IAC-AH-KEW-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/01552/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**
**On 8 December 2015**

**Decision & Reasons Promulgated**
**On 4 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**VV**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr A MacKenzie, Counsel instructed by Theva Solicitors
For the Respondent: Ms J Isherwood, Specialist Appeals Team

**DECISION AND REASONS**

1. Pursuant to Rule 14(1) of the Upper Tribunal Procedure Rules, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. Failure to comply with this direction could lead to contempt of Court proceedings.

2. Following a successful error of law challenge to a decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State to refuse to

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recognise him as a refugee or as otherwise requiring international human rights protection, the decision under appeal comes before me to be re-made.

*The decision of the First-tier Tribunal in 2011*

3. The appellant was born in Sri Lanka on 21 May 1983. He arrived in the United Kingdom on 30 April 2011, and applied for asylum on that day, following apprehension by Immigration Officers. The appellant was given a screening interview on 1 May 2011 and he attended a substantive asylum interview on 20 May 2011. On 26 May 2011 the then Secretary of State gave her reasons for refusing to recognise him as a refugee. The appellant's appeal against this decision came before Judge Tipping sitting at Taylor House on 16 August 2011. In her subsequent decision, she set out the appellant's account at paragraphs [6] to [10], which I reproduce below:

> "6. The appellant's claim is that he has suffered persecution at the hands of the Sri Lankan authorities by reason of his political opinion as a supporter or member of the LTTE, and that he fears further persecution if now returned. The account of events given by the appellant varies between the sources of his evidence, but the account on which he relied at the hearing appears to be as follows: The appellant was born on 21 May 1983 and brought up in Mullaitivi on the north-eastern coast of Sri Lanka. He worked as a fisherman. His father was an LTTE sympathiser, and his elder sister and younger brother joined the LTTE in 1995 and 2008 respectively. The family continued to live in Mullaitivi apart from a period when they were displaced by military occupation of the area by the Sri Lankan Army. The appellant was married on 7 March 2007 and set up home independently but in the same area. He was forcibly conscripted into the LTTE in June of that year.
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> 7. The appellant's experience of the sea led the LTTE to decide to train him as a builder of boats for LTTE use, including suicide bombing missions. He worked in a team of 11 under the command of Lt.-Col. Sutha. By reason of his knowledge and skills, the appellant was promoted to be 'second leader' of the team. The appellant was, however, caught up in the advance of the Sri Lankan Army in March 2009, and was ordered by the LTTE to take part briefly in the front line fighting. After that, his assistance to the LTTE was limited to carrying food from LTTE kitchens to the front line. He encountered his wife by chance, and she was able to inform him that arrangements had been made for him to escape with her from the LTTE by boat, together with his younger brother. This occurred on 16 April 2009. However, the boat was intercepted, and the appellant and his brother were taken to Chettykullam Camp. The appellant's brother was identified as an LTTE member and arrested. The appellant himself was questioned on a number of occasions whilst in the Camp.
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> 8. He was released in September 2010 and went to live in Vavuniya. However, in December 2010, the appellant was re-arrested, and taken to Joseph Camp. He was kept there for two days and ill-treated during questioning. He was hung upside down and beaten, sustaining injuries of which he carries scars. He was photographed and finger-printed. He was detained at the Joseph Camp until March 2011.
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> 9. He was then released on payment of a bribe by his uncle. The release was disguised as an escape. He was taken from the Camp as if still a prisoner but the

vehicle in which he was travelling suddenly stopped and he was told to run away. Shots were fired over his head. The appellant went to his uncle's house in Vavuniya. Arrangements were made for an agent to take him out of Sri Lanka, and on 20 March 2011, he left Sri Lanka and travelled with the agent to Dubai. On arrival the agent discovered that his colleague in Dubai had been arrested, and he told the appellant that they would have to leave Dubai. The appellant did not know when he boarded the plane in Dubai on 3 April 2011 that they were to travel back to Sri Lanka. On arrival there, he was lodged in a house in Colombo, while fresh arrangements were made for the appellant to leave Sri Lanka.

10. On 28 April 2011, the appellant again left Sri Lanka and travelled to London 'via a few countries.' He did not know that he was coming to the United Kingdom until he arrived here. The appellant approached immigration control alone. His passport did not contain a visa, and he was detained by the immigration officer for that reason. He then applied for asylum. The appellant states that if he is returned to Sri Lanka he will be shot by the authorities."

4. At paragraphs [11] to [13], Judge Tipping discussed the expert evidence of Mr Martin who found a number of scars on the appellant's body which were faint, but which were discernable on careful examination. Mr Martin opined that the scars on the appellant's back were consistent with his claim to have been beaten during detention, the circular scars on his leg were consistent with cigarette burns, and those on his wrists and ankles were consistent with him having been restrained by handcuffs and or ligatures.

5. The judge noted that the appellant was specifically asked at interview whether he had any scars remaining, and replied that he had sustained injuries from a beating during detention but the scars had vanished. The appellant claimed that he had mentioned visible scarring, but the interviewing officer had failed to record this. It was clear to Judge Tipping that the reply given by the appellant had been accurately recorded. Also his account of ill-treatment during detention was limited to a claim to having been beaten, and there was no mention of being burnt by cigarettes. The judge found the discrepancy difficult to explain, but decided that the inconsistency should not be taken as damaging the credibility of his evidence.

6. At paragraph [14] she turned to other inconsistencies in the appellant's account of events. The appellant was asked at screening interview what activities he had carried out for the LTTE, and he had said he had given food to the Tigers, he had driven for them and also carried artillery for them. The judge found this reply ran wholly counter to the claim made at the main interview and maintained at the hearing, which was that he had been employed by the LTTE to build vessels for terrorist use. It was only later in the asylum interview that the appellant had first claimed to have been second in command of a boat building team.

