

111. Thereafter, Dr Smith's report proceeds on an acceptance of the Appellant's account that he views himself as a Tamil, that he and his family were sensitive to the Tamil cause, that his father was an LTTE sympathiser or supporter and that therefore the authorities would view the Appellant in the same way as a Tamil, particularly if his account is to be believed of having assisted (or having been thought to have assisted) LTTE activists.

112. I take into account Dr Smith's views that torture continues in Sri Lanka so that, if the Appellant were detained, he would be at real risk of ill-treatment. I note what Dr Smith says about the risk of the authorities having a record of the Appellant's detention and escape and whether that would be available to the authorities at the airport now. It is of course though the Appellant's case that he was released on payment of a bribe by his uncle. I note Dr Smith's evidence about what is likely to happen if the Appellant's details are on a stop list or watch list. However, that assumes that his details are so held. It is not the Appellant's case that there is any court order or arrest warrant held against him.

113. Dr Smith, at [51] of his report suggests that a bribe was paid to an immigration official in order for the Appellant to leave Sri Lanka. However, that does not appear to be the Appellant's case; rather that he was able to leave because of his uncle's influence. However, I do note what Dr Smith says at [49] and [50] of the report about the method by which a person may be assisted to leave the country via a complicit immigration official who will not swipe the passport but only stamp it. That is consistent with what the Appellant says happened.

114. Dr Smith notes that there is evidence that the Sri Lankan authorities have increased surveillance of diaspora activity and that the UK is one of the countries which is most likely to be targeted. He notes that the authorities take photographs of demonstrations but says that it is not clear what happens to those photographs. As he says, to monitor those people against photographs of those returning would require some sort of facial imaging ability and to his knowledge and recollection there are no photographs taken at the airport. He also records that the Tamil diaspora is heavily penetrated by Sri Lankan security forces. He concludes that if the Sri Lankan authorities have identified the Appellant as someone of interest in the diaspora, this would be another reason for him to be on a stop list or watch list.

115. Dr Smith is of the opinion that, in spite of political changes, the Appellant would still be at risk on return (assuming of course that his account is credible).

116. Dr Smith has also commented on the availability of treatment for mental health problems although notes that he cannot comment on any more than the availability of those facilities. He notes there is a paucity of psychiatrists. There are fifteen in Colombo. He says, however, that waiting lists are not long due in part to the failure to recognise mental health problems and also the stigmatisation of mental health issues. He notes the high incidence of mental health problems due to the war and also that Sri Lanka has one of the highest suicide rate in the works which has prompted the authorities to develop "an institutionalised national strategy" to prevent suicide ([91]). He notes information from the British High Commission as to the availability of mental health institutions in Colombo for up to 1400 patients and other smaller facilities elsewhere ([92]).

117. In terms of medication, Dr Smith says at [94] that there is a "significant range" of medication available in Sri Lanka, particularly in Colombo and that pharmaceuticals are subsidised by the government and in any event cheap because they are imported from India, South East Asia, Singapore and Thailand. There is evidence, again from the British High Commission that the authorities provide free drugs and care to patients with mental health problems. Dr Smith notes that the Appellant would need an ID card in order to access services and points out the difficulties of the Appellant obtaining one if he is indeed of interest to the authorities. Dr Smith sets out at [137] the areas of the Appellant's daily life which would be affected if he is unable to access an ID card or unwilling to do so due to the interest in him by the authorities.

Other evidence produced by the Appellant

118. The Appellant has produced his father's death certificate which confirms the date of death given but not the cause which is given as "disseminated liver disease" (and not a heart attack as the Appellant claims). The certificate confirms the Appellant's father's profession as "businessman".

119. At [A-25], there is a certificate of registration of the Appellant's father's business ("FM") which is described as a seller of "textile, shop items, radio sets, shoes, gems etc" and an exporter of gems. The Appellant's father is stated to be the only owner.

120. There are a number of land documents which consist of deeds of sale, purchase and transfer of various parcels of land. It is not clear to me what those are said to show other than that the Appellant's father had sufficient money to buy and sell land.

121. The Appellant has produced various educational certificates showing that he has passed a Diploma in Business Administration from Business College of London and also that he has obtained at least two certificates in English language proficiency.

122. The Appellant has produced background evidence relating to the bus bombing which is said to lie at the heart of the Appellant's problems in 2008. The attack is said to have occurred in Piliyandala, a suburb of Colombo. Kelaniya which is where the Appellant says it occurred is a completely different suburb which appears to lie about thirty kilometres from Piliyandala.

123. One of the reports of the bus bombings mentions an arrest by the authorities of one of the men suspected of carrying out the attack ([A-76]). The footnote [8] to that account is to another report which is not included in the bundle but which I have viewed for completeness. That is a report dated 7 May 2008. That reports the arrest of this suspect and two other suspects on the same day as the bombing and the confession given to the authorities by the first suspect. It also provides details of the movements of the person who confessed and the other suspects prior to the bombing and notes that they were staying in a boarding house owned by a lady at Jalathara in Piliyandala.

124. The Appellant has provided a document dated 23 September 2015 which is said to show that the Appellant's mother has lodged a complaint with the HRC. The address of the HRC in Colombo is not the same as that on their website. It is though of course possible that they have moved in the interim.

125. I note at this point that all of the documents which the Appellant has produced which are personal to him, that is to say his father's death certificate, registration of his father's business, land documents and letter from his mother to the HRC are written in Sinhalese as they are clearly stated to be translated from that language. It is of course plausible that official documents such as death certificates, title deeds and business registrations would be required to be written in Sinhalese. That does not though explain why the Appellant's mother would handwrite a letter in Sinhalese. The HRC is an organisation which investigates complaints of abuse, many of which are likely to come from Tamils. If the Appellant's mother's first language were Tamil, it would surely be more natural for her to write the letter in that language.

126. Finally, the Appellant has produced a letter from the British Tamils Forum ("BTF") dated 5 August 2014 which confirms receipt of the Appellant's completed application. There is no indication that the Appellant had any involvement with that organisation before August 2014 nor that he has any involvement beyond mere membership.

127. The Appellant has produced nine photographs (largely unclear) of demonstrations which I assume are to show that he has attended demonstrations in the UK. None are dated. None identify where the Appellant is shown on the photographs. There is a further article regarding a protest in March 2014 calling for the release of a Tamil activist and his daughter who it is said had been recently arrested by the Sri Lankan police. It is not said that the Appellant was involved in any way with these individuals nor that he was prominently involved in the protest.

128. The Appellant has also included background material relating to attacks on Muslims in Sri Lanka by Sinhalese Buddhists. I do not understand that to have any relevance to the Appellant's claim. He does not claim to fear the Sinhalese on account of his religion.

129. Finally, in addition to the evidence produced by the Appellant, I have independently had regard to the most recent background evidence published by the Home Office, in particular the report entitled Country Policy and Information Note: Sri Lanka: Minority religious groups" ("the CPIN"). That report makes the point that most Tamils are Hindu ([3.1.2]). It also confirms that most Muslims speak Tamil as their first language. Reference is however made to a report from the Minority Rights Group International dated December 2016 which notes that in the Sri Lankan context, the term Muslim denotes both ethnicity and religion ([5.2.1]). It is also noted at [7.2.5] that, according to the Australian Government, Department of Foreign Affairs and Trade 2017 report, "most Muslims sided with the Government (Sinhalese) forces during the civil conflict" although goes on to make the point that since then religious tensions between Muslims and the Sinhalese Buddhist majority have increased (which is confirmed by the articles which the Appellant produces: see [128] above).

