



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

Appeal Number: DA/00061/2013

THE IMMIGRATION ACTS

Heard at Field House

On 3rd June 2014

**Determination
Promulgated**

11th July 2014

Before

UPPER TRIBUNAL JUDGE REEDS

Between

KETHESWARAN SRITHARAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Iqbal, Counsel instructed on behalf of Polpitiya and Co Solicitors

For the Respondent: Mr C Avery, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Sri Lanka born on 4th June 1985. This is an appeal against a determination of the panel of the First-tier Tribunal composed of First-tier Tribunal Judge Devittie and Mrs L R Schmitt (hereinafter referred to as "the panel") who in a determination promulgated on 17th March 2014 dismissed the Appellant's appeal against

the decision of the Respondent that Section 32(5) of the UK Borders Act 2007 applied to the Appellant.

The Background to the Appeal

2. The background to the appeal can be summarised as follows. The Appellant entered the United Kingdom travelling on a Sri Lankan passport with entry clearance as a visitor on 10th September 2000. The visit visa was valid from 18th August 2000 to 18th February 2001. On 26th September 2000 the Appellant's mother lodged an asylum claim with the Appellant as a dependant. That application for asylum was refused by the Secretary of State and upon exercising her right to appeal that decision, the case came before the Asylum and Immigration Tribunal on 24th July 2001 sitting at Hatton Cross. The Adjudicator, Mr R L G Varcoe CMG, in a determination promulgated on 20th August 2001 dismissed her appeal on asylum and human rights grounds. The determination is exhibited at F1 of the Respondent's bundle.

3. The basis of the claim that she made was that in 1994 she had been investigated by the police and accused of having harboured a Tamil teacher from Batticaloa who turned out to be an LTTE member. The teacher would stay with them until his arrest on suspicion of an LTTE connection. It was asserted that she herself was held by the police overnight and interrogated and was given a warning from the police. In or about March 1999 one of her female students was believed by the police to have been involved as a suicide bomber in which an inspector was killed and approximately four weeks later the police raided her establishment to check all the students' records. She was questioned by the police, and accused of having connections with the Tamil Tigers. She was called to the police station for questioning and had to bribe them to stop them from harassing her. The reason why she left Sri Lanka, it is said, was that she had received a demand from an underworld group that she should pay money as they knew that she was with the LTTE and was wealthy. After discussion with her immediate family, she agreed to pay by instalments the money demanded and then left Sri Lanka. The judge set out his findings of fact on credibility at [23]-[30] at F5 and F6 of the Respondent's bundle. He accepted that in 1994 she was strongly interrogated by the police on suspicion of having harboured a teacher but that the police were satisfied that she had done nothing wrong and the case was closed. He reached the conclusion that this could not have been instrumental in any way to her eventual decision to leave Sri Lanka. The judge considered the reactions of the police and investigated the background of a suspected Tamil suicide bomber was not unreasonable and justified and in those circumstances, the Appellant not being harmed or ill-treated and cooperated with the police that the judge reached the conclusion that the authorities had no lasting adverse interest in her. He then turned to the findings on the extortion demand but did not find that there would be substantial reasons for believing that on return to Colombo now that she would face any further demands or that if she did not pay either she or her son would be harmed. He made that finding on the basis of the evidence

before him and in the light of the objective material [28]. It is also clear that he had some doubts as to the truth of that part of the Appellant's evidence which he set out at [23] and [28].

4. Notwithstanding the dismissal of her claim for asylum, the family remained in the United Kingdom. On 18th October 2005 the Appellant's mother lodged an application under the Family Exercise but that application was rejected on 30th March 2006.
5. On 2nd October 2006 at Isleworth Crown Court the Appellant was convicted of offences of kidnapping and violent disorder. On 8th December 2006 he was sentenced to an indeterminate sentence of imprisonment in which the custodial element was set at a minimum of four years and six months' imprisonment before being considered for release. This sentence was passed using the sentencing principles under the Criminal Justice Act 2003 relating to dangerous offenders.
6. The circumstances surrounding the commission of the offence were set out and summarised by the First-tier Tribunal by reference to a parole report in the following terms:-

"You are serving an indeterminate sentence for public protection for offences of kidnap and violent disorder. Your minimum term of imprisonment was set at four and a half years less time remanded in custody. This expired in April 2011.

The victim of the index offence was Mr Paratharjan who was then aged 18. With others you pursued him, assaulted him and forced him into a car. He was then driven to another area and during the journey was again physically assaulted. Your co-defendants took turns to use a cigarette lighter to burn the victim's ears. You admitted to the panel that you beat up the victim and that you continued to punch him when he was in the car. You said that after driving for a while you were dropped off at your uncle's house where you were residing, as you were subject to a family curfew. You had a meal and when your uncle and aunt retired to bed you telephoned one of your co-defendants who said that they were still holding Mr Paratharjan. They were close by and you left the house to join them. When asked by the panel why you did this you said that it was as a result of curiosity, thrill seeking and a sense of excitement.

When you arrived you found that there were many other men present, most of whom were older than you. The victim had his hair, face and elbows shaved and you say was barely recognisable. You said that being shaved in this way is seen as particularly humiliating within your culture. Your victim was then subjected to violent attacks by others using knives, an iron bar, an axe and cricket stump. You told the panel that you were shocked. You had intended the victim to suffer punching and kicking but not the orgy of violence that transpired. You said that you lacked the courage to intervene as you feared that the perpetrators may have turned on you.

The sentencing judge referred to this as a vicious and cowardly violence and said that it was fortuitous that none of the injuries incurred proved to be fatal. You told the panel that the motive for these offences was revenge and

a desire to impress your peer group. You said that you were part of a gang of young men mainly from a similar ethnic background. You deny that the gang was involved in criminal activities but said that they were genuinely up to no good, 'bunking off school, going clubbing and being verbally aggressive to people'. You saw yourselves as 'wannabe' gangsters. Mr Paratharjan was a member of a rival gang who had previously attacked one of your co-defendants Mr Chandran, breaking his jaw and nose. You said that you took the lead in the initial assault and kidnap of the victim as you wanted to be seen as a 'macho type person' with members of your peer group. Prior to these convictions you had not come to the attention to the court. There is no evidence that either drugs or alcohol played a significant part in the commission of the index offences. You told the panel that you had not committed any undetected crimes but accepted that at school and college you did become involved in a number of fights and did break someone's nose. You said that these fights were as a result of people mocking you because of your poor English. You said that at the time you could not find the words to talk yourself out of trouble so resorted to using fists instead."

7. The judge's sentencing remarks were set out in the Respondent's bundle and recited at paragraph [6] of the panel's determination. The judge stated:-

"This was the action of a coward attacking a helpless and defenceless victim with a weapon to cause him unnecessary injury and at the same time, you, Gnanajeyarajah acting in a cowardly way hit him with an iron bar on his other leg and the result is that he fell down. It was then, that you, Chandran pressed on with the joint enterprise of criminal violence against a helpless and defenceless victim by exerting a brutal and vicious attack with your knife, giving him no chance of escaping further injury showing no pity.