7. Judge Tipping did not find it credible that the appellant would have been allowed to escape through the payment of a bribe, and with the assistance of a government minister, as the appellant suggested at one point during the interview. At the same interview the appellant claimed that prior to his release he had been identified by an informer as a builder of LTTE suicide boats. In the circumstances, the judge found,

the appellant would clearly have been liable to be prosecuted for aiding terrorist acts. He would have been a relatively high profile prisoner, and the judge did not accept that he would have been allowed to go, even on payment of a bribe. He would have been of too great adverse interest to the Sri Lankan authorities for the accompanying officers to have taken the personal risk to themselves of releasing him. Also she did not accept that a government minister would have had any motive for assisting the appellant in securing his release.

8. Judge Tipping found that the appellant's account of his release contained elements of pantomime that stretched credibility to breaking point and that his account of his departure from Sri Lanka was also riddled with inconsistencies. He stated that the agent procured a passport in his own identity. He said he himself signed the application form and that the passport contained his photograph. It was with this passport that he sought to enter the United Kingdom. He originally claimed the passport was obtained in January 2010 but on being reminded that this conflicted with his claim to have been in detention at that time, he said the passport had been obtained at the time of his first alleged release from detention in May 2009. Finally, returning in part to his first account, he had claimed that the passport was applied for in September 2010, but not issued until January 2011. He sought to account for this delay by saying he was too frightened to go to the passport office, but this ran counter to his claim that obtaining the passport was in the hands of the agent. The appellant claimed to have been identified as a high profile member of the LTTE, yet he also claimed that during his detention in January 2011 the authorities issued him with a passport. Asked about this at interview, the appellant again said that it had been issued with the help of a Minister. In his own evidence, the appellant was thus issued with a passport in his own identity whilst on detention as a terrorist suspect.

9. The judge found there was no discernible reason for the appellant allegedly employing an agent. The agent took no direct part in the appellant's attempted entry to the United Kingdom. The appellant simply arrived here on his own passport, but lacking a visa. He nonetheless claimed that his family paid the agent £15,000 for his assistance, a sum which was wholly disproportionate not only to the degree of assistance that the agent provided, but also the resources available to a fisherman and his family, notwithstanding the appellant's explanation that the money had been raised by the sale of land. Moreover, despite the appellant's claim not to have known he was travelling to the United Kingdom, there was clearly a pre-arrangement, since the appellant arrived here with the contact details of a friend with whom accommodation had already been arranged at the time of the screening interview, despite the appellant having been in detention since his arrival in the UK. The judge continued:

> "15. These flaws in the appellant's evidence relate to the core of his claim to have been subject to persecution in Sri Lanka, to have been released illegally from detention, to have left Sri Lanka clandestinely, and to be at risk of coming to the adverse attention of the authorities if now returned.
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> 16. I have had careful regard to the supporting evidence of Mr MK and Mr PR. Both state that they knew the appellant in Sri Lanka. Mr MK says that he recalls the

appellant selling fish in the market, and that he met him again when the appellant was driving a vehicle for the LTTE. There is no mention of boat building. They met by chance at a funeral in Lewisham. Mr PR says that he knew the appellant in Sri Lanka, that he was forcibly recruited into the sea tigers, and that very recently he met the appellant by chance in his solicitor's office. Given the striking discrepancies in the appellant's evidence, little weight can to my mind be accorded to this supporting evidence; I regard it as self-serving.

17. The appellant states that his wife has been harassed by the authorities since the appellant since Sri Lanka because of his earlier escape from custody. I have had regard to the complaint lodged by the appellant's wife (though not until 19 July 2011) with the Human Rights Commission of Sri Lanka. There is no evidence of any further steps in the matter. It is open to anyone to lodge a complaint, and the mere lodging of a complaint is not therefore evidence of much weight. At the hearing, the appellant said that his wife had been arrested by the authorities, detained for three days, and on release had been required to report regularly to the authorities. He claimed that this took place on 12 March 2011, and therefore before he left Sri Lanka. The appellant claimed at the hearing to have told the officer at the substantive interview about the arrest of his wife. There is no record of this. The appellant said that he was upset and dizzy at the interview, though this runs counter to his affirmative reply when asked at the end of the interview whether he was still feeling fit and well (Q.330). The appellant's failure either at screening or substantive interview to mention his wife's arrest and detention, events which he states had taken place only a few weeks before his arrival here, undermine the credibility of this aspect of the appellant's account.

18. The appellant said at interview that he had not been charged with any offence. He has nevertheless now belatedly submitted (in the appeal bundle at pages 25 to 27) three documents that he claims are orders for his detention and confiscation of a vehicle. These date from 30 March 2010 and earlier, and there is no explanation of the appellant's failure to produce them until now. The originals have not been produced, and it is fair to comment that the documents could readily have been typed on any personal computer. The appellant has not explained their provenance or submitted any evidence of how they reached him. In all the circumstances, I can attach little weight to these documents.

19. I return to the issue of scarring. The evidence of Mr Martin establishes to my mind a reasonable likelihood that the appellant has at some point been beaten, leaving the scars that are visible on his back. It also appears to be the case that he was restrained at hand and foot. The gunshot wound remains wholly unexplained, and Mr Martin's report does not record anything the appellant may have told him about this injury. During the hostilities in Sri Lanka, a bullet wound could have been sustained in a wide range of ways, including accidentally.

20. I turn therefore to an assessment of the credibility of the appellant's evidence. In my view, the medical report establishes that the appellant was at some point held by the Sri Lankan authorities and ill-treated in the course of questioning; there is no other reasonable explanation of the scars borne by the appellant. There is evidence in the public domain that during the civil war, the Sri Lankan authorities routinely rounded up and questioned Tamils, young men like the appellant in particular, in their efforts to contain the Tamil insurrection. There is also evidence that the authorities used beatings to extract information. I accept

that the appellant may have been detained in this way, and I do not of course condone the ill-treatment he may have suffered.

21. The detention of the appellant on one occasion of this kind would not of itself, given the changed circumstances since the end of hostilities, create a reasonable likelihood that he would now be of adverse interest to the Sri Lankan authorities. The clear discrepancies and internal inconsistencies in the appellant's evidence that I have addressed above to my mind undermine the much-embellished account that the appellant has now given. I do not find this account credible."