Discussion, Findings of Fact and Conclusions

130. I have considered whether the Appellant has made a genuine effort to substantiate his claim and whether his account is credible, coherent and plausible and does not run counter to available specific or general information relevant to his case (see paragraph 339L of the Rules).

131. I begin with the issue of the Appellant's ethnicity. He is a Muslim. At [14] of her decision (which I have set aside), Judge Kaler says that she accepts that the Appellant is both a Muslim and a Tamil and that the "two are not mutually exclusive". I accept this as a potentially accurate statement. However, the question is whether the Appellant regards himself as a Tamil and what flows from that in terms of risk.

132. The Appellant, when screened, initially referred to himself as a Muslim when asked about his ethnicity. He said his religion was "Islam". He said that he spoke Tamil, Sinhalese and some English. He has been interviewed in Tamil. That is consistent with what is said in the CPIN that most Muslims speak Tamil as their first language. It is though not entirely consistent with other documents. As I observe at [125] above, even if the fact of some of the Appellant's documents being translated from Sinhalese is because the documents are official, it is not clear why the Appellant's mother writes in Sinhalese.

133. I take into account what is said by Dr Smith about the relationship between Muslims and the LTTE and that there was empathy between the groups notwithstanding the LTTE's treatment of the Muslims in 1990. It is therefore

plausible that a Muslim might associate himself with the plight of Tamils. The Appellant also says that many of his classmates were Tamil. Again, it is plausible that he would have learnt of their plight and empathised with it as a member of a religious minority. That does not mean though that the Appellant regards himself as a Tamil as is shown by his original assertion that he is a Muslim (with no mention of Tamil ethnicity).

134. I also have to consider the credibility of the Appellant's claim that he and his family had LTTE sympathies even if a Muslim might plausibly empathise with the Tamil plight. As is noted in the CPIN, based on an Australian report, most Muslims are said to have sided with the Sinhalese Government forces during the conflict and not the LTTE. I have already noted that the Appellant himself said that he spoke Sinhalese when first interviewed and many of the documents he produces are translated from that language. It is clear therefore that his parents understood and are able (and may even prefer) to communicate in that language. That is not necessarily indicative of Sinhalese sympathies but I find it difficult to accept that someone who actively supports the Tamil and LTTE causes would use that language out of choice.

135. I accept that the Appellant's father was a businessman and a successful one. The land transaction documents suggest that he was not poor and he had a registered business. The Appellant says that he had a relatively wealthy upbringing. It is of course possible that such a man as the Appellant's father would have a Tamil business partner (although if he did, that person is not named on the business registration certificate). I do though doubt the plausibility of that account for two reasons. First, to have that connection, certainly during the conflict, might well have been damaging to that business. Second, the Appellant's paternal uncle [H] is said by the Appellant to have such influence with the authorities that he managed to get the Appellant's father released (on one version of that account), the Appellant released and managed to get the Appellant out of Sri Lanka on his own passport without adverse interest of the authorities. I consider it highly implausible that the authorities would regard as influential a person who is the brother of someone suspected of LTTE involvement.

136. I also consider it damaging to the Appellant's credibility on this aspect of his account that he did not mention the authorities' interest in his father when first asked. I do not accept his explanation (itself contradictory) that he did not mention this because he was scared but did mention it and it was not properly recorded (although I do accept that the account written in the screening interview does appear to tail off mid-sentence). I do not accept the Appellant's explanation about the letter dated 26 July 2012 that his English is not good enough to write a detailed and accurate letter. The Appellant has produced two certificates indicating a proficiency in English and his diploma which he passed was no doubt taught in English. He had also lived in the UK by this time for about seven years.

137. I also do not accept the Appellant's later addition to this part of his claim that his father was helping the LTTE, still less the even later addition made in his

statement that his father was supplying goods to them. No doubt, given the nature of his business, his father could have done so (although the business description does not include leather goods) but the inconsistency between this and earlier accounts leads me to conclude that this is an embellishment designed to bolster this part of his account.

138. It is plausible that the Appellant's first account of events is a true one. On that account, his father was kidnapped by unknown people but released following his brother paying a ransom. If, as appears to be the case, the Appellant's father was wealthy, it is possible that individuals may have targeted him for his money. I do not though accept that this gives rise to a risk to the Appellant now. He managed to remain in Sri Lanka after his father's death in March 2004 for a further eighteen months before he left for the UK, during which time he says he was running the business. There is nothing to suggest that he (or his brother) were targeted at that time. The Appellant, in his letter dated 26 July 2012, says that he was kidnapped but not until 2008 and that he was released on payment of a ransom by his brother. Since, by 2008, the Appellant was living in the UK and not running his father's business, it is not credible that the kidnapping (if he was in fact kidnapped) has any link to the Appellant's father's status as a wealthy businessman.

139. It follows from this that I do not accept that the reason the Appellant came to the UK is because he or his family feared for his safety. As I remark at [48] above, the assertion by the Appellant that he came to the UK with the assistance of an agent appeared, initially at least, to be an attempt to suggest that he had to be helped to leave Sri Lanka and left there in some clandestine manner. It is though clear from the Appellant's statement that, if an agent was used at all, this was a student recruitment agent. There is no suggestion that the Appellant was not able to leave Sri Lanka openly as a student. In order to make the application to come to the UK as a student, he also made an application to the Sri Lankan authorities to obtain a passport. That is not the action of a person who claims to fear those same authorities.

140. I turn then to the events of 2008 which lie at the heart of the Appellant's claim now. I begin with the issue of whether the Appellant did in fact travel to Sri Lanka on 20 April 2008 and return on 3 May 2008.

141. The Respondent says in his reasons for refusal letter that this is not accepted because the Appellant's passport does not show that he travelled out of the UK at that time. The passport on which the Respondent relies is the one which we now know was seized by immigration officials when the Appellant was arrested and detained in July 2012. It was the one bearing a forged work permit visa (which the Respondent has now confirmed is forged). It is not clear if the passport itself is forged or genuine but I accept as likely that if the visa in the passport is forged then the passport itself is also not genuine (or not genuinely one issued to the Appellant).

142. The Appellant says his genuine passport is that numbered [ ]. He claimed when arrested in June 2012 that he had lost that passport. If that were the case, it would be difficult to accept that the passport produced bearing the exit and entry stamps is a genuine one. However, the Appellant has explained that he was not able to find it at the time he was arrested and detained, which is when he sought asylum. He has since found it. That is a plausible explanation. Moreover, it is supported by the Respondent's confirmation that this was the passport used not only for the first student application but also that made in 2009. I accept therefore that the passport on which the Appellant relies is genuine.