You used the knife to slash his face twice, on his back and also on the side of his head; once above the left ear and once close to the eye. You also slashed him on the upper left arm and we saw the result of your brutality in the photographs that were exhibited in the case at exhibit 3.

After Partheepan was slashed with a knife most, if not all of those who were present, including the five of you started to kick him. Then you, Chandran directed the order for them to leave him. 'He is finished'. You all then ran away. All of you must understand that kidnapping and violence of this nature is simply not acceptable in a civilised society.

What happened to Partheepan was a blatant case of men acting together in a gang, having a hostile attitude which culminated in merciless violence, conducted towards a young man who had done no harm whatsoever to you.

It was a serious, vicious and deliberate attack upon a man who was taken against his will from one place to another and beaten and subjected to what can only be described as a vicious and cowardly violence.

The attacks launched upon your victim were sustained and involved the use of weapons. This sort of behaviour strikes at the very heart of law and order and, in my judgement, in each of your cases, whatever your circumstances, history or other personal factors, it cannot be overlooked.

Ordinary people deserve the protection of the courts. It is impossible to overlook the fact that right thinking members of the public find such offences as those that the jury convicted you of as nothing less than abhorrent.

You must be in no doubt that this course of wholly unjustified cowardly violence by a group of people acting together as a violent gang will result in condign punishment. In posing the sentences I am about to impose upon each of you, I am making it plain that one of the objects of the sentence is to deter others who might be minded to embark upon this type of activity.

You were all in it together and there is no reason to distinguish between you at all a part from the fact of your ages which I shall come to and the fact that once of you, in a very minor way, will be given credit for having been acquitted of a Section 18 offence.

Ketheswaran at the time of this offence you were 20, you are now 21, having been born on 4 June 1985. You are now to be sentenced for the offence of kidnapping, which is a specified offence in schedule 15 of the Criminal Justice Act 2003.

Your offence is punishable with a life sentence, but I do not consider it sufficiently serious to justify such a sentence.

In my opinion, there is a significant risk to the public of serious personal injury whether it is physical/psychological caused by your commission of further offences specified in Schedule 15.

In reaching this conclusion I have taken into account in the main, the nature or substantially, the nature of and the circumstances of your current offence and that does, in my judgement, represent that you are a significant risk of causing serious harm by the commission of a further specified offence. In reaching that conclusion I have taken into account this matter as well as mitigating factors that have been put before me including the letter from you and all what Mr Chan said on your behalf about your level of education and how you have wasted your future; it is all your fault, and you have no previous convictions.

In these circumstances, I am required by law to impose a sentence of detention in the young offender institution for public protection. I am required to specify the minimum period you must serve in custody before the parole board may consider your release.

Had it not been appropriate to impose a sentence for public protection, I would have passed a sentence of 9 years imprisonment, taking into account the seriousness of your offence and the mitigating factors in your case. Of that period you would have spent one half in custody and after deducting the time you have spent in custody. After that time the parole board will be entitled to consider your release. Only when it is satisfied that you no longer be confined in custody for the protection of the public will it be able to direct your release. Until it is so satisfied you will remain in custody.

If you are released it will be on terms that you are subject to licence for the rest of your life unless the Secretary of State orders that your licence is to end, which he cannot do so until you have been on licence for at least 10 years. Whilst you are on licence you are liable to be recalled to custody at any time for your licence- if your licence is revoked either on the recommendation of the parole board or if it court expedient in the interest of justice by the Secretary of State.”

8. The Appellant was duly informed of his liability for automatic deportation and was served with liability to automatic deportation on 27th February 2009.
9. On 26th July 2012 the Appellant was served with notice informing him that Section 72(2) of the 2002 Act applied. He was given the opportunity to submit a rebuttal case against the presumption that he had been convicted of a serious offence and that his continued presence in the United Kingdom constituted a danger to the community.

The Determination of the First-tier Tribunal Panel:

10. On 18th July 2012 the Appellant claimed asylum. The basis of that claim is set out in the determination of the panel.
11. It was stated by the Appellant that he had left Sri Lanka in September 2000 using his own passport and had had no affiliation with any political party in Sri Lanka. He claimed that his family were considered as sympathisers of the LTTE and his father was taken away by the authorities and may have played an active role in the support of the LTTE. His evidence relied upon what his mother had told him concerning links with the Tamil Tigers and he made reference to his mother being arrested and detained for harbouring Tamil Tigers.
12. He further made reference to his kidnap at the age of 13 in 1998 where his mother was required to pay a ransom for his release. He claimed that he had been detained for a week and had sustained injuries. The Appellant claims that his kidnappers wanted money and he thought that it may have to do with his father's role in the LTTE based on the fact that they knew that his family were financially well off and could afford to pay a ransom. His mother had told him that she had paid the kidnappers a substantial amount of money and that his uncle had been the intermediary of the payment of the money. He also asserted that the police were involved in the kidnapping as they did not take any notice of his mother's complaint. Subsequently he left Sri Lanka in September 2000 but between August 1998 and September 2000 there were no further attempts to kidnap him but he did not leave the house without company.
13. The Respondent dealt with the Appellant's application for asylum and its grounds within the reasons for refusal letter.
14. The basis of the Appellant's asylum claim was advanced on two particular bases. Firstly, on the basis of the factual account that he had given

concerning his past circumstances when living in Sri Lanka with his mother and in particular his links to the LTTE and the kidnap in 1998. Secondly, as the panel noted at [16] it was claimed that as a result of his conviction and the circumstances of that, that his profile was such that the Sri Lankan authorities would perceive him as associated with LTTE activity, targeted at destabilising the unitary state of Sri Lanka. This was advanced on the basis that the circumstances of the offence made it plain that he had been convicted of a gang-related activity and that the expert evidence from Dr Chris Smith demonstrated that there was a risk on return by reason of his conviction which would be likely to be known to the authorities if he were returned to Sri Lanka. The panel also noted that it was claimed that his absence from Sri Lanka for a considerable period and that he was coming from the United Kingdom would also create a risk profile for him.

15. The findings of fact made by the panel in relation to his asylum claim are set out as follows:-

“17. In considering the appellant’s asylum appeal we bear in mind that it is for him to establish that there is a reasonable degree of likelihood that he would, if returned to Sri Lanka, be exposed to the real risk of persecution on grounds of imputed political opinion. We do not accept the appellant’s claim that he was kidnapped in 1998. The tribunal’s determination in relation to his mother’s asylum claim accepted that his mother has paid ransom. That determination however does not reveal that the appellant’s mother indicated at the time that the appellant had been abducted and had been released upon the payment of a ransom by her. We are satisfied that if the appellant had been abducted, the appellant’s mother would not have failed to mention this, as it would have been central to her claim for asylum.