10. On the issue of risk on return, Judge Tipping reiterated that the appellant was not a high profile LTTE unit second in command that he described in later versions of his evidence. He might have been forced to assist the LTTE at a low level, as he initially claimed, by driving and providing food. But as such, he would not be of adverse interest to the authorities on return. This conclusion was supported by his own evidence that he was not of such interest on return to Sri Lanka in early April 2011.

11. Judge Tipping's decision dismissing the appellant's appeal on all grounds raised was promulgated on 8 September 2011. The appellant's representatives applied unsuccessfully for permission to appeal, and the appellant's appeal rights became exhausted as of 7 February 2012.

*New evidence in support of a fresh claim for asylum*

12. On 9 February 2012 the appellant was detained pending removal from the UK. On 13 February 2012 he submitted a Rule 35 – torture allegation claim. This was refused on 15 February 2012. At the end of the month his representatives obtained a court injunction, and removal directions were cancelled. On 2 April 2012 the appellant was released from detention, and on 29 August 2013 the appellant's solicitors placed further evidence before the Home Office in support of a fresh application for international and human rights protection. The fresh evidence fell into two categories. The first category comprised witness statements from three individuals testifying to the appellant taking part in protests and rallies in London against the Sri Lankan government. The other strand of new evidence was a medical report by Dr Camilo Zapata dated 16 August 2013.

*The rejection of a fresh claim*

13. In a letter dated 9 October 2013 Kiran Gil acting on behalf of the Secretary of State gave her reasons for deciding that the further submissions dated 29 August 2013 were not significantly different from the material which had previously been considered and therefore did not amount to a fresh claim for asylum and human rights. With regard to the medical evidence, it was noted that in his report of 16 August 2013, Dr Zapata stated that:

> "In my opinion, bearing in mind some reduction in the frequency of his symptoms, Mr [V's] PTSD is currently reasonably well-treated by psychiatrists and I strongly believe his PTSD would continue to improve if he were to continue to receive the very good treatment and management he has had while under the joint management of his GP and Dr Hussain, his psychiatrist at Ladywell CMHT. Mr [V] has also benefited from

counselling at the stress and refugee group, although he is not currently attending due to financial and transport difficulties; I recommend he attends these counselling and support groups."

14. It was considered that the level of the appellant's illness fell well short of the threshold required to engage Article 3, as indicated by the case of **Y and Other (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362**. Furthermore, it was noted that the appellant had a number of family members residing in Sri Lanka, including his wife and other family, who could support him.

15. After further correspondence between the solicitors and the Home Office, on 28 February 2014 the Home Office agreed to give the appellant a right of appeal against the decision made on 9 October 2013 to refuse to grant him leave to remain.

**The Hearing before, and the Decision of, the First-tier Tribunal**

16. The appellant's appeal came before Judge Cameron sitting at Taylor House on 18 July 2014. Both parties were legally represented. The judge received oral evidence from the appellant, and two supporting witnesses. In closing submissions on behalf of the appellant, Mr Lewis submitted there had been significant developments since the decision of Judge Tipping. The Tribunal in **GJ and Others** at paragraph [275] had accepted the evidence of a lawyer that despite the seriousness of an offence, bribes were paid and a person could leave through the airport. Secondly, there was now evidence that the appellant had been suffering from PTSD at the time of his screening interview, when he had not made reference to being involved in boat building. The fact that he was second in command was not significant. What was significant was the accusation that he was aware of where they had buried arms. Given his believed involvement in the hiding of arms, he would be at risk on return.

17. Judge Cameron set out his findings of fact and credibility at paragraphs [31] onwards. At paragraphs [37] to [44], Judge Cameron considered the previous psychiatric reports made by Dr Zapata, beginning with the first one which was dated 20 August 2011, four days after the hearing on 6 August 2011. He noted that the appellant was seen by the psychiatrist on 11 August 2011, which was five days prior to the hearing before Judge Tipping.

18. At paragraphs [46] to [48], the judge considered the most recent report of Dr Zapata dated 7 April 2014, and at paragraphs [49] to [62], the judge gave his reasons for finding that the new evidence relied on by the appellant did not establish to the required standard of proof that he was of continued adverse interest to the Sri Lankan authorities. I reproduce paragraphs [45] to [62] below,

> "45. In an up-to-date report dated 7 April 2014 Dr Zapata states that the appellant is still symptomatic in terms of his PTSD but that he has improved since he was last seen in August 2013. The appellant continues to be seen by his GP and psychiatrist and other health professionals. There is further reference at paragraph 14 to the appellant having taken an overdose of paracetamol and superficially lacerating both his arms. At paragraph 16 there is reference to medication the appellant is currently prescribed.

46. At paragraph 21 there is reference in the last 4 weeks the appellant has wished that he was dead but has not harmed himself but had thought about suicide by taking an overdose but had no actual suicide plans when he was seen by Dr Zapata. The report at paragraph 37 again refers to the fact that the appellant's symptoms could explain inconsistencies in his evidence.

47. Dr Zapata states at paragraph 46 that the appellant's condition would worsen if removed to Sri Lanka and his suicide risk would increase. He states that the appellant should continue his psychological psychotherapeutic treatment for at least another 6 months (48) and that the threat of return is currently in his opinion worsening the appellant's state and consequently increasing his risk of suicide (49).

48. Dr Zapata again indicates at paragraph 52 that if the appellant were removed back to Sri Lanka the risk of suicide could reach a higher level and be maintained as treatment would not be readily available to him. At paragraph 56 he states that the appellants risk if his appeal was refused would increase to extremely high.

49. It is submitted on the appellant's behalf that documents now obtained including a letter from an MP in Sri Lanka and also from a Sri Lankan attorney which deal with the appellants arrest enable the tribunal to go behind the findings of Immigration Judge Tipping. The letter from the MP indicates that that he was aware of the appellant's previous detention and also refers to the fact that in November 2011 the appellant's father asked his advice about the fact that the appellant's wife was being detained and harassed by the authorities seeking her husband.