143. Of course, simply because the passport is genuine does not necessarily mean that the stamps are also genuine. However, I have no evidence to the contrary. Further, there is a note in the Appellant's medical records dated 5 January 2009 which indicates that the Appellant told his GP that he had "recently" visited Sri Lanka. The period between April/May 2008 is sufficiently close to warrant a description as "recent". I also accept as plausible that the Appellant would want to return to visit his family and April/May is not an unusual period within a college year to be able to take time out to do so. I accept therefore that it is likely that the Appellant did return to Sri Lanka on 20 April 2008 and came back to the UK on 3 May 2008. As an aside, I note that the Appellant returned to Sri Lanka on his own passport which further undermines the Appellant's case that the Sri Lankan authorities have or had at that time any interest in him as a result of his father's claimed allegiances or activities.

144. That the Appellant was in Sri Lanka at the time he claims to have been detained and tortured is capable of assisting his case but is of course not determinative of it. I therefore turn to consider whether his account of having been detained and tortured by the Sri Lankan authorities is credible.

145. I accept that the medical evidence is capable of corroborating the Appellant's account. Dr Dhumad in particular accepts that the Appellant's symptoms of severe depression and PTSD are consistent with the Appellant's account to have been detained and tortured as claimed. As I have already observed, though, Dr Dhumad has given no consideration as to why, if the Appellant was tortured as he claimed in April/May 2008, he did not report any mental health problems to his GP until November 2013, over five years later. Although the Appellant has offered some explanation for not mentioning his condition earlier – he says he was embarrassed to discuss the sexual abuse he claimed to have suffered – I do not have any evidence from Dr Dhumad nor indeed from the other medical professionals as to whether it is likely that a person with severe depression and PTSD would hide (or even be able to hide) those symptoms from a GP who he saw on a quite regular basis. The lack of evidence on this issue lessens the weight which I am able to give the medical evidence as corroboratory of the Appellant's account.

146. A medical expert can only give an opinion as to whether the claimed causation is consistent with the symptoms caused. It is not for the medical expert to determine a person's credibility as to the account given. Dr Ish-Horowicz in

particular has offered some possible alternative explanations for why the Appellant may be suffering from severe depression and PTSD aside his account of being detained and tortured (see [106] above).

147. I of course accept that, if they suspected the Appellant of assisting LTTE bombers, the authorities in Sri Lanka would be likely to arrest and detain him. I also accept as credible that, if they did arrest and detain the Appellant, they may well torture him. Notwithstanding the plausibility of the claim, however, I do not accept the Appellant's account as credible for the following reasons.

148. First, the Appellant did not mention the events of April/May 2008 either in his letter dated 26 July 2012 or when screened on 3 August 2012. I have already set out at [136] above my reasons for not accepting the Appellant's explanations for giving an entirely different account at that time. His explanations in that regard are also internally inconsistent (see [39] and [40] above).

149. Second, the background evidence does not support the Appellant's case that he was arrested for harbouring the LTTE bombers in one of his properties. I accept that the press reports show that there was a bomb attack on a bus on 25 April 2008. However, the location which the Appellant gave for that attack is not consistent with the press reports. Nor is his initial assertion that only sixteen people were killed (although I accept that this is a minor inconsistency and would not of itself be damaging to his credibility). Moreover, stemming from the documents disclosed by the Appellant there is a footnoted document which his solicitors did not include in the bundle which casts more light on the authorities' actions following the attack and which document undermines the case that he was believed to be the owner of the property rented to the bombers at the time of the attack. The property where they are reported to have stayed was reportedly owned by a woman whose name bears no similarity to the Appellant's name.

150. Third, the Appellant's account of why he was wanted by the authorities has changed over time. He started out by saying only that he was suspected of having rented the property to the bombers. He has since said that the authorities suspected him of having financed the attack, particularly in light of his presence in the UK. There is an inconsistency in the account. Even if I were to accept the initial claim made in this regard (which I do not), I consider the later part of that claim to be an embellishment. There is no evidence to show that the Appellant was active in his support of the Tamil cause before 2008 (and in fact little since). He did not even join the BTF until August 2014. There is nothing to suggest that the Appellant had such a profile that the Sri Lankan authorities would draw a connection between him and an LTTE bombing, particularly when he had not previously come to their attention.

151. Fourth, I consider the Appellant's evidence that he stayed indoors and tried not to travel around following the bombing in order to avoid any problems to be an embellishment. Even if I accepted the earlier part of the Appellant's account about any interest by the authorities in his father (which I do not), the Appellant

had entered Sri Lanka using his own passport and had no problems. Why then would he expect the Sri Lankan authorities to suspect him of involvement in a bomb blast to which he has avowedly no connection and where he had no involvement in the renting of the property to those arrested (even if they were staying at one of his properties which, reportedly, they were not)?

152. Fifth, if the authorities were really interested in the Appellant because one of his properties had been rented to the bombers, it is not credible that they would not then arrest [KP], the accountant who, on the Appellant's account, was responsible for renting the property to those accused of the bombing and whose name the Appellant had given to the authorities (on his account). Yet the Appellant says that [KP] was not picked up and questioned.

153. Sixth, if the authorities suspected the Appellant of being someone who had assisted (and possibly even financed) a bombing carried out by the LTTE which killed civilians, it is not credible that they would release the Appellant and even more unlikely that they would do so without any reporting conditions and following payment of a bribe, even if the Appellant's uncle [H] is as influential as the Appellant claims.

154. Seventh, I do not accept what the Appellant says about having signed a confession. If he had indeed confessed as he claims (or thinks) he did, it is even more unlikely that the authorities would have released him. He suggests that he does not know if he signed a confession or not because the document he signed was written in Sinhalese. However, he said when screened that he speaks both Tamil and Sinhalese (which is consistent with his parents understanding Sinhalese and being able to write also in that language). He would therefore know what that document was. Nor has he provided details of the address of the property which he says the authorities suspected he had rented to the bombers. That is information which I would expect him to know and that omission leads me to the suspicion that he may not be providing that information because he knows it is something which could be checked.

155. Eighth, the Appellant, when asked whether there were any reporting conditions placed on him, said that the authorities had told him to leave Sri Lanka as otherwise his life would be in danger and that he should return to the UK. Given what is said in GJ and others about the concern which the Sri Lankan authorities have about those involved in the Tamil diaspora, particularly in the UK, it is implausible that those same authorities would suggest that the Appellant, on his account a suspected associate, harbourer and funder of LTTE bombers, should return to a place which the authorities suspect is a base for the proliferation of such activities. I appreciate that GJ and others post-dates the period of time when these events are said to have happened but even on the Appellant's account, he claims that the authorities suspected him in part because he had been living in the UK.

156. Ninth, the Appellant's account of how he left Sri Lanka is implausible. I accept that the Appellant does say that he left Sri Lanka earlier than he had planned

to leave which might support his case that he was forced to leave by intervening circumstances. However, there is no independent evidence that the Appellant had intended to stay for one month. It is just as likely that he only ever intended to spend a fortnight in Sri Lanka which would be consistent with arrival on 20 April and departure on 3 May.

157. I accept, based on what Dr Smith says that it is not inherently implausible that the Appellant might be able to leave on his own passport if immigration officials were persuaded to turn a blind eye to the authorities' interest in the Appellant (although that is somewhat undermined by Dr Smith's assumption that a bribe was paid which is not the Appellant's case).