18. **Findings of Fact**

We make the following findings of fact:

- (i) The appellant has not had any personal involvement with the LTTE. He has never previously come to the adverse attention of the authorities on account of his LTTE activity.
- (ii) The appellant’s mother was detained on suspicion of LTTE activity but released more than a decade ago. She currently lives in Sri Lanka and runs a successful business as a tutor. She has not come under any adverse attention since her return to Sri Lanka in 2005. The appellant has indicated that she would be able to accommodate him in Sri Lanka if he returned there and that she would also be able to assist him if he remained in the United Kingdom. All this indicates that, contrary to the appellant’s claim, his mother has not come under any adverse attention from the authorities on account of her past or her husband’s past links with the LTTE. In our view that the appellant would not be regarded with any suspicion on account of his family’s alleged links with the LTTE. His evidence regarding his father’s involvement in the LTTE is lacking in detail. If his father was involved in the LTTE and such involvement had caused the family to be persecuted, we have no

doubt that the appellant's mother would have been able to provide him with further details in this regard. The appellant has not been able to shed any light on the exact extent, if any, of his father's involvement in the LTTE, and accordingly I am satisfied that his father had not come to the attention of the authorities on account of his activity, and in any event, that if he did, it would be more than a decade ago, such that it is not a significant factor that would constitute a risk to him at present.

- (iii) The appellant claims that he has been involved in demonstrations in the United Kingdom but has not provided any cogent evidence in this regard. In any event, his involvement would only be after August 2013, after his release from prison. We are prepared to accept that he may have participated in some anti Sri Lankan demonstrations since his release from custody. Whilst we accept that the appellant may have scarring on his person there is no evidence however to demonstrate that this scarring is significant."

In this regard the panel directed themselves to the most recent country guidance decision of **GJ and Others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 00319** and set out the head note to that country guidance decision.

16. The panel gave express consideration to the arguments advanced on behalf of the Appellant concerning the nature of his crime and whether or not this would be known to the authorities and would be seen as ascribing to him a profile which would be perceived as him being associated with Tamil gangs in the United Kingdom and therefore lead to an assumption that he associated with the LTTE and would thus be perceived as a threat to the integrity of the unitary state in Sri Lanka. The panel said this:-

"20. The appellant's counsel submitted that the crime that the appellant had committed was likely to be known by the authorities upon his return. She submitted that his crime is associated with Tamil gangs in the United Kingdom and this would lead to an assumption that he is associated with the LTTE. On that basis, she submitted that the appellant would be perceived as a threat to the integrity of the unitary state in Sri Lanka. In reliance on the country guidance case of GJ the skeleton argument advances the contention that:

'When the factors highlighted above are viewed together at the very least, it is submitted that he is generally someone who will be perceived to be associated with the diaspora activities in the United Kingdom at the very least as an LTTE supporter or at the worst as an LTTE cadre. Given that the government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state, it is submitted that the appellant would be at risk on return.'

21. In advancing the contention the appellant's conviction of a gang related crime is reasonably likely to give rise to the perception by the

Sri Lankan authorities that he is involved in LTTE activity in the Diaspora and that he constitutes a threat to the integrity of the unitary state in Sri Lanka, the appellant's counsel relied in the main on the following extract at paragraph 60 of the expert report:

'The Ministry of Defence website has in the past reported details of Tamil criminal activity in London. This indicates that they will monitor criminal activities in the United Kingdom in relation to suspected LTTE connections. (The expert then makes reference to a report on the Ministry of Defence website, which states that an LTTE suspect was arrested with cloned credit cards unsuspecting card holders in the United Kingdom that the police believed that these would later be transferred to the LTTE. The report also states that the Tamil Diaspora in the United Kingdom is now tapping into the resources of the British public at large and committing credit card fraud in order to fund the LTTE.)

However, on the basis of my past work for the Metropolitan Police Service on precisely this issue, I can confirm that the links between the LTTE and Tamil credit card fraud in the United Kingdom is ambiguous. Nevertheless, the Sri Lankan authorities tend to automatically associate Tamil criminal activity in the United Kingdom with LTTE. As such, the Sri Lankan authorities are likely to be aware of the appellant's conviction, as they have been with others.

Although the war is over and has been now for four years, the conflict between the two sides has not been resolved and the Sri Lankan authorities remain concerned over the possible resurgence of the LTTE.

It will be many, many years before the authorities can be confident that the LTTE has been defeated and this process will require more than draconian security measures, such as the Emergency Regulations and the Prevention of Terrorism Act, of which the latter remains undecided.'

22. I am not satisfied that these observations are sufficient to draw the conclusion that there is a reasonable degree of likelihood that any Tamil returning to Sri Lanka, who has been convicted of gang related activity would be suspected of having links with Tamil activity that is directed at destabilising the Sri Lankan state. I find that the authorities and the sources of Dr Smith's conclusions do not support his opinion. The extract from the Ministry of Defence website does not go so far as to say that any gang related activity is to be viewed as related to diaspora activity directed at destabilising the state. More to the point, is the fact that the latest country guidance case makes it very clear that the Sri Lankan authorities' approach to the risk posed by Tamils in the diaspora is sophisticated, both as to the activities within Sri Lanka and in the diaspora. The country guidance case makes clear that, the authorities know that many Sri Lankan Tamils travel abroad as economic migrants and that everyone in the Northern Province would have had some involvement with the LTTE and that in post-conflict Sri Lanka; an individual's past history will be relevant only to the extent

that it is perceived by the authorities as indicating a present risk to the unitary state of the Sri Lankan government. In the circumstances of this appellant, he has never had any involvement in the LTTE; his family has never had any significant involvement in the LTTE. The appellant has not, save perhaps for the period after his release from custody, been involved in anti Sri Lankan activity in the United Kingdom. The crime for which he was convicted, although gang related, involved no more than the gruesome torture of a fellow Sri Lankan for no apparent reason. It is difficult to understand how, if the Sri Lankan authorities came to know of the circumstances of this offence which it is accepted they would, they could reasonably construe the appellant's involvement in this offence as justifying the perception that his activity poses any threat to the unitary state of Sri Lanka. The fact that he would not have an identity document, and even the fact that he may have some scarring, would not in our view, when considered with the evidence as a whole, be sufficient to place this appellant at risk.

23. We find therefore that the appellant has failed to establish that he has a well founded fear of persecution for reasons of imputed political opinion.”
17. Thus the panel concluded that the Appellant had failed to establish that he had a well-founded fear of persecution for reasons of imputed political opinion.
18. The panel then went on to consider the basis of the appeal against the deportation order, namely that the Appellant claimed that the deportation would breach his right to family life in the United Kingdom relying upon his relationship with his partner, a British citizen. The panel set out the Immigration Rules at [24] and noted the concession made on behalf of the Appellants at [25] that the Appellant could not meet the requirements under the Immigration Rules under paragraph 399 or 399A. The panel then referred themselves to the decision of **MF (Nigeria) [2013] EWCA Civ 1192** and it is plain that later in the determination they considered the requisite Article 8 jurisprudence including the **Uner** criteria which they set out at [29].
19. In making an assessment of proportionality they took into account the factors that they had identified earlier in the determination and said this at paragraph 30:-
- “30. In assessing proportionality we turn firstly to consider the personal consequences to the appellant and his family members in the United Kingdom of interference with his private and family life.
- (i) It stands in the appellant's favour, that he has made significant progress in his path to rehabilitation. This is well recognised in the report of the parole board which assesses the risk of reconviction as low. We are satisfied therefore that the appellant does not constitute a present risk of harm to the public in the United Kingdom.