50. The letter from the Sri Lankan lawyer refers to documents in connection with the appellant dated March 2010 and December 2009. Although he states that the documents are genuine and not fabricated the documents simply indicate that the appellant was believed to have undergone training with the LTTE. Given that it is accepted by Judge Tipping that the appellant was detained and ill-treated and that he was a low level member of the LTTE, I do not find that these particular documents take the matter any further.

51. The appellant does of course indicate that he is still of interest and refers to the fact that he was contacted by his wife after his asylum interview indicating that she had documents pertaining to the arrest of his brother. In his witness statement dated 18 July 2014 he again refers to the findings of the previous Immigration Judge and gives a further explanation as to why those findings were incorrect. In addition he states that he has maintained contact with his wife and that in March 2014 she told him that she was still being harassed by CID officers looking for him. He states that she still continues to report to the police station and is questioned about him.

52. I do take into account the new evidence in relation to the appellants statement that his wife has been harassed by the authorities in connection with his whereabouts and that this statement appears to be corroborated by the MP's statement that he was contacted in 2011 about this issue however I am not satisfied even to the lower standard of proof that this evidence is credible given the change in emphasis adopted by the Sri Lankan authorities towards those who were previously members of the LTTE particularly given the findings that the appellant was not a high level member of the LTTE.

53. Although the appellant has provided additional witnesses, one of whom in fact gave evidence on the previous occasion, they do nothing more than confirm that the appellant was a member of the LTTE and was detained. This is in fact accepted by Judge Tipping.

54. Taking into account all of the evidence available I am not satisfied that the appellant has shown that the findings of Judge Tipping that he was not a high-profile member of the LTTE are incorrect.

55. I find that the appellant was a member of the LTTE and did assist them. I also accept the evidence that he was detained and ill-treated. He was however released on the payment of a bribe and left the country albeit that he then returned briefly and left again with the aid of an agent. I do not find even to the lower standard of proof that the appellant would still be of interest to the authorities given his low level profile and I do not accept the evidence as credible that his wife has been required to report for the last 2 years or so and is still being questioned about him.

56. Dealing with the appellants return to Sri Lanka the court in MP (Sri Lanka) have confirmed the risk factors set out by the Upper Tribunal in GJ at paragraph 356. The tribunal confirmed that if a person was detained by the Sri Lankan security service there remained a real risk of ill-treatment or harm and that internal relocation within Sri Lanka was not an option for such a person. They also indicated that the Sri Lankan authorities approach was based on sophisticated intelligence. It was stated that the Sri Lankan authorities knew that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the Civil War.

57. I do take note of the fact that in MP (Sri Lanka) the court upheld findings that the attendance at one or even several demonstrations was not of itself evidence that a person is a committed Tamil activist seeking to promote Tamil separatists within Sri Lanka. The appellant's evidence is that he has attended a number of pro-LTTE activities in the UK and he states that his photograph has appeared on certain websites. There is also evidence that the appellants were videotaping those who attended some of these demonstrations.

58. As indicated above I accept to the lower standard of proof that the evidence available including the medical report is sufficient for me to make a finding that the appellant was detained and ill-treated. I also note the MP's comment that he was contacted in 2011. I do however note paragraph 30 of MP (Sri Lanka) and in particular the comments that 2011 was still relatively soon after the ending of the war when the risks may have been greater.

59. Although I accept that the appellant was detained and was subjected to ill-treatment he was released on the payment of a bribe and left Sri Lanka. I do take into account the change in the authorities position in particular that their focus is now on identifying Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state.

60. The appellant undertook low level activities for the LTTE. In this country he has attended a number of demonstrations. There is nothing however on the evidence available which would indicate that the appellant is an activist or that he would

be perceived as an activist such as to now be of interest to the authorities on return.

61. I not satisfied even to the lower standard of proof that the appellant would come within any of the risk factors currently set out in GJ. I am not therefore satisfied that the appellant would be at risk on return to Sri Lanka for a convention reason.

62. Given the conclusions as outlined above, I do not find that the appellant has discharged the burden of proof to establish that he is entitled to the grant of asylum. I come to the conclusion that the appellant's removal would not cause the United Kingdom to be in breach of its obligations under the Qualifying Regulations."

19. On the topic of the appellant's alternative claim under Article 3 ECHR (mental health/suicide risk), the judge accepted at paragraph [69] the findings in **GJ** that there were only facilities available in the cities and they did not provide appropriate care for mentally ill people. But he was not satisfied that the severity of the appellant's current mental health was such that there was a real risk that he would commit suicide. He would clearly have assistance during his removal, and he would be removed to Colombo where there were some mental health professionals available.

**The Reasons for Finding an Error of Law**

20. The appellant applied for permission to appeal to the Upper Tribunal against the decision of Judge Cameron to dismiss his appeal on asylum and human rights grounds, and permission was granted by Designated Judge McCarthy. An error of law hearing took place at Field House on 17 October 2014 before Deputy Upper Tribunal Judge Kelly, at which Mr Lewis of Counsel appeared on behalf of the appellant, and Mr Bramble, Senior Home Office Presenting Officer, appeared on behalf of the respondent. Judge Kelly's decision was subsequently promulgated on 28 October 2014, and the decision is set out in its entirety below

"1. The appellant appeals, with permission, against the decision of First-tier Tribunal Cameron who, in a determination promulgated on the 6th August 2014, dismissed his appeal against the respondent's decision to refuse his application for asylum and to remove him to Sri Lanka.

2. The present proceedings arise from a fresh claim for asylum. His appeal against the rejection of a previous claim for asylum was dismissed by Judge Tipping in a determination promulgated on the 5th September 2011. Judge Tipping accepted that the appellant had been detained and tortured in 2010 (an experience in respect of which he still bore the physical scars) due to his membership of the LTTE ('Tamil Tigers'). She nevertheless did not find his account of subsequent events credible, and thus concluded that he had failed to substantiate his claim to be the subject of continuing interest to the Sri Lankan authorities. The evidence upon which the appellant based his fresh claim was to the effect that the Sri Lankan authorities were continuing to question his wife about his whereabouts, and thus demonstrating that they continued to have an adverse interest in him.