158. However, the Appellant says that he was so badly beaten on the soles of his feet that he could not put them on the ground. He says nonetheless that, twenty-four hours after being in that position, and somehow having managed to get treatment from a clinic (which he could not name), he was able to walk through an airport. The implausibility of the Appellant having such severe injuries is compounded by the fact that he saw his GP some three days later when he presented with a skin abscess and yet did not mention what he says were severe injuries and his GP apparently did not notice them. No medical evidence has been produced about any physical injuries and I have already set out at [90] and [91] above, why the medical notes do not corroborate the Appellant's account.

159. I accept as plausible that the Appellant might not claim asylum immediately on return even if he genuinely considered himself to be at risk. He had leave to remain as a student. That leave continued until 30 July 2011. That does not explain however why he did not claim until about one year later following his arrest and detention. That delay is damaging to this credibility (Section 8).

160. The Appellant also claims that there is continuing interest in him by the Sri Lankan authorities which is evidenced by his brother's disappearance in January 2009.

161. I do not regard as implausible the claim that the authorities would arrest and detain a family member of someone suspected of LTTE support if they could not find the person in whom they were interested. I do not accept as credible though this part of the Appellant's account for the following reasons.

162. First, it is not clear to me why the authorities would have any interest in the Appellant or any of his family in January 2009, even if the family were involved in renting a property to the bombers (which I do not accept). The authorities had arrested the bombers and one of them at least had confessed. The authorities had let the Appellant go on payment of a bribe and, on his account, had suggested he leave the country. It is inconsistent with that account that they would then pursue either the Appellant or his brother some seven months later. There is no report of any event in the interim which it is said might have resurrected the authorities' interest in the Appellant.

163. The Appellant says that his brother's disappearance is corroborated by his mother's letter to the HRC. Of course, if his mother had complained about her son's disappearance, that is capable of supporting the Appellant's account on this aspect. However, I do not accept that the Appellant's evidence does corroborate his account. First, as I have already noted, the address on the HRC letter does not match their website address. I do though accept that it is possible that the organisation has moved and I do not reject the letter for that reason alone. However, there is no explanation why the Appellant's mother would wait for over six years before complaining about the Appellant's brother's disappearance. Even if it is the case as the Appellant claims that his mother was visited by the authorities again in 2013 and told not to look for her son, it does not explain why she would not do so before then nor why it took her a further two years to do so. Furthermore, there is no copy of the complaint made. The only evidence is an acknowledgement letter.

164. The Appellant's account now of his brother being taken by the authorities is also inconsistent with his first account that his brother was kidnapped. This inconsistency further undermines this part of his claim.

165. Finally, the Appellant says that he will be at risk on account of his sur place activities in support of the Tamil cause.

166. I note what is said in Dr Smith's report about the ability of the Sri Lankan authorities to monitor UK demonstrations against the Sri Lankan government. However, Dr Smith does not go so far as to suggest that the authorities have the ability (as yet) to identify at the airport an individual who is not previously known to the authorities, as opposed to identifying within those demonstrations a person already known to them. For the reasons I have already given, I do not accept that the Appellant is a person already known to the authorities.

167. Further, the only evidence of the Appellant's involvement in diaspora activities is a small number of photographs and a letter confirming that the Appellant joined the BTF in August 2014.

168. As to the latter, I note that it was over six years after the Appellant claims that he returned from Sri Lanka following his detention and torture that he apparently formally affiliated himself to the Tamil cause. That coincides with the period when his asylum claim was under consideration. In any event, the letter shows nothing more than that the Appellant is a member and has paid a fee. There is no suggestion that the Appellant has been involved in any activities for the BTF or has taken up any leadership position within that organisation. That would not, without more, create a risk. The Sri Lankan authorities would be aware that those claiming asylum would seek to affiliate with the Tamil cause in support of that claim.

169. The photographs are very unclear. They show nothing more than a group of men carrying banners on a protest march. It is not clear whether one of them is said to be the Appellant. The photographs are undated and it is not clear whether all or some are taken on one occasion or several. I do not accept that these identify the Appellant as someone with any profile in Tamil diaspora activities such as would bring him to the attention of the authorities.

170. Finally, I come to the Appellant's delay in claiming asylum and to the impact of Section 8 more generally. As I have noted at [159] above, I accept that the Appellant might not have claimed asylum immediately on return to the UK in 2008 when he knew that he still had leave to remain in the UK. It is also understandable that he would not have claimed when his leave was extended as he would know that he was not then threatened with removal. However, there is no satisfactory explanation for his failure to claim once his leave had ended until June 2012 when he was encountered working illegally.

171. As I have noted at [30] above, even after the Appellant claimed asylum, he did not cooperate with the authorities in the investigation of his claim. Although, on the first occasion when he was due to be interviewed, he claimed to be too unwell, he was subsequently caught working again illegally and then failed to attend two further interviews, again claiming that he was too unwell. Even if it is the case that he was unwell, his failure to engage is also evident from the Tribunal's recent experience in relation to this appeal where the Appellant has failed to maintain contact with his own solicitors and has failed to attend hearings, even though the appeal has now been relisted on two occasions to allow him to do so.

172. Taken alone, I would not have considered the delay and failure to cooperate as damaging to the Appellant's credibility. Those are, though, additional factors which add to the other reasons for not accepting his claim as credible.

Summary of conclusions in relation to the Appellant's protection claim

173. I do not accept that the Appellant's father was of interest to or detained by the Sri Lankan authorities on account of any pro-Tamil activities. At the highest, I am prepared to accept that he may have been kidnapped for a ransom due to his wealth but no more and that does not suggest any interest by the Sri Lankan authorities.

174. It follows that I do not accept that the Appellant came to the UK in 2005 due to any risk to him from the Sri Lankan authorities. He came as a student and remained as such.

175. I accept that the Appellant may have returned to Sri Lanka in April/May 2008 but I do not accept his account of events which occurred during that period. I do not accept that he was detained and tortured by the Sri Lankan authorities during his visit. It follows that I do not accept that the Appellant is at risk from the authorities on account of anything which occurred when he was in Sri Lanka in

2008. Even if the Appellant was kidnapped as he first claimed, he was released on payment of a ransom and, as I note at [138] above, the kidnapping is not credibly linked to the Appellant's relationship to his father or his links with his father's business which he was not running at that time. This is therefore a random incident (if it occurred which I doubt) and does not provide evidence of a real risk of reoccurrence on return.

176. I do not accept that the Appellant's brother has been detained by the authorities and has disappeared as a result. Again, at the highest, his brother may have been kidnapped for money but if that is so, a ransom would have been demanded and the Appellant has not made such a claim. If the Appellant's brother has disappeared, that is not because of any connection with the Appellant and does not demonstrate a risk to him.

177. The Appellant may have been involved in some limited pro-Tamil demonstrations in the UK and has joined the BTF but neither of those factors gives rise to a risk to him on return.

178. Dealing with the risk factors as set out in the headnote in GJ and others, the Appellant is not someone who is or is perceived to be a threat to the integrity of Sri Lanka due to any significant role within the diaspora. There is no reason, based on my findings about the Appellant's past history, that he would be on a stop list or watch list. Whilst I accept what Dr Smith says about the likely outcome for a person on such lists, therefore, the Appellant is not at risk for that reason. None of the other factors even potentially apply.