- (ii) The appellant was able to complete a bachelor's degree in accountancy during his time in prison, and the documentary evidence shows that he has now been accepted at the London School of Economics to do a masters degree.
- (iii) We bear in mind the principle enunciated in the case of Maslov App no.1683/03 [2008] ECHR 546 . namely , that regard is to be had to the special situation of aliens who have spent most, if not all, their childhood in the host country, were brought up there and received their education there . The court held that in cases where a settled migrant has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile. The appellant has established significant private life in the United Kingdom. He arrived here at the age of 15 in 2000 and therefore has spent most of his formative years in Sri Lanka. He does not have settled status in the United Kingdom although he has been here for 14 years .It is significant though, at least half of his 14 year period of residence has been spent in custody. We accept that he was a juvenile at the time of the offence.
- (iv) We find that the appellant does retain significant cultural, family and social ties with Sri Lanka. His mother lives in Sri Lanka and he is in regular contact with her. We have no doubt that he has other family members living in Sri Lanka. Furthermore it is apparent from the evidence that the appellant has retained strong links with the Sri Lankan community in the United Kingdom in the period that he has resided here.
- (v) We recognise that the appellant's removal would rupture the significant private life ties that he has established in the United Kingdom. He has nieces and uncles as well as aunts with whom he is in close and regular contact in the United Kingdom. These ties would be broken if he was deported to Sri Lanka.
- (vi) We accept that the appellant is in a genuine relationship with his partner, who is a second year university student. We accept that she is pregnant, although there was no documentary evidence presented to support this. We find that it would not be unreasonable to expect the appellant's partner to return to Sri Lanka with him. She and the appellant were fully aware at all material times that he was facing deportation and that any relationship that they would form, would have to face this potential difficulty. We do not accept her evidence that they have not discussed what would happen if he is deported to Sri Lanka. The appellant has acquired a good level of education in the United Kingdom. We do not think that it would be disproportionate, if his partner was placed in the difficult position of having to choose whether to join him in Sri Lanka or to remain in the United Kingdom with his child. She has been fully aware at all times that the appellant was facing deportation. She accepts that she met him when he was prison on day release. The appellant's mother

is in a relatively stable financial position in Sri Lanka, and would be able to accommodate the appellant and his partner if she was to accompany him to Sri Lanka and to continue family life there. We take into account that the appellant has recently met his partner, they have never cohabited, and hence, that the strength of their family life is rather tenuous at this stage. We do not consider that the best interests of the unborn child, if indeed she is pregnant, would in any way be adversely affected, were she to accompany the appellant when he returns to Sri Lanka.

20. They assessed the main principles from the recent jurisprudence at [31] and at [32] identified what they consider to be the “public interest considerations that were in support of the Appellant’s deportation.” The panel found that they were identifiable as follows:-

“32. The public interest considerations that support of this appellant’s deportation are the following:

- (i) The appellant was convicted of a very serious offence that falls at the upper end of the range of seriousness for offences involving violence. The sentence received, an indefinite sentence, adequately reflects the seriousness of his offence. The aggravating circumstances have been fully dealt with in the sentencing remarks of the trial judge. The appellant and his co-defendants subjected an innocent person to a senseless prolonged and sustained ordeal of torture.
- (ii) We accept that the appellant does not pose a present risk to the public. We accept that the appellant’s risk of re-offending has been assessed as low and to that extent, he does not pose a high risk of harm to the public in the United Kingdom. The trial Judge correctly identified deterrence as a significant factor. We find that the appellant’s deportation would serve a compelling need in the public interest to deter likeminded foreign persons from committing offences.
- (iii) The appellant’s deportation would also serve a compelling need to express society’s condemnation of serious criminal activity and to promote public confidence in the treatment of foreign citizens who have committed them serious crimes.”

21. Having weighed up the evidence that was before them they reached the conclusion that the Appellant’s removal would not be in breach of Article 8 and that the consequences of interference of the Appellant’s private and family life would not be sufficiently serious to outweigh the compelling public interest factors that they had identified in the appeal. Thus the appeal was dismissed on asylum grounds, under the Immigration Rules and on human rights grounds.

The Appeal before the Upper Tribunal:

22. The Appellant sought permission to appeal the decision of the panel and grounds were submitted by Ms Bayatti of Counsel who had appeared before the First-tier Tribunal panel.

23. Permission was granted by First-tier Tribunal Judge Cox on 23rd April 2014 for the following reasons:-

“I have carefully considered the determination in relation to the grounds, settled by Counsel who appeared before the panel. The grounds contend that the panel materially erred in a number of ways in its assessment of risk on return as a Tamil and also in its Article 8 assessment. In particular, as to the former, it made no reference to and apparently had no regard to, further reports submitted with leave after the hearing and which lent further support to the proposition put forward in the expert report of Dr Smith that the Appellant, whose offence of kidnapping was committed as the member of a Tamil gang, would be at risk because the Sri Lankan authorities regard such gangs as LTTE gangs and fronts for the LTTE. It seems to me that the background is certainly arguable. The contention with respect to Article 8 is less clear cut but it is I think appropriate to grant permission on that ground also.”

24. Thus the appeal came before the Upper Tribunal. The Appellant was represented by Ms S Iqbal, Counsel and Mr Avery, Senior Presenting Officer. At the outset of the hearing we identified the appeal bundles before the First-tier Tribunal which consisted of four appeal bundles. Ms Iqbal also sought to introduce a statement from Ms Bayatti of Counsel that made reference to the documentation that was sent post-hearing to the panel which it is asserted that the panel did not take into account when reaching its conclusions.

25. The first issue that is raised in the grounds is that there were other reports submitted to Judge Devittie post-hearing by Ms Bayatti. Those documents were sent by the Appellant's solicitor by post and fax on 24th February 2014, the hearing having taken place on 20th February 2014 at Kingston Crown Court. Those documents consisted of a BBC News article entitled “Tamil gangs attacked from within” dated 26th February 2007 and a Defence Lanka article “LTTE as an international threat” which had been downloaded from the internet last modified on 30th December 2010 relating to events outside Sri Lanka in 2006 and 2007. The grounds submitted that the judge did not consider those documents despite them being sent.

26. At the outset of the proceedings, I made reference to the Tribunal file and informed the parties that the letter from the solicitor was on file and therefore I was satisfied that the letter had been sent with the enclosures that I have just referred to. I could find no reference to this in the ROP nor any directions issued by the judge. It is usual that if material is to be provided post-hearing, directions are given as to time of service and indeed service on the other party as it is unusual for one party to send information without it being served upon the other. Nonetheless, Ms Bayatti, who appeared as Counsel before the Tribunal has provided a

statement confirming that the information was sent as described above and I informed the parties that in those circumstances I was satisfied that the documents were indeed sent. The parties therefore both confirmed that they would deal with the relevance of those documents in their submissions.