3. The appellant's first ground of appeal to the Upper Tribunal is predicated upon the First-tier Tribunal having accepted that the appellant's wife 'had actually been detained (not merely questioned) on account of the suspicion with which the appellant was held following the appellant's escape, and further that his father had also been detained' [paragraph 14 of the application for permission to appeal]. However, as Designated Judge McCarthy pointed out when granting permission to appeal, that premise is not borne out by the contents of the Tribunal's determination. Thus, at paragraph 52, Judge Cameron said this:

> "I do take into account the new evidence in relation to the appellant's statement that his wife has been harassed by the authorities in connection with his whereabouts and that this statement appears to be corroborated by the MPs statement that he was contacted in 2011 about this issue however I am not satisfied even to the lower standard of proof that this evidence is credible given the change in emphasis adopted by the Sri Lankan authorities towards those who were previously members of the LTTE particularly given the findings that the appellant was not a high level member of the LTTE."

4. It is right to say that Judge Cameron subsequently appeared to backtrack somewhat upon his otherwise clear earlier finding that the appellant had failed to substantiate his claim of continued interest in him by the authorities [see paragraph 58 of the determination]. I therefore indicated to Mr Lewis that because I had decided (for other reasons) to re-determine this appeal, I was prepared to revisit this issue at a resumed hearing. It is nevertheless my expectation that the issue will be argued by reference to the evidence that was before the First-tier Tribunal. I therefore make it plain that any further evidence that may be submitted in relation to this issue is likely to be the subject of very close scrutiny, and the degree of weight that the Tribunal attaches to it is likely to be substantially dependent upon the credibility of any explanation that is given for its late arrival.

5. The ground upon which I have decided to set aside the decision of the First-tier Tribunal is that, having apparently accepted the factual basis of the appellant's subjective fear of ill-treatment on return to Sri Lanka – that is to say, his ill-treatment by the authorities in 2010 – it thereafter failed adequately to explain why it did not also accept the expert evidence of Camilo Zapata (a Consultant Psychiatrist) concerning the risk of suicide. It was Dr Zapata's evidence that, whilst the appellant did not have 'current suicidal plans,' if he were to fail in his asylum appeal the risk of a 'completed suicide' would nevertheless increase from its currently 'high' level to an 'extremely high' one [paragraphs 55 and 56 of the addendum to his report]. Judge Cameron stated that it was 'relevant to note that the appellant does not <u>currently</u> have active suicidal thoughts and there are no plans made' [paragraph 68: emphasis added]. Whilst it is obviously the case that a Tribunal can only make findings of fact by reference to past and present circumstances, it is equally obvious that any assessment of risk is necessarily an exercise in predicting future possibilities. In this case, the Tribunal's consideration of the likely situation for the appellant on return to Sri Lanka was confined to its finding that there would be 'mental health professionals' available to him in Colombo [paragraph 69]. The Tribunal thus reached its conclusion that the appellant would not be at risk of suicide on return to Sri Lanka by combining Dr Lapata's assessment of the appellant's *present* state-of-mind (that is to say,

whilst he is in the United Kingdom) with its own finding that treatment for that condition would be available to him upon his *future* return to Sri Lanka. A rational assessment of the matter would have involved consideration of the appellant's predicted state-of-mind *on return to Sri Lanka*, within the context of the mental health facilities and family support that would be available to him *at that time*. I therefore set aside the decision of the First-tier Tribunal on the ground that it did not conduct a rational assessment of the risk of suicide upon the appellant's forced return to Sri Lanka.

6. Unfortunately, by the time that I had concluded that there had been a material error of law in the First-tier Tribunal's determination of this appeal, there remained insufficient time to hear the arguments of the representatives relating to the re-making of the decision. It will therefore be necessary to list the matter for a resumed hearing on another date.

7. For the avoidance of doubt, and subject to what I have said at paragraphs 4 and 5 above, the factual findings of the First-tier Tribunal are preserved.

*Decision*

8. The First-tier Tribunal made a material error of law and its decision is set aside."

**New evidence relating to alleged ongoing adverse interest**

21. For the purposes of the re-making of the decision, the appellant's solicitors served on the Tribunal and on the Specialist Appeals Team a supplementary bundle marked U for a contemplated hearing on 27 January 2015. The supplementary bundle contained a fresh witness statement from the appellant, a witness statement from Mrs Sakundaldevi Vijayalingam, a psychiatric report prepared by Dr Saleh Dhumad and various documents which had been obtained from Sri Lanka following the error of law hearing in the Upper Tribunal.

22. In a letter dated 8 January 2015 a lawyer in Vavinuya (who Mr MacKenzie asked me not to identify by name in this decision) said that the appellant's wife, T, had been referred to him by a named Member of Parliament of Sri Lanka, who had personally spoken to him about her pathetic situation and had requested him to render her his professional assistance. According to his records, he could confirm that T came to his office in the first week of March 2012. He obtained instructions from her about the continued harassment and reporting to the police station which had come about due to matters relating to her husband. There were thousands of similar cases. As the law stood now, the remedies available to LTTE suspects and sympathisers were nil since they were counted as terrorists. The police and other security agencies had absolute power to impose conditions, such as regular reporting, on an indefinite basis, if acts related to terrorism were made out. He advised T that she had no legal remedy, and that her only recourse was to make a complaint against the police to the Human Rights Commission in Vavuniya. He gave this advice to T, but she was not interested in approaching the commission as ordinary Tamils believed that the commission was full of state spies leading to further harassment.

23. After obtaining T's consent, he had contacted the police station in August 2014 through his junior (whose name he gave) to know the reasons for the prolonged

reporting conditions which they had imposed on T. His junior was informed that T was a traitor just like her husband, and that her husband was one of the key people who were directly involved in concealing weapons of the LTTE, done with an intention to use against the state when time was once again in their favour. V had knowledge about the locations where the weapons were buried and he was also a vital link for surviving LTTE members in the country as well as abroad.

24. He was certain they were determined to take action against V and were currently using his wife as an instrument to bring him back to the country. He requested that the appellant's solicitors keep the information he was providing in the letter strictly confidential. It was on that basis that Mr MacKenzie asked me to keep his identity secret.