MEDICAL CLAIM

179. The medical experts are consistent in their diagnosis of the Appellant's condition as involving symptoms of PTSD and including severe depression. I have though explained at [102] to [104] above, why I can give only limited weight to Dr Dhumad's opinion as to the cause of that condition. Dr Ish-Horowcisz accepts that the Appellant's problems might be explained by other causes. I accept therefore that the Appellant does suffer from mental health problems, including symptoms of PTSD.

180. In terms of the treatment which the Appellant has received for his condition, there is limited evidence of any counselling as advocated by Dr Dhumad and Dr Ish-Horowicz. Most of the evidence appears to have been prepared for the purposes of this appeal (see in particular the chronology taken from the medical notes set out at [89] to [100] above). According to his medical notes, the Appellant has been treated for the most part with anti-depressant medication.

181. The evidence I have about the availability of mental health treatment in Sri Lanka is what is said in GJ and others, and the report of Dr Smith (see [116] to [117] above). Dr Smith's views are echoed in the Respondent's decision letter. The Tribunal in GJ and others was not tasked with dealing with this issue specifically

but it arose in one of the cases. At [454] of the decision, the Tribunal noted that there were only twenty-five working psychiatrists in the whole of Sri Lanka and that money spent on mental health went only to the larger institutions in the capital cities which were inaccessible. That is a far cry from the evidence of Dr Smith who considers the up-to-date position in his report (as recorded at [116] to [117] above). I note in particular what he says about the availability and low cost (indeed free access) to medication which has been the main treatment offered to the Appellant in the UK. That is confirmed at [53] of the Respondent's decision letter.

182. I take into account Dr Dhumad's view that the Appellant's mental health would deteriorate significantly if he were returned to Sri Lanka. That is though predicated on Dr Dhumad's acceptance of the Appellant's account that he is genuinely at risk on return which I have found that he is not. Dr Dhumad has also not reviewed the Appellant's medical notes and has therefore formed various assumptions both as to the onset of the Appellant's symptoms and to the treatment which he is receiving, neither of which are borne out by those notes. For those reasons, I can give only limited weight to Dr Dhumad's conclusions about the likely effect of removal on the Appellant's mental health.

183. This is not a case where I have found that the Appellant has a genuine subjective fear which is objectively not well-founded but where I have found the risk and therefore also the fear to be fabricated. It is also the case that the Appellant has family in Sri Lanka in the form of his mother, possibly his brother and his uncles. He will therefore have support in that country which he does not have here (other than from friends and possibly from a girlfriend).

184. Even if the only generally available treatment for mental health issues in Sri Lanka is free medication, therefore, I conclude that there is no real-risk that the impact of removal on the Appellant's health will reach the threshold to meet Article 3 ECHR.

185. Turning finally to suicide risk, I have in mind the approach advocated by the Court of Appeal in J (see [10] above). Again, the question is whether there is a real risk that removal will breach Article 3 ECHR on the basis that the evidence shows that there are "substantial grounds for believing" that there is a real risk that the Applicant will commit or attempt to commit suicide before, during or after the removals process. I need to consider also whether the risk is causatively linked to removal and will therefore be heightened by the threat of removal or actual removal.

186. I repeat what I say at [182] above. If the Appellant is genuinely suicidal, then it is not caused by any fear or risk on return. For that reason, as also noted at [182] above, I can give limited weight to the conclusions of Dr Dhumad as to that risk.

187. I accept that there is evidence that the Appellant has not only reported suicidal thoughts but also attempted an overdose on 18 July 2017. The trigger for that event is unclear. Although by that date, the Appellant had one appeal which had been

determined against him, that decision had been set aside and remitted for redetermination. The attempt immediately pre-dated the second appeal hearing and it may therefore have been due to fear linked with that appeal process or a desire to avoid having to give evidence (for a second time). It was not though due to any fear of being imminently removed to Sri Lanka. I note also that the evidence shows that the Appellant was released following in-patient treatment on 29 July 2017 at which time he was said not to have suicidal thoughts and his PTSD symptoms were said to have improved.

188. There is also some disagreement between the medical professionals on this topic. Dr Dhumad considers there is a risk which cannot be managed during the removal process but acknowledges that the Appellant's mother and girlfriend are said to be protective factors against such risk outside the removals process. That conclusion has to be read of course in the context of Dr Dhumad's acceptance of the Appellant's account and his fear of return.

189. Dr Ish-Horowicz on the other hand notes that the Appellant has suicidal ideation but has no active suicidal thoughts or plans and that there is no history of suicidal acts or self-harm. There is of course now one such attempt but, as I have already noted, unconnected with the removals process.

190. Since I do not accept for reasons I have given that the Appellant has any genuine fear of return to Sri Lanka, I find that, even though the Appellant's mental health may occasionally give rise to suicidal thoughts (and on one occasion a failed attempt), that is unconnected with removal. For that reason, the evidence does not support a real risk that removal will increase the Appellant's propensity to commit suicide (when compared with any risk arising from his mental health condition which may eventuate if he were to remain in the UK).

191. Although I accept that treatment in Sri Lanka for mental health problems may not be as good as that in the UK, the Appellant would have the additional protective factors in Sri Lanka of having family to assist him. I note also Dr Smith's evidence at [91] of his report that, although Sri Lanka has one of the highest suicide rates in the world, this has prompted the authorities there "to develop an institutionalised national strategy designed to prevent suicide".

192. Looking at the evidence as a whole and for the foregoing reasons, I find that there are no substantial grounds for believing that removal to Sri Lanka will lead to a real risk of the Appellant committing or attempting to commit suicide.

193. Article 8 ECHR is raised in the grounds of appeal only in the context of the Appellant's medical claim. The only issue which therefore arises is whether the Appellant's mental health conditions amount to very significant obstacles to integration in Sri Lanka and/or whether removal would be disproportionate based on that mental health condition.

194. There are two points to be made about the application of the "very significant obstacles" test as applied to this case. First, I have already found that the Appellant's mental health condition does not give rise to a real risk of Article 3 because it does not reach the high threshold necessary. The test for whether there exist "very significant obstacles" is also a high one.

195. Second, the test is about barriers to reintegration. Whilst I do not discount the possibility that in an appropriate case a person's mental health condition may provide that barrier, in this case it does not. The Appellant has family in Sri Lanka with whom he (now) retains contact. He told Dr Dhumad that his mother was one of his main protective factors against suicide (the other being his girlfriend about who there is very little evidence). The Appellant would therefore be returning to a family unit who would help him reintegrate. Conversely, in the UK, the Appellant seems to have a limited social circle and little assistance with his mental health problems other than from his GP and other mental health professionals who, as I have noted, he seems to see infrequently and mainly, it appears, at times connected with the provision of evidence for the appeal process.

196. On the evidence, I find that there is no reason why the Appellant would not be able to reintegrate in Sri Lanka, assisted by his mother and other family such as his uncle [H] who has supported him in the past. The Appellant lived in Sri Lanka for his formative years and although he has been in the UK for about thirteen years, there is little evidence of his integration here. The Appellant will be familiar with the culture of Sri Lanka. There are no very significant obstacles to the Appellant's integration in that country.