27. Ms Iqbal submitted that those documents were important because they corroborated the expert report of Dr Smith in relation to those who were associated with Tamil gangs and as to how they are perceived. She referred the Tribunal to the BBC article dated 26th February 2007 that referred to Tamil gangs being involved in confrontation and that the Metropolitan Police had sent up a task force to combat this. She submitted that the document demonstrated that criminal gangs were funding rebel struggles and that credit card fraud carried out in the United Kingdom by Tamil gangs funded the Tamil Tigers and referred to Chief Inspector Griffiths.
28. Ms Iqbal also referred the Tribunal to the second document which was the Defence Lanka article downloaded from the internet. That was last modified on 30th December 2010 and referred to incidents in 2006 and 2007. She made reference to May 16th and the "Eastside Boys" who were said to have been paid by an organisation called the LTTE. Thus she submitted that those two reports read together with Mr Smith's report supported the Appellant's account that he would be at risk of harm as he would be perceived as someone associated with Tamil gangs who were funding the LTTE. She submitted that the report at page 61 in which it is said that the Sri Lankan authorities automatically associate criminal activity with the UK supports the view that the authorities would take of the Appellant whose conviction was widely recorded. In this respect she referred the Tribunal to pages 131, an article from the Harrow Times dated 11th December 2006, page 134 an article from the Free Press dated 6th October 2006 and page 136 This is Local London article dated 12th December 2006. She submitted that in those news articles that related to the circumstances of the Appellant's conviction the Appellant was named. In this context she referred the Tribunal to Dr Smith's report who had mentioned the areas that the Tamil communities were based and in particular referred to Harrow (see paragraph 38). She submitted that Tamil communities outside of the UK were being monitored by the authorities and this was accepted in **GJ**.
29. Ms Iqbal submitted that there had been no consideration of the facts surrounding the offence itself which connected to the Tamil community being mentioned. She submitted that the incident took place following an altercation after a Tamil event (see page 34 of the bundle) and that he was on his way home from a Tamil festival. In this context she referred the panel to the sentencing remarks at H4 that it was an annual Hindu Ratha Yelva chariot festival.
30. Ms Iqbal referred the Tribunal to paragraph 22 of the panel's determination where the panel recorded the skeleton argument which was

taken from paragraph 75 of Mr Smith's report. Therefore she submitted looked at cumulatively the panel did not properly assess the risk on return to the Appellant.

31. Turning to Article 8, it is submitted that there was evidence before the panel that the Appellant's partner was pregnant. However the panel took no proper consideration of her circumstances at paragraph 30(vi) and there were a number of factors which would demonstrate it would be unreasonable for her to expect the Appellant's partner to return to Sri Lanka with him. She submitted there would be a degree of hardship to relocate to a country that she had no links with, her family resided in the UK and that there were significant security concerns identified in what was a vulnerable state and those issues were not properly considered and therefore had an impact on the proportionality of the decision. She submitted that the findings of the panel was that he posed a low risk of re-offending but did not appear to be given weight when carrying out the balance of the issue of proportionality under Article 8.
32. Mr Avery on behalf of the Secretary of State made the following submissions. In respect of the asylum claim he submitted that the argument advanced on behalf of the Appellant that the Sri Lankan authorities would consider this Appellant having been part of a Tamil gang therefore would perceive him as being associated with the LTTE and therefore treat him with suspicion, was a flimsy argument and was not supported by the evidence. He submitted that there were a couple of references to it at paragraphs 61 and 75 in the expert report of Dr Smith and the evidence on which it was based could properly be described as thin and therefore the conclusions of the expert were unsustainable.
33. He submitted that apart from the expert citing that he had involvement with the Metropolitan Police which led to concerning links with the LTTE at paragraph 61 that is ambiguous but nevertheless it is an assertion that has no evidence to back it up. He submitted that even from a historical perspective, there has been no case law on the basis of an asylum claim based in the way that this one had been advanced even though this is an issue that goes back to the year 2000 and in those circumstances he submitted that if there was a risk on return of those convicted of offences in the UK of the type the Appellant was involved in that it is likely that a risk category would have been identified.
34. Mr Avery made reference to the news article from the BBC dated 2007 making the point that that was prior to the military defeat of the LTTE and therefore how relevant that document was to the situation as it was today was debatable. Furthermore in its contents it is ambiguous about the involvement of the LTTE. It referred to quotes from Mr Griffiths about money being sent back to Sri Lanka however a couple of paragraphs later it is plain that that allegation of sending money back was denied vehemently.

35. He made reference to the Defence Lanka website and their interest in members of gangs. He said that this was taken from the website in 2014 however what was relevant was that the most recent report related to 2007 and 2006 and if that was the case that the Sri Lankan government maintained an interest in gang-related activity, then it is likely that there would be more recent evidence. In the case examples given particular incidents were described and the court concerned made reference to them having alleged LTTE interests and therefore it was a speculative assertion by the expert with no evidence to support it, that the Appellant would be perceived as someone supporting the LTTE by reference to his conviction. The dates of the articles do not assist.
36. He submitted that this was a problem that the panel had identified in the determination and at paragraph [21] quoted from the report. The expert does not say when he did work with the Metropolitan Police and the link is ambiguous. At paragraph 22 of the determination the panel were not satisfied that the observations made by Dr Smith were sufficient to draw the conclusion that there was a reasonable degree of likelihood that any Tamil returning to Sri Lanka who had been convicted of gang-related activity would be suspected of having links with Tamil activity that is directed at destabilising the Sri Lankan state. Mr Avery submitted that that conclusion was open to the panel and was a sustainable conclusion to be reached on the evidence before them. The evidence referred to was speculative. There was no evidence that people involved in criminal activity who have been returned have been targeted upon return therefore there was nothing wrong in the conclusions of the panel. In those circumstances the evidence provided subsequently would not have made any material difference to their conclusions as it does not support the contention of the expert. Therefore the grounds do not make out any error of law as asserted in them.
37. As to Article 8, the grounds reveal a selective view of the consideration of the panel. Whilst it was said that the panel had not taken into account evidence relating to her pregnancy, it is plain from the determination that they accepted that she was pregnant and therefore that point has no force.
38. The determination considers if (Mr Avery's emphasis) she was to accompany her partner that there would be no significant interference. The panel did not say that she had to go with him. The panel set out the background of the relationship at [6] and the partner had to face a difficult choice to go or to stay and she was fully aware at the time she met him that he was in prison and therefore the panel carefully weighed all the factors. In particular, the panel as they were entitled to place significant weight upon the public interest as a result of the circumstances of the conviction. The panel, having considered all the factors made a balance and reached the conclusion that even if there was a low risk of re-offending, this was a serious offence and did not lessen the public interest. Thus he submitted the decision of the panel should be upheld.

39. Ms Iqbal by way of reply submitted that the evidence did demonstrate an historic link as the Metropolitan Police were setting up an operation relating to Tamil gangs and therefore he would be associated with Tamil gangs.
40. Dealing with the news articles, the second article from 2007 is collated from various countries Defence Lanka is a website from the Ministry of Defence in Sri Lanka this is the article that Mr Smith refers to in his report when he refers to the website. It records that the Sri Lankan authorities have records. This was important material as it shows that the Sri Lankan government is monitoring the diaspora in different countries including the United Kingdom. Therefore she submitted that the panel had not properly considered the expert evidence that demonstrated that he would be at risk on return.
41. At the conclusion of the hearing I reserved my decision.