25. In a letter dated 12 January 2015, another lawyer, Mr Francis Royce Regi Croos, who has an office in Vavuniya according to his letterhead, responded to a letter from Theva Solicitors dated 10 November 2014. He said he had known T for many years as her father was a family friend and lived next to their home in Vanni. He was aware that the appellant left the country to evade the imminent arrest by the Sri Lankan armed forces and authorities due to his explicit involvement with the LTTE. Based on his personal knowledge and after having seen T many times in 2014 while reporting, he could confirm she was directed to report to the police station situated at the heart of Vavuniya town. He was defending a case against his client who was charged on the Prevention of Terrorism Act for aiding and abetting terrorists to build a safe house where they attempted to hide weapons and valuable belongings. For legal reasons he was unable to reveal his client's name in the letter, but he could confirm that he was interrogated about V, who was believed to be part of a team who tried to hide weapons. Therefore, he would like to state that V was still wanted for his involvement in hiding weapons. T was required to report in respect of her husband's alleged involvement in burying weapons.

26. In a letter dated 20 January 2015 the Grama Sevaka officer for the village of Vannankualam in Mullaitivi district said that before he was transferred to this village, he served as the Grama Sevaka officer for Pandarikulam. T was domiciled with her two children in Thonikkal area, which had come under his previous jurisdiction. He knew T very well. He had had the opportunity to interact with T for various acts and development activities in the village. It was difficult for T to bring up her children as a single mother, and she had been facing serious problems from society.

27. The Sri Lankan armed forces, police and CID regularly asked him to give them an updated list of people in his village who were said to be the most wanted people for involvement with the LTTE and terrorist related activities. T's husband V was one of the people on the list that was handed over to him to give an update. Those who gave him the list had chided them (the appellant and his wife) as attempting to give oxygen to the decimated LTTE, both in Sri Lanka and foreign soil. They had asked him to submit various details about T, including the name of the schools where her children had been studying, how much she was paying for the tuition fees, details of

immoveable and moveable properties bought by her recently, the identities of people who were visiting her home regularly, and her continuing relationship with former members of the LTTE and their family members. As he had a heavy workload, he had expressed his inability to assist them but had agreed to carry out some other tasks for them. He was still aware that she had been reporting to the police station due to her husband's involvement with the LTTE as V was accused of concealing weapons belonging to the LTTE. From the conversations, pocket meetings and emergency meetings he had had with officers of the armed forces, he could confirm that V was one of their wanted targets who would face imminent arrest and interrogation upon his arrival to this country. He had seen T many times at Vavuniya Police Station when summoned to the police station to discuss various official matters with police officers.

28. In her unsigned witness statement, Mrs Vijayalingam said she was a naturalised British citizen. She had come to the UK as a refugee in 2000, and in 2004 she was granted indefinite leave to remain. Since she came to the UK, she had visited Sri Lanka three times. She went back in November 2005 for her father's funeral and in September 2009 in connection with her relative's wedding. Her last visit was in August 2014 to attend the wedding of her elder sister's son which was scheduled for 31 August 2014. She had known V's father for a long time. Like her family members, V also shared close contacts with the LTTE. She saw V in Sri Lanka in November 2005 at her father's funeral. When she visited the country in 2009 she was not able to meet V or his family as the war had displaced everyone from the northern region to camps.

29. In January 2012 she met V in the UK at Lewisham Hindu temple. She learnt from him that he was wanted by the authorities in Sri Lanka, and that in his absence his family was being targeted. She tried her best to help V to overcome his mental condition.

30. When she returned to Sri Lanka in August 2014, she went to V's parents and invited them to the wedding. She obtained T's address from the appellant's mother, and went to her house to invite her to the wedding as well. She learnt from her that she was interrogated by the police for her husband's LTTE associations. She had to report to the police station each week. Neither V's parents nor his wife attended the wedding.

31. She next encountered T at the Vavuniya Police Station. She had lost her bag in an auto-rickshaw, and she had to go three times to the police station to file a complaint as the police were busy with preparations for a visit by the president. On her third visit to the police station, she met T who had come there for her weekly reporting. She was unable to speak to her at the time. She was sitting at a desk where persons who had to report were also made to wait. A weak smile and shame was the only thing they could share.

32. When she returned to the UK, she invited the appellant to come to her house, and she informed him about the difficulties faced by his wife and family in Sri Lanka.

*Adjournment*

33. At a scheduled hearing earlier in 2015, the witness was ill, and therefore was unable to attend to give oral evidence. As Ms Isherwood wished to cross-examine her on her evidence, I agreed to adjourn the hearing.

*Recent suicide attempt*

34. On 15 November 2015 the appellant attended University Hospital in Lewisham having taken an overdose of paracetomal. As a result of this incident, the appellant's solicitors commissioned a further psychiatric report from Dr Camilo Zapata, which was produced on 1 December 2015. This report, together with medical notes relating to the incident in November 2015, was served in a supplementary bundle marked U2.

**The Continuation Hearing**

35. Mrs Vijayalingam was tendered as a witness, and she was cross-examined by Ms Isherwood. She also answered questions for clarification purposes from me. She had applied for asylum in the year 2000, and her claim had been rejected. She had been granted asylum following a successful appeal. She initially said she could not recall the basis of her asylum claim, but she later confirmed that the basis of her asylum claim was that she feared the Sri Lankan government because of her connections with the LTTE. She was a sympathiser and supporter of the LTTE. She had problems before she came here in 2000, including being detained and taken to court. It was put to her that nonetheless she did not have any fear about going back. She said that as she had British nationality, she was confident that this would give her protection. A British passport had been issued to her in October 2009.