197. That there are no very significant obstacles to integration is reason moreover why the decision to refuse the Appellant's claim is not disproportionate. Article 8 ECHR is a qualified right. Outside the Rules, I am required to have regard to Section 117B, Nationality, Immigration and Asylum Act 2002. Since the Appellant cannot meet the Rules, removal is in the public interest (maintenance of effective immigration control is in the public interest). The Appellant's status in the UK has always been precarious – he was here originally as a student and then asylum seeker. I have found that the Appellant does not have a well-founded fear of persecution on return and that there is no real risk of ill-treatment contrary to Article 3 ECHR. He therefore has no basis of stay for protection reasons. His private life is to be accorded only little weight.

198. I have determined that removal will not breach Article 3 on account of his medical condition because the impact on that condition does not meet the high threshold. I accept that it is not the case that, simply because Article 3 is not breached, Article 8 could never be breached on the same facts. However, as the Court of Appeal noted in GS (India), "[i]f the Article 3 claim fails… Article 8 cannot prosper without some separate or additional factual element which brings the case within the Article 8 paradigm" ([86]). In other words, the Appellant would need to point to other factors in support of an Article 8 claim which would supplement his medical claim in order to render the decision as a whole disproportionate.

199. In this case, there is limited evidence as to the development of private life (and inconsistent information given to medical professionals about the extent to which he socialises with others). Although the Applicant has mentioned a girlfriend, there is little evidence about the relationship and some inconsistencies surrounding the Appellant's account of it.

200. When the private (and as appropriate family life) factors are added to the factor of the Appellant's medical condition and the impact on that of removal and when the weak evidence of the Appellant's private and family life is balanced against the strong public interest in removal of someone with no right to be in the UK, the decision to remove the Appellant is not disproportionate.

CONCLUSIONS

The Appellant does not have a well-founded fear of persecution on return to Sri Lanka and he has not shown that there is a real risk of ill-treatment contrary to Article 3 ECHR. The Respondent's decision does not breach the Refugee Convention. The Respondent's decision also does not breach any article of the European Convention of Human Rights (and therefore the Human Rights Act 1998) either on account of the consequences of removal on the Appellant's mental health or otherwise.

DECISION
The Appellant's appeal is dismissed.

Signed Dated: 7 August 2018

Upper Tribunal Judge Smith

APPENDIX: PREVIOUS DECISIONS

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/04995/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 1 February 2018	**19 February 2018**

Before
UPPER TRIBUNAL JUDGE SMITH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M N M T

Respondent

Representation:

For the Appellant: Mr S Staunton, Senior Home Office Presenting Officer
For the Respondent: No attendance or representation.

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to continue that order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

ERROR OF LAW DECISION AND DIRECTIONS

Background

1. This is an appeal by the Secretary of State. For ease of reference, I refer below to the parties as they were in the First-tier Tribunal albeit that the Secretary of State is technically the Appellant in this particular appeal. The Respondent appeals against a decision of First-tier Tribunal Judge Kaler promulgated on 15 August 2017 ("the Decision") allowing the Appellant's appeal against the Respondent's decision dated 9 March 2015 giving directions for the Appellant's removal from the UK pursuant to section 10 Immigration and Asylum Act 1999 (prior to amendment by the Immigration Act 2014) and refusing his asylum claim. The Decision followed a remittal by this Tribunal following a decision of Deputy Upper Tribunal Judge McClure finding an error of law in the decision of First-tier Tribunal Judge Andonian who dismissed the Appellant's appeal by a decision promulgated on 13 July 2016. That earlier decision was therefore set aside.

2. The Appellant is a national of Sri Lanka. He entered the UK as a student on 11 September 2005 and claimed asylum on 24 July 2012. There is a factual dispute about whether and when he returned to Sri Lanka. The Appellant claimed asylum on the basis that his father was arrested in late 2003 on suspicion of association with the LTTE. The Appellant says that his father died following injuries sustained during his detention.

3. The Appellant says that he returned to Sri Lanka on 9 April 2008 for a family reunion and to see his mother. He claims that he was arrested on 27 April 2008 and detained on suspicion of having rented his house to a person linked with the LTTE and that one of the occupants of the house had carried out a bomb blast two days' earlier. He claims to have been detained until 2 May 2008 and tortured. He says he returned to the UK on 3 May 2008. At that stage he still had leave to remain as a student until October 2009. The Appellant says that the authorities also detained his brother because they were unable to trace him. He relies on a letter sent by his mother to the police and Human Rights Commission complaining about his brother's detention.

4. The Respondent did not accept that the Appellant had returned to Sri Lanka in 2008 as his passport, apparently produced to the Respondent with an application on 30 October 2009 for the purpose of obtaining further student leave showed that it was obtained in Colombo on 20 August 2009 and bore a date stamp showing exit from Sri Lanka on 7 October 2009 arriving in the UK on the same date. The Appellant says that this is a false passport obtained by someone on his behalf. He has produced another passport which he says is the genuine one which shows the entry and exit dates consistent with his account. I will come back to this when addressing the content of the Decision below.

5. The Judge accepted the credibility of the Appellant's account. She found that the Appellant would thereby be known to the authorities in Sri Lanka and would be

recognised by them as involved in sur place activities in the UK. She therefore found that he would be at real risk on return.

6. The Respondent challenges the credibility findings on the basis that the Judge has failed to give reasons for certain of her findings. The Respondent relies upon what is said in MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC) as follows:-

> "(1) It is axiomatic that a determination discloses clearly the reasons for a tribunal's decision.
> (2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons."

7. The Respondent's case in short summary is that this guidance applies equally to a case where a Judge finds in the Appellant's favour. The Respondent is equally entitled to know why she has lost. I accept that proposition. I will come to the individual credibility findings about which complaint is made below.

8. Permission to appeal the Decision was granted by Upper Tribunal Judge Kopieczek in the following terms:-

> "I consider that the grounds raise arguable issues in relation to the FtJ's reasoning in finding the appellant's account credible. Matters of fact are quintessentially within the province of the judge assessing the facts, but the contention that the First-tier Tribunal Judge has not given legally adequate reasons for her findings, merits further consideration."

9. The appeal comes before me to determine whether there is a material error of law in the Decision and if so either to re-make the decision or to remit to the First-tier Tribunal to do so.

10. At the hearing before me the Appellant was not present or represented. He has instructed Jein solicitors to act on his behalf in this appeal. The notice of hearing was sent to those solicitors at the address which appears on their website. The notice was also sent to the Appellant at the address which Mr Staunton confirmed is the address appearing on the Home Office file. Efforts made by the Tribunal to contact the solicitors to find out why they were not in attendance failed as their telephone line was constantly engaged.

11. I was satisfied that the notice of hearing was sent not only to the solicitors but also to the Appellant. There was no application for an adjournment nor any letter explaining the failure to attend. In those circumstances, I determined that it was appropriate to continue with the hearing to deal only with the error of law. As this is the Respondent's appeal, it is for her to establish that there is an error of law. If I were to find an error of law, I indicated that I would give directions for

a resumed hearing at which the Appellant and his representatives would have the opportunity to attend.