Discussion:

42. The grounds assert that the panel erred in law in its consideration of the background evidence and the expert report of Dr Smith in assessing whether the appellant was at risk on return to Sri Lanka. The issue arises from the criminal conviction of this Appellant for kidnapping and violent disorder that has been set out earlier in this determination and it is based on the premise that the Sri Lankan Government viewed Tamil gangs overseas to be "LTTE gangs" and thus fronts for the LTTE and that he would therefore fall within the risk categories identified by the Upper Tribunal in the country guidance decision of **GJ and Others** (as cited at paragraph (7(a)) which reads as follows:-

"Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka."

43. I have set out the oral submissions made by Ms Iqbal in this regard.
44. The panel gave express consideration to the report of Dr Smith and the background evidence including that contained in **GJ and Others** at paragraph 19 to 22 of the determination when making an assessment of risk. In this context it is important to take into account the panel's earlier findings relating to the basis of the asylum claim made by him and the findings set out at 18(i) - (ii). There is no challenge to those findings. Whilst the grounds refer to material that was sent post-hearing to the judge and that it is said the panel had failed to take them into account, paragraph 22 does refer to the extract from the Ministry of Defence website which was one of the documents that was sent to the Tribunal after the hearing and it is therefore arguable that the panel did have regard to this material. However in any event, I have considered the material in the general context and the findings made by the panel

concerning their consideration of the expert reported and the issue of risk.

45. After setting out the headnote to **GJ** the panel set out its conclusions at paragraphs [20] - [22]. The panel said this:-

“20. The appellant’s counsel submitted that the crime that the appellant had committed was likely to be known by the authorities upon his return. She submitted that his crime is associated with Tamil gangs in the United Kingdom and this would lead to an assumption that he is associated with the LTTE. On that basis, she submitted that the appellant would be perceived as a threat to the integrity of the unitary state in Sri Lanka. In reliance on the country guidance case of GJ the skeleton argument advances the contention that:

‘When the factors highlighted above are viewed together at the very least, it is submitted that he is generally someone who will be perceived to be associated with the diaspora activities in the United Kingdom at the very least as an LTTE supporter or at the worst as an LTTE cadre. Given that the government’s present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state, it is submitted that the appellant would be at risk on return.’

21. In advancing the contention the appellant’s conviction of a gang related crime is reasonably likely to give rise to the perception by the Sri Lankan authorities that he is involved in LTTE activity in the Diaspora and that he constitutes a threat to the integrity of the unitary state in Sri Lanka, the appellant’s counsel relied in the main on the following extract at paragraph 60 of the expert report:

‘The Ministry of Defence website has in the past reported details of Tamil criminal activity in London. This indicates that they will monitor criminal activities in the United Kingdom in relation to suspected LTTE connections. (The expert then makes reference to a report on the Ministry of Defence website, which states that an LTTE suspect was arrested with cloned credit cards unsuspecting card holders in the United Kingdom that the police believed that these would later be transferred to the LTTE. The report also states that the Tamil Diaspora in the United Kingdom is now tapping into the resources of the British public at large and committing credit card fraud in order to fund the LTTE.)

However, on the basis of my past work for the Metropolitan Police Service on precisely this issue, I can confirm that the links between the LTTE and Tamil credit card fraud in the United Kingdom is ambiguous. Nevertheless, the Sri Lankan authorities tend to automatically associate Tamil criminal activity in the United Kingdom with LTTE. As such, the Sri Lankan authorities are likely to be aware of the appellant’s conviction, as they have been with others.

Although the war is over and has been now for four years, the conflict between the two sides has not been resolved and the Sri Lankan authorities remain concerned over the possible resurgence of the LTTE.

It will be many, many years before the authorities can be confident that the LTTE has been defeated and this process will require more than draconian security measures, such as the Emergency Regulations and the Prevention of Terrorism Act, of which the latter remains undecided.'

22. I am not satisfied that these observations are sufficient to draw the conclusion that there is a reasonable degree of likelihood that any Tamil returning to Sri Lanka, who has been convicted of gang related activity would be suspected of having links with Tamil activity that is directed at destabilising the Sri Lankan state. I find that the authorities and the sources of Dr Smith's conclusions do not support his opinion. The extract from the Ministry of Defence website does not go so far as to say that any gang related activity is to be viewed as related to diaspora activity directed at destabilising the state. More to the point, is the fact that the latest country guidance case makes it very clear that the Sri Lankan authorities' approach to the risk posed by Tamils in the diaspora is sophisticated, both as to the activities within Sri Lanka and in the diaspora. The country guidance case makes clear that, the authorities know that many Sri Lankan Tamils travel abroad as economic migrants and that everyone in the Northern Province would have had some involvement with the LTTE and that in post-conflict Sri Lanka; an individual's past history will be relevant only to the extent that it is perceived by the authorities as indicating a present risk to the unitary state of the Sri Lankan government. In the circumstances of this appellant, he has never had any involvement in the LTTE; his family has never had any significant involvement in the LTTE. The appellant has not, save perhaps for the period after his release from custody, been involved in anti Sri Lankan activity in the United Kingdom. The crime for which he was convicted, although gang related, involved no more than the gruesome torture of a fellow Sri Lankan for no apparent reason. It is difficult to understand how, if the Sri Lankan authorities came to know of the circumstances of this offence which it is accepted they would, they could reasonably construe the appellant's involvement in this offence as justifying the perception that his activity poses any threat to the unitary state of Sri Lanka. The fact that he would not have an identity document, and even the fact that he may have some scarring, would not in our view, when considered with the evidence as a whole, be sufficient to place this appellant at risk."

46. Dr Smith was instructed to deal with a number of questions and in particular was asked to consider the likelihood that the Sri Lankan authorities would be aware of the Appellant's conviction in the light of the details accessible on the internet. The references in the report that Ms Iqbal has invited the Tribunal to consider are set out at paragraphs [60], [61] and [75]. It is these paragraphs that are relevant to the issue where

it is contended that the Appellant falls into the risk category identified in **GJ** at paragraphs (7)(a). Those paragraphs read as follows:-

“60. The Ministry of Defence website has in the past reported details of Tamil criminal activity in London. This indicates that they will monitor criminal activities in the UK in relation to suspected LTTE connections. For example,

‘The suspect Anandan, alias Meshanadan Muruganandan, was in a super luxury apartment in Wellawatta at the time he was arrested by the special police team, sources said. He had a large number of personal identification numbers (PIN) and bank receipts issued by both local and foreign banks, amounting to a massive sum of money, over Rs100,000,000, in his possession when he was arrested. He had cloned credit cards using PIN and card numbers obtained from unsuspecting card holders in the United Kingdom, a police official said adding that these were later believed transferred to the LTTE. Unlike in the past where the LTTE was mainly extracting funds from the Tamil diaspora in the UK, it is now tapping in to the resources of the British public at large who are unknowingly funding the LTTE, he further asserted speaking to the defence LK.’