36. It was put to her that she was speculating when she said that T was at the police station for the purposes of reporting. The witness denied this. She saw the appellant sitting on a bench. When she saw T, she gave her a "thumbs up" sign, and T in response made a gesture indicating that she was here to sign a document. T had previously told her that she came to the police station every week to report. So she understood that the signing gesture meant that she was here to report. When Ms Isherwood queried this, she said she saw a notice board above T's head which had words to the effect that this was the place for people reporting. It was put to the witness that T could have been there for a number of other reasons. The witness said that she had taken her friend's son with her, and she asked him to get confirmation from the police sergeant that the bench was for people to sit on who were reporting. The friend's son obtained this confirmation from the police sergeant. Ms Isherwood put to the witness that she had made this all up. The witness denied this, saying there was no need for her to lie.

37. In her closing submissions on behalf of the Secretary of State, Ms Isherwood invited me to make an adverse credibility finding in respect of the evidence of alleged ongoing advesre interest in the appellant and his wife. With respect to the Article 3 claim, she submitted that the Tribunal in **GJ** had been wrong to find that adequate

treatment for people suffering from PTSD would not be available on return to Sri Lanka. She relied on the findings of the European Court of Human Rights in **AA v Sweden** made on 2 September 2008 (application number 859A/04) and on a recent Country of Origin Information response.

38. In reply, Mr MacKenzie submitted that the MP's letter referred to in the decision of Judge Cameron was a significant piece of evidence which was supportive of the claim that the authorities in Sri Lanka continued to have an adverse interest in the appellant, and thus continued to require his wife to report every week. As to the mental health claim, the COI response actually assisted the appellant's case, rather than the respondent's, as it highlighted the absence of provision in the appellant's home area of Mullaitivi. The evidence referred to in **AA v Sweden** was out of date, and in any event the Secretary of State could not reasonably rely on the findings in that decision to undermine the findings made in **GJ** at paragraphs [454] and [455]. For such findings were based on evidence provided by the UK Border Agency, as the Tribunal made clear:

> "The evidence is that there are only 25 working psychiatrists in the whole of Sri Lanka. Although there are some mental health facilities in Sri Lanka, at paragraph 4 of the April 2012 UKBA Operational Guidance Note on Sri Lanka, it records an observation by basic needs that 'money that is spent on mental health only really goes to the large mental health institutions in capital cities, which are inaccessible and do not provide appropriate care for mentally ill people."

**Discussion and Findings on Re-Making**

**The Burden and Standard of Proof**

39. In international protection claims, the standard of proof is that of real risk or reasonable degree of likelihood. Evidence of matters occurring after the date of decision can be taken into account.

**Past Persecution or Serious Harm**

40. Under Paragraph 339K, the fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or serious harm, will be regarded as a serious indicator of the person's well-founded fear of persecution or serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

**Duty to Substantiate Claim for International Protection**

41. Paragraph 339L of the immigration rules provides that it is the duty of the person to substantiate his claim. Where aspects of his claim are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

    (a) The person has made a genuine effort to substantiate his claim;

(b) All material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;

(c) The person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;

(d) The person has made his claim at the earliest possible time, unless the person can demonstrate good reasons for not doing so;

(e) The general credibility of the person is established.

42. It is convenient at this stage to refer to the country guidance case of **<u>GJ and Others</u> (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319**. This country guidance replaces all existing country guidance on Sri Lanka, and it includes the following headline guidance:

> "(2) The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.
>
> (3) The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state ... Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
>
> (4) If a person is detained by the Sri Lankan Security Services there remains a real risk of ill-treatment or harm requiring international protection.
>
> (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.
>
> (6) There are no detention facilities at the airport. Only those whose names appear on a 'stop' list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.
>
> (7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
>
> (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.
>
> (b) Journalists ...
>
> (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes ...

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

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

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

43. As the decision of Judge Tipping stands undisturbed, I take this as my starting-point in the fact-finding exercise. The central question is whether the new evidence relied upon before Judge Cameron and the even newer evidence relied on before me is of sufficient credibility and cogency as to lead to a different conclusion on future risk, applying the lower standard of proof and bearing in mind Paragraph 339K.

*The MP's letter*

44. In a letter dated 2 January 2012, Mr Nohrathaligam, a Member of Parliament for Vanni district, informed the appellant's solicitors that in July 2007 the appellant's father had telephoned him seeking his assistance regarding his son's forceful conscription by the LTTE. He told him he was unable to help as it was a matter beyond his control. After that he lost contact with him, until he met him again in November 2011 at his residence in Vavuniya after he and his other family members had been released from an internal displacement camp in the same month.

45. He was contacted by V's uncle for help in getting V out of Joseph Camp detention. He contacted the officers at Joseph Camp where he was incarcerated, and was given the information that V was identified as an LTTE terrorist. So the only way to help the appellant was to get the help of agents who had close contacts with the military and police establishments, and to bribe them for their release. So he gave the contact number of a person who had close connections with the Sri Lankan army to V's uncle.

46. In November 2011 the appellant's father came with his daughter-in-law T who had been arrested and detained. She was later released on the condition that she had to

report each week to Vavuniya Police Station. This was the usual tactic employed by the army and police to compel a wanted person, such as V, to surrender. He advised the appellant's father and wife to retain the help of an attorney. Some weeks later, his mother came to seek his assistance as her husband (the appellant's father) had been taken by the Sri Lankan authorities to investigate his son's involvement with the LTTE, and on suspicion that he was in contact with V. He said that he was not in a position to render her any help. The reality was that people who had been associated with or had a link with the LTTE had been harassed and humiliated by the authorities, and this was what was happening to V's family.

47. The evidence of the MP dovetails with the new evidence contained in supplementary bundle U insofar as the well-known lawyer that the MP says he recommended to T has now come forward to confirm on a strictly confidential basis that T consulted him in 2012.

48. But there are problems with the chronology. As recorded by Judge Tipping, T's human rights complaint was lodged on 19 July 2011. The lawyer says that according to his records, T came to his office in the first week of March 2012, and it was at that point that he advised her to make a complaint to the police to the Human Rights Commission at Vavuniya. Indeed, he says that T rejected his advice, as she was concerned the Human Rights Commission was full of state spies and therefore a complaint would only lead to further harassment. However, the fact is, according to other evidence filed by the appellant, his wife had already made a complaint to the Human Rights Commission, and therefore her stated response is not credible for two reasons. It is not credible that she would have rejected his advice because she was fearful of the consequences, and it is not credible that she would not have told him that she had *already* made a complaint to the Human Rights Commission in July 2011, and that this information would not have been noted in the records which the lawyer claimed to have kept of his consultation with T in the first week of March 2012.