Discussion and conclusions

12. There are two passages in the Decision about which complaint is made by the Respondent as follows:-

> "[18] I do accept that the Appellant had a reasonable knowledge of English when he wrote his letter to the Home Office on 26/7/2012. That letter says that his father dies of a heart attack but that is not born [sic] out by the death certificate. The chronology of the letter seems to say that the Appellant's father was kidnapped in 2003, he dies of a heart attack, and the Appellant was involved in his father's business and so he was too scared to stay in Sri Lanka, which is why he came to the UK with the assistance of an agent. The letter then goes on to say that the Appellant returned to Sri Lanka after that, and so I read this as the Appellant saying he left Sri Lanka for the first time because he was already in fear by then. This is not what the Appellant has said in his subsequent screening and asylum interviews; his case has been that he was not in fear until after his visit in 2008. I do accept that the Appellant wrote this letter without any legal or other guidance. This may explain why he did not mention matters clearly.
>
> …
>
> [21] The report of Dr Dhumad (A94) – 24.12.2015) relies on documents relating to the appeal process and a two hour interview with the Appellant. This is a fuller report than that prepared by Dr Ish Horowicz and does set out the diagnostic criteria used for establishing that the Appellant has suffered from a severe depressive episode and post traumatic stress disorder, and in the doctor's opinion, the Appellant's "nature of his psychological symptoms is consistent with psychological reaction to extreme traumatic events." These have been exacerbated by his uncertain status and the risk of being returned to Sri Lanka. I do note that despite claiming that he was reluctant to engage with the outside world, the Appellant was working, attended demonstrations and had a girlfriend, but I do accept that someone who has these conditions will be able to lead some sort of a social life and economics would dictate that he needed to work. The two do not necessarily contradict each other."

13. In relation to the second of those passages, the Respondent's complaint is that the Judge is not a medical expert, that she does not say why the report is inconsistent with this aspect of the Appellant's case and that she fails to explain why this inconsistency is not damaging to his credibility.

14. I note from Dr Dhumad's report that he was aware that the Appellant has been attending demonstrations; indeed, this was mentioned expressly by the solicitors in one of the questions asked of him [A-97]. The doctor was also aware that the Appellant has a girlfriend [A-98, A-99]. The doctor refers to his girlfriend as being one of the main protective factors [A-101] and opines at [A-102] that attendance at demonstrations is not unhealthy for the Appellant.

15. However, what the Appellant says as reported to the doctor at [A-100] does appear inconsistent at the very least with his attendance at demonstrations. He

there says that "he has been avoiding going out and feels anxious when he is with strangers; he said he is frightened of sudden loud noises, or the sound of footsteps. He is scared of the police, or people in uniform". Such fears at least on the face of it do appear inconsistent with someone wishing to attend a demonstration where there would be crowds of people, likelihood of loud noise and a likelihood of police presence to ensure calm.

16. The doctor does not grapple with that apparent inconsistency and was not asked to do so. However, the Judge did need to do so. That the Appellant might not wish to go out is not necessarily inconsistent with him having a girlfriend or even working. However, the Judge has failed to grapple with the inconsistency of what the Appellant states as recorded at [A-100] and his attendance at demonstrations, has failed to explain why that is not an inconsistency or, if it is, why it is not to be given weight.

17. The first of the passages criticised by the Respondent involves an inconsistency not simply about how the Appellant's father died but the very essence of the Appellant's claim. The first claim made by the Appellant is that he was at risk because of what happened to his father in 2003. In fact, contrary to what the Judge says at [18] of the Decision, that impression was not corrected by the time of the screening interview. The Appellant's account in the screening interview also states that the source of his fear is what happened to his father and also because he said his brother had been kidnapped. There is no mention in the screening interview of the events said to have taken place in 2008 which are now, as the Judge rightly points out, at the forefront of the Appellant's case.

18. Considered in this context, what is said by the Judge at [18] of the Decision is inadequate. First, it is not entirely clear in any event whether she accepts the Appellant's explanation for the inconsistency which appears to be that the Appellant was not legally advised at the time he made the claim. The Judge says that "this may explain" why matters were not mentioned clearly. However, it is not clear from this whether the Judge considers the difference in the account only to be a lack of clarity or an inconsistency and, if the latter, whether that is explained by the reason given.

19. Second, as I have already pointed out, the Judge does not appear to have appreciated that this was not simply the way in which the Appellant put his claim in the letter but also the way he put it in answers to questions at the screening interview.

20. Third, it is difficult to see why the Appellant would need legal representation in order to explain the facts of his case. He is the person who knows why he fears return not his solicitors. If the explanation for failing to mention the 2008 incident when he first made his claim is that he had not taken legal advice at that time, this does raise a question whether that later claim is an embellishment rather than the true account and that inconsistency at least needed to be considered by the Judge.

If it was found to be an inconsistency, the Judge needed to explain why it did not adversely affect the credibility of the Appellant's account.

21. For those reasons, I am satisfied that the Decision does disclose errors of law. There are two further matters which were discussed in the course of the hearing before me and which lend weight to the materiality of those errors. I raise those here so that the Appellant is aware that these are matters which may need to be addressed in evidence at a resumed hearing (see directions below).

22. The first is what is said at [16] and [17] of the Decision as follows:-

> "[16] The Appellant claims to have returned to Sri Lanka on 9 April 2008 and then to have returned to the UK on 3 May 2008. This is when he says he was picked up by the authorities. The Respondent avers that the Appellant was issued with a new passport in Colombo on 20 August 2009 and the stamp on this passport showed that he left Colombo on 7 October 2009; he made an application for further leave to remain as a Tier 4 student on 30 October 2009. That application was granted. The relevant passport showing this appears at B in the Home Office bundle. Therefore it is said that the Appellant was not in Sri Lanka when he claimed to have been there.
> [17] The Appellant's case is that he travelled to Sri Lanka on a different passport, which appears at page A18 in bundle "A". This shows the Appellant's sojourn in Sri Lanka between 9 April 2008 – 3 May 2008. His explanation for the passport at B1 is that he wanted to stay in the UK and so procured the second passport through unlawful means via a third party in Sri Lanka. The visa in the second passport permitted him to remain in the UK with a working visa until 29 September 2012. He claims he did not use this visa to enter the UK as he was already here. I accept his reasons. The Appellant did not apply to extend his student visa and overstayed. He should not have done so. He chose to employ subversive means to extend his stay by employing another person and make an application with another passport and on a false premise. He can rightly be criticised for that, but I accept that this is precisely what occurred and he extended his stay in the UK by employing deception. His passport shows that he was in Sri Lanka from 9 April 2008 – 3 May 2008 and I accept this to be the case."

23. There are a number of difficulties with this passage. It does appear from what the Appellant says is the false passport that at the very least the visa in it is false. The copy in the bundle is marked "counterfeit" with a reference number which I assume is the report confirming that. It is though not clear whether the exit and entry stamps are also said to be false. If they are not, then it is difficult to see how the Judge could simply accept the Appellant's account about this passport being false as someone must have left Sri Lanka and entered the UK using it.

24. Even if it is the case that those stamps are also false, the Judge does not appear to have fully appreciated the factual background to this case. The Appellant did not overstay after October 2009. He applied for student leave and was granted further leave whilst in the UK. That brings me on to another difficulty with the Appellant's account which is unexplained by the Judge. What the Appellant now says is the false passport was apparently produced by him to the Home Office

when he sought further leave. If that passport was false it is difficult to see how the Home Office would miss that, particularly if an investigation was carried out in relation to the visa in the passport. If the passport was found to be false, then it is highly unlikely that the Appellant would have been granted further leave.