61. However, on the basis of my past work with the Metropolitan Police Service on precisely this issue, I can confirm that the links between the LTTE and Tamil credit card fraud in the UK is ambiguous. Nevertheless the Sri Lankan authorities tend to automatically associate criminal activity in the UK with the LTTE. As such, the Sri Lankan authorities are likely to be aware of the Appellant’s conviction, as they have been with others.”

.....

“75. The Sri Lankan authorities would seem to monitor events relating to the diaspora, principally for evidence of LTTE activity, especially in relation to resurgents. Anyone convicted of an offence linked to a Tamil gang in the UK will be assumed to be, at the very least, a supporter of the LTTE and, at worse, an LTTE cadre. The names relating to similar convictions have appeared before on the MOD website, which would strongly imply adverse interest on the part of the authorities.

47. The panel expressly considered those paragraphs and at [22] reached the conclusion that the authorities and the sources of Dr Smith’s conclusions did not support the opinion and in particular the extract from the Ministry of Defence website did not go as far as to say that any “gang related activities to be viewed as relating to diaspora activity directed at destabilising the state.” It was open to the panel to reach that conclusion on the evidence provided before them. At paragraph 60, Dr Smith made reference to the Ministry of Defence website and reached a conclusion that it indicated that “they will monitor the criminal activities in the UK in relation to suspected LTTE connections”. The report did not provide any source material and the footnote at 27 referred to a mastermind behind the LTTE credit card fraud

who was arrested on 30th December 2010. That article itself was not provided before the panel who were not able to view that article and the context in which it was given. The extract from the Defence Lanka website subsequently provided could not be said to be support for the claim that “they will monitor the criminal activities in the UK as there is no recognition in the report of Dr Smith of the fact that the Defence Lanka website has not been modified since 30th December 2010 and the incidents that are set out on that website refer to 2006 and 2007 thus there is no recent evidence of any monitoring of activities criminal or otherwise in the UK. Furthermore, the example mentioned in Dr Smith’s report at [60] is not referred to on the website or at least in the extract provided in support of the Appellant subsequently. As Mr Avery submitted, a careful consideration of the contents of the document provided on behalf of the Appellant, gave examples of those who were suspected of LTTE involvement and made specific reference to such involvement and LTTE links.

48. Dr Smith also cites at [61] his past work for the Metropolitan Police on this issue and confirms that links between the LTTE and credit card fraud is ambiguous. Therefore Dr Smith could not say there was evidence of any cogency that gang related activity was funding the LTTE. In any event, the gang related activity as the panel set out in the determination was described as “violent behaviour which could not be said to have anything to do with links to the LTTE”. In this context the second Article produced on behalf of the Appellant which is a BBC News article from 26th February 2007 also arguably provides no evidence to support the belief that credit card fraud in the UK funds the LTTE. This is a report entitled “Tamil gangs tackled from within” dated 26th February 2007. It is a BBC News article relating to an interview with 26 year old Abyha and describes the confrontation with a rival gang at a wedding in 2005 in Ilford identifying those who attacked the complainant as members of a Tamil gang. The article goes on to say “since 2000 Tamil gangs in London have been involved in many gory confrontations, which have resulted in ten deaths spurring the Metropolitan police to set up a special task force, Operation Enver to tackle gang related incidents.” The article names Chief Inspector Griffiths involved with the task force and identified five main Tamils gangs in London namely East Ham and Walthamstow, Wembley, Merton and Croydon and East Ham being the biggest with 30 members. This refers to the CCTV driving gangs into hiding and refers to a relatively quiet two years. Under the hearing “funding rebel struggle” it is stated that most of the violence resulted in inter gang rivalries and revenge attacks stemming from territorial control and historically involved in credit card fraud and extortion from local businesses. It is recorded that Mr Griffith added “and the money is sent to Sri Lanka to fund the struggle by the Tamil Tiger rebels. There is a photo with the caption underneath stating ‘Mr Griffiths believed the money extorted by gangs is laundered to Sri Lanka’”.
49. It is asserted that the panel did not take this into account and it was material evidence in support of Dr Smith’s conclusions. However, the panel’s view of the evidence at [22] was that the expert report of Dr Smith

did not support the view that any gang related activity was to be viewed as related to diaspora activity and whilst Dr Smith's opinion is that the Sri Lankan authorities associate criminal activity in the UK with the LTTE, no reason is given from the evidence to support the assertion. The evidence from the website that has subsequently been produced could not properly be said to support this assertion. As can be seen by the date of the article the most recent example was 2007 which was before the military defeat of the LTTE. As to "funding rebel struggles" the evidence contained in it comes from a quote from Mr Griffiths and the caption underneath his photograph in which it is said he "believes the money extorted by gangs is laundered in Sri Lanka" gives no reference for the source material for this belief and this is no doubt why Dr Smith refers to the evidence in support as "ambiguous". The article further makes it clear that it was repeatedly and vehemently denied by community leaders that this was the case and cited a councillor in Newham that the behaviour had been "damaging race relations and spoiling the image of the community, but it is mostly territorial confrontation with the boys. They have nothing to do with the fighting in Sri Lanka". Furthermore as Mr Avery pointed out, the article refers to this being a problem since the year 2000 but from a historical perspective no case has been advanced on behalf of an asylum claim or a deportation claim where this has been an issue. The article refers to deportation and 24 names having been submitted to the Secretary of State.

50. At [75] the opinion of Dr Smith was that "anyone convicted of an offence linked to a Tamil gang in the UK will assume to be, at the very least a supporter of the LTTE and, at worst an LTTE cadre". This relies on the claim that "the name relating to similar convictions that appeared before on the MOD website which would strongly imply adverse interests on the part of the authorities." As such Dr Smith does not identify any article on the MOD website (and I presume he refers to the Defence Lanka website extract that was produced post-hearing) and there was no footnote source that accompanies paragraph 75. As can be seen above, the most recent report relates to 2007. Thus I consider it was open to the panel to reach the conclusion at [22] that the sources to Dr Smith's conclusions did not support his opinion.
51. Furthermore, Dr Smith took as a starting point that this Appellant or anyone convicted of an offence linked to a Tamil gang would be perceived as linked to the LTTE and in this context Ms Iqbal submits that the circumstances of the Appellant's offence lent support to this because it occurred following an altercation after a Tamil event and the panel did not take this into account when reaching its conclusions at [22]. I do not find that that is demonstrated by the panel's consideration or supported by the evidence before the Tribunal itself. The panel had before it articles from the internet taken from the press coverage at the time of the Appellant's conviction. Page 134 describes the victim or complainant of the event on his way home from a festival in Wembley. It does not characterise this as a Tamil festival or event. At page 136 it was referred to as a "chariot festival". Only the sentencing remarks from the transcript which would not be available to the Sri Lankan authorities refer to it as a Hindu Ratha Yatra

Chariot festival and there is no reference to this being in the context of a Tamil festival or an LTTE event anywhere or any reference to fund raising could possibly be said to be inferred from that.

52. As to the circumstances of the offence it was open for the panel to find at [22] that the crime for which he was convicted, although gang related, involved no more than the “gruesome torture of a fellow Sri Lankan for no apparent reason” and that if the Sri Lankan authorities did get to know about his conviction they could not reasonably construe the Appellant’s involvement in the offence as to justify the perception that his activity posed any threat to the unitary state of Sri Lanka. Consequently it was open to the panel to reach the conclusion that notwithstanding the lack of an identification document and the presence of scarring, they found that he would not be at risk on return to Sri Lanka.
53. I am satisfied that was a conclusion that was entirely open to the panel to reach on the evidence before them. The sentencing remarks themselves and also the press coverage refers to the complainant and the Appellant and his associates having seen each other prior to the assault and also refers to others who were not of Sri Lankan origin being involved [see H6 of the bundle] and whilst the judge made reference to them as acting as a gang it cannot be said that the Appellant was part of an identifiable Tamil gang as identified in the Sri Lanka website. Furthermore, there was nothing in the reports of the Appellant’s conviction that make reference to money, credit card fraud or extortion and as the panel properly characterised it it was “no more than mindless and serious violence”.
54. I consider the point made by Mr Avery has force that if it is the case that this had been an identified problem since the year 2000, that it has not been advanced in any previous case of deportation or asylum that a conviction would lead to such perception by the Sri Lankan authorities in the last fourteen years and there was no evidence placed before the panel that any returnees involved in criminal activity had been targeted upon return by reason of such a perception by the Sri Lankan authorities. The panel therefore properly characterised the report’s contents in respect of this question as speculative and not based on any cogent evidence.
55. I therefore find that the panel were entitled to reach the conclusion that they did at [21] and [22] and that their conclusions are firmly evidence based and are sustainable findings. The Appellant had never had any significant involvement with the LTTE, and his crime, although gang related could not be said to have been in the category of a crime that was related to any monetary extortion but was a crime of violence. Whilst the grounds challenge to some extent the panel’s finding that he had not taken part in any activities in the UK, the finding at 18[iii] of the panel was that whilst the Appellant had claimed he had been involved in demonstrations in the United Kingdom he did not provide any cogent evidence in this regard. As the panel noted in any event, such involvement would only have been after August 2013 after his release and they were prepared to accept that he may have participated in some anti-

Sri Lankan demonstrations since his release in custody however there was no evidence before the panel to demonstrate that his attendance at such demonstrations would be known to the authorities.

56. The panel made the point at [22] relying on the country guidance case of **GJ** that the Sri Lankan authorities approach to the risk posed by Tamils in the diaspora is sophisticated, both as to the activities within Sri Lanka and in the diaspora. That is supported by paragraph 354 in **GJ**. That country guidance decision identified the categories of person at risk on return to Sri Lanka at sub-paragraph [7] of the guidance. The thrust of the guidance set out in **GJ** was that there had been a significant change in the approach of the Sri Lankan authorities since 2007 and the interest of the Sri Lankan authorities was focussed on the present diaspora activities and in particular, attempts to revive and or refinance the separatist conflict in Sri Lanka, together with persons in specific categories. It was open to the panel to reach the conclusion that on the findings of fact made, that the Appellant could not reasonably be considered, even in the present climate, as a potential source of finance for those wishing to revive the conflict. As **GJ** set out at paragraph 356 that the question of whether the authorities regard an individual of interest “will be a question of fact in each case dependent on any diaspora activities carried out by such an individual”. That was what the panel did consider in relation to this Appellant and I do not consider that the grounds in this respect are made out.
57. Turning to Article 8, the grounds advanced on behalf of the Appellant submit that the panel did not properly consider the proportionality balance under Article 8 and in particular, failed to give weight to a number of factors in which it is said demonstrate it would be unreasonable to expect the Appellant’s partner to relocate with him to Sri Lanka.
58. I have considered with care the submissions made in this regard but I find that this ground has no merit. As set out earlier in this determination the panel set out the relevant law under paragraph 398, 399 and 399A noting that it was not contended behalf of the Appellant that he could meet the Rules (see [25]). They cited the relevant authorities at [24] – [29] including **MF (Nigeria) [2013] EWCA Civ 1192, R (Nagre) v SSHD [2013] EWCH 720 (Admin), Razgar** and **Maslov** and the criteria in **Uner**. Their assessment of proportionality is set out at paragraphs 30(i) – (vi), [31], [32]. They have been set out in full earlier in the determination.
59. In my judgment they demonstrate that the panel had regard to the material considerations and factors when carrying out the wider weighing process under proportionality. Such considerations included his relationship with his current partner. Whilst the grounds refer to the panel being in error concerning evidence of pregnancy, that is wholly immaterial as the panel proceeded on the basis that she was indeed pregnant. However, whilst they accepted that and also that she was in a genuine relationship with the Appellant, they did not find it unreasonable to expect her to return with him to Sri Lanka. It was entirely open to the panel to take into account and place weight on the fact that both she and the

Appellant were fully aware when embarking on their relationship that he was facing deportation and that any relationship that they would form would be against such a backdrop. As the panel noted, she met the Appellant when he was in prison on day release and the panel expressly rejected her evidence that they had not discussed what would happen if he were to be deported to Sri Lanka (see paragraph [30(iv)]). The panel also found that this was a relatively recent relationship, they had never cohabited and thus family life was characterised as “tenuous”. Contrary to the grounds, the panel was stating that she was not required to go to Sri Lanka but that it was open to her by choice to join him in Sri Lanka or remain in the United Kingdom. Whilst Ms Iqbal states that no consideration was given to the circumstances that she would face in Sri Lanka, it is plain from the findings of fact made that the Appellant’s mother was resident in Sri Lanka and the panel found that she was “in a relatively stable, financial position in Sri Lanka” and would be able to accommodate both the Appellant and his partner, if indeed she did accompany him there.

60. Contrary to the grounds, the panel did take into account in the balancing exercise the Appellant’s rehabilitation at [30(i) - (ii)] where they expressly took into account that he had made significant progress on his path to rehabilitation, namely that he was able to complete a degree in accountancy and had been accepted for a masters degree at the LSE and that the risk of reconviction was low. However they gave regard and weight to the public interest considerations which they set out at [32] and the public policy of deporting foreign criminals and the importance of that object. The panel properly directed themselves to this at [32] to the weight of the object in the light of the criminality of the Appellant which they found to be a very serious offence at “the upper end of the range of seriousness for offences involving violence”, this having been a sentence passed under the provisions of the Criminal Justice Act 2003 for an indefinite sentence of imprisonment and the panel also took into account the aggravating circumstances. Thus in my judgment it was open to the panel to reach the conclusion on the facts that were before them and on balancing the factors in favour of the Appellant that they did not outweigh “the compelling public interest factors” identified in this appeal. For those reasons, the decision of the panel was a sustainable one and it could not be said that the proportionality balance did not take into account the material factors as set out in the grounds.

Decision

61. The decision of the First-tier Tribunal panel does not involve the making of an error of law. The decision shall stand.

Signed

Date

Upper Tribunal Judge Reeds