25. I have given a direction below for the Respondent to provide evidence about this passport. However, for the time being, the above discrepancies are sufficient for this also to amount to a further error of law. The Judge appears to have misunderstood at least part of the evidence or has not explained the differences between the evidence she heard and what appears from the documents to be the factual situation. Further, she has not explained why she was satisfied by the Appellant's evidence that the second passport is the genuine one and not the first. That is the more so when one considers his answer in the screening interview that he had lost his passport and was unable to produce it.

26. Finally, the other matter raised by Mr Staunton is that the Judge has failed to grapple with the application of GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) ("GJ"). As Mr Staunton pointed out, there is not in this case any arrest warrant. It is of course part of the Appellant's case that the authorities remain interested in him as shown by their arrest of his brother. However, as Mr Staunton pointed out, the Judge needed to grapple with whether the "stop list" category is likely to apply given the lack of any warrant and that the Appellant's release was said to be secured by a bribe. The Appellant does not claim to have any particularly high profile in his sur place activities which would, in and of itself, cause the authorities to be interested in him. Whilst it is right to point out that the Judge does consider GJ at [28] to [32] of the Decision, she does so on the basis of incomplete reasoning as to the factors which she says apply.

27. In conclusion, the Respondent has established that the Decision discloses errors of law. I therefore set aside the Decision. Although the errors found relate to the Appellant's credibility, in light of the fact that this appeal has already been remitted on a previous occasion, I am minded to retain the appeal in the Upper Tribunal. In light of the absence of the Appellant and his representatives from the hearing before me, though, I have given an initial direction permitting them to make written representations about that course if they choose to do so and, in default of any representations, I have given directions below for the resumed hearing.

DECISION

The First-tier Tribunal Decision involves the making of a material error on a point of law. I therefore set aside the First-tier Tribunal Decision of Judge Kaler promulgated on 15 August 2017 and make the following directions.

DIRECTIONS

1. **Within 14 days from the date when this decision is promulgated, the Appellant/his representatives may make written submissions about the proposed course of retaining this appeal in the Upper Tribunal. If they submit**

that the appeal should again be remitted to the First-tier Tribunal, they are required to provide reasons for that request and those submissions should be placed before me for consideration whether to retain the appeal in the Upper Tribunal or remit to the First-tier Tribunal. The submissions should be copied to the Respondent. The following directions will in that event be suspended pending a decision whether to remit. In the event that no submissions are made, the following directions will apply.

2. **Within 28 days from the date when this decision is promulgated, the Respondent shall file with the Tribunal and serve on the Appellant such information as she is able to produce concerning the Appellant's passport number [ ] apparently issued in Colombo on 20 August 2009. In particular, she should provide information about the extent of the falsity of that document in light of the "counterfeit" marking on the copy of the working visa in the bundle (bearing reference MET/4071296) and whether, assuming that it was not considered to be false, that passport was used in the making of the application for further student leave by the Appellant on 30 October 2009.**
3. **Also within 28 days from the date when this decision is promulgated, the Appellant shall file with the Tribunal and serve on the Respondent any further evidence on which he seeks to rely.**
4. **The resumed hearing shall be listed for the first available date after 35 days from the date when this decision is promulgated. Time estimate ½ day.**

Signed Dated: 15 February 2018

Upper Tribunal Judge Smith

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/04995/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 10 April 2018	**On 25 April 2018**

Before
UPPER TRIBUNAL JUDGE SMITH

Between

M N M T

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant did not attend and was not represented
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
No anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to make that order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

ADJOURNMENT DECISION

The hearing of this appeal is adjourned to be relisted on the first available date after 24 April 2018 (time estimate half day).

REASONS

1. By my decision promulgated on 19 February 2018, I found an error of law in the decision of First-tier Tribunal Judge Kaler promulgated on 15 August 2017 and gave directions for the resumed hearing. Since the Appellant's (at that stage Respondent's) solicitors were not present on that occasion, I gave them the opportunity to make written submissions regarding remittal if they thought fit. No submissions were received and the appeal was therefore relisted before me on 10 April 2018 as a resumed hearing to re-determine the appeal.

2. At the start of the appeal list, the Appellant was not present or represented. Telephone enquiries were made of his solicitors who indicated that they would send an e-mail indicating whether they continue to represent this Appellant. The appeal was therefore put to the back of the list but, by the time that it was called on, no e-mail had arrived. Further attempts at telephone contact with the solicitors proved fruitless as their phone line was continually engaged.

3. A direction was also given to the Respondent in my error of law decision, requiring her to produce such evidence as she was able regarding passport number [ ] Regrettably, Mr Tufan had not seen this direction until the day prior to the hearing and therefore no further evidence had been submitted. From enquiries made of the Home Office computer system, he was though able to tell me that passport number [ ] which appears in the Home Office bundle was one found at the Appellant's home during an immigration visit and the visa therein had been found to be counterfeit (and accepted to be so by the Appellant). That passport had been sent to an immigration port for the purposes of an earlier removal attempt and could no longer be traced. Accordingly, it is not possible for the Home Office to provide evidence as to the genuineness of that passport.

4. Mr Tufan also confirmed that, contrary to my understanding as appears at [22] of my error of law decision, passport number [ ] which the Appellant says is his genuine passport is the passport used when the Appellant sought further leave as a student on 30 October 2009 and also the one used for the entry clearance application on 9 August 2005. That may therefore undermine to some limited extent what I say there about that evidence. It does not though undermine what I say at [23] and [25] of the decision concerning the Judge's failure to engage with the evidence about the two passports.

5. Having resolved that issue so far as possible, I considered of my own volition whether I should simply proceed with the appeal hearing in the Appellant's absence. I decided that it would be inappropriate to do so for the following reasons.

6. First, Mr Tufan submitted that, even without further evidence about the two passports, the appeal should inevitably fail. The difficulty with that submission is that a First-tier Tribunal Judge was persuaded to allow the appeal, albeit without taking account of certain of the evidence as I have previously found.

7. Mr Tufan also submitted that there is a history of failures to attend in this case. True it is that there have been past failures to attend interviews with the Home Office, a failure to attend the error of law hearing and a failure to engage with the directions given in my error of law decision. However, on both previous occasions when the appeal was heard in the First-tier Tribunal, the Appellant was present and represented. I bear in mind the importance of this hearing to the Appellant, particularly in circumstances where his appeal had previously been allowed (although I also note that he did not give oral evidence at his previous appeal hearings).

8. Finally, in the absence of confirmation from the Appellant's solicitors that they remain instructed, I could not be satisfied that the Appellant himself had notice of the hearing and was aware of the need to attend. Mr Tufan indicated that the address held on file for the Appellant to which notice was sent appears to be the most up-to-date address. However, without confirmation from the solicitors that they either do not continue to act and that the Appellant has been informed that they would not be attending or confirmation that they do and why they had not attended, I was satisfied that it was not in the interests of justice to proceed with the hearing without giving the Appellant and his solicitors one final opportunity to attend the hearing.

9. For those reasons, I indicated that I intended to adjourn for a short period to give the Appellant the opportunity to attend, even if his solicitors are no longer instructed. To that end, I have also instructed the Tribunal office to ensure that notice of the hearing is given to both the solicitors and the Appellant himself at the address on file.

Signed Dated: 10 April 2018

Upper Tribunal Judge Smith