49. The MP's letter also engenders another significant discrepancy in respect of what happened to the appellant and his family in 2011. According to the appellant, all his family, including his parents and his uncle, ended up in Arunsalam camp in May 2009. The appellant and his family were based at the camp until September 2010, when his wife's aunt, who was a teacher and permanent resident of Vavuniya and a family card holder, got them all released from the camp (B5 to B7, main bundle). The appellant says he was arrested for a second time by the CID on 4 December 2010, as a result of information provided by an LTTE informer who had revealed the appellant's involvement in building suicide boats. On the appellant's account, the MP's assistance in obtaining his release from Joseph Camp would have needed to have been sought in the early part of 2011; and his assistance in respect of the alleged harassment of the appellant's wife following the appellant's "escape" from Joseph Camp in March 2011 would have been sought soon thereafter, before T eventually made a complaint to the Human Rights Commission, allegedly about her harassment by the CID.

50. It is plainly asserted in the MP's letter that the appellant's father and other family members were only released from an internal displacement camp in November 2011, which is more than a year after (according to the appellant) they were in fact released.

51. Moreover, the plain implication of his account of the appellant's father and T seeking his assistance in November 2011 is that T had only very recently been arrested, detained and then released on condition that she had to report each week to Vavuniya Police Station. Hence, the MP said that at the meeting in November 2011 she was afraid she would be detained and harassed again, "when she goes for reporting." But on the appellant's account, she had been reporting for some six months already.

52. It is strongly arguable that the implication of the MP's letter is that V himself was still in Joseph Camp at the beginning of November 2011, as his account of V's uncle seeking his help to get V released from Joseph Camp is immediately preceded by a reference to the date of November 2011 as being the date when he saw the appellant's father and other family members again for the first time since July 2007. Even if that is not the correct interpretation, it is significant that the MP does not give a date for the alleged approach by V's uncle to help get V out of Joseph Camp detention.

53. In summary, the message of the MP's letter is that (a) he helped the appellant to escape from Joseph Camp in the late summer or early autumn of 2011, when in fact the appellant was already in the United Kingdom; and (b) that the authorities only began to harass the appellant's wife by arresting, detaining and then releasing her on condition that she report once a week some *six months* after the alleged escape. Thus, far from supporting the appellant's core claim, the MP's letter ultimately serves to undermine it.

*New background evidence on bribery?*

54. Another reason which has been advanced for departing from the findings of Judge Tipping is that the evidence given to, and accepted by, the Tribunal in **GJ and Others** shows that the appellant's claim of being officially treated as an escapee, although he had been unofficially released on payment of a bribe, is a plausible one. However, the proposition which was accepted by the Tribunal in **GJ and Others** was not a novel one. In earlier country guidance it was recognised that release upon payment of a bribe did not necessarily mean that the authorities no longer had an adverse interest in the person released.

55. Each case must be considered on its own particular facts, and it remains the case that the appellant's account of being allowed to escape, even though he was perceived as being able to provide the authorities with useful information as to where explosives were buried and, moreover, was perceived as still being a terrorist, is not credible. It is far more likely that the appellant was released because the authorities had no further interest in him. This is reinforced by the fact that the appellant on his own case re-entered Sri Lanka from Dubai in April 2011. The fact that he was able to re-

enter the country through Colombo Airport without being stopped undermines the claim that he was treated as an escapee and was being actively sought by the authorities in April 2011, with the consequence that his wife was being harassed about his whereabouts. It is also necessary to recognise that Judge Tipping's reasons for disbelieving the core claim extended to the account given by the claimant as to the manner in which his alleged escape was orchestrated. The new evidence which has been put in since the hearing before Judge Cameron does not impinge on this aspect of Judge Tipping's findings.

*Impact of PTSD diagnosis*

56. The subsequent diagnosis of the appellant suffering from PTSD potentially provides an explanation for some of the stark inconsistencies in the appellant's evidence noted by Judge Tipping. However, it is only since the error of law hearing in the Upper Tribunal that the appellant has been declared unfit to give oral evidence.

*New evidence adduced since the error of law hearing in the Upper Tribunal*

57. The new evidence emanating from Sri Lanka in supplementary bundle U falls to be treated in accordance with the guidance given in **Tanveer Ahmed** and, separately, in **Devaseelan**. As the evidence relates to a state of affairs which began as far back as March or April 2011, this is evidence which could have been deployed at the hearing before Judge Tipping, and certainly should have been deployed at the hearing before Judge Cameron. Due to the prevalence of bribery and corruption in Sri Lanka, there is no a priori assumption of reliability in respect of documents emanating from lawyers or those who hold public office. The documents discussed in **PJ (Sri Lanka)** fall into a different category as they were primary documents, namely certified copies of what was on a court register, which had been separately authenticated by two different sets of independent lawyers. In contrast, there are no primary documents being deployed here. There are no purported extracts from court or police records, and there has been no disclosure of, for example, a contemporaneous record that would have been made when the lawyer was allegedly consulted by T about her reporting conditions or the contemporaneous record which would have been compiled when the lawyer's junior allegedly visited Vavuniya Police Station in August 2014 in order to ascertain why she was still the subject of a reporting condition.

58. The second supplementary witness statement for the appellant signed on 26 January 2015 contains a purported explanation for the delay in obtaining additional secondary (as opposed to primary) documentary evidence of T being the subject of reporting conditions, and the reasons for this.

59. The appellant signed the witness statement shortly after he had been seen by Dr Dhumad, who produced a psychiatric report on 20 January 2015. He observed that V's concentration was very poor during the interview. He was unable to recall some of the details, due to poor concentration and PTSD symptoms. There was evidence of memory problems and cognitive impairment. In his opinion, his presentation was consistent with a diagnosis of moderate depressive episode, and his symptoms met

the criteria for a diagnosis of PTSD. Based on the two interviews which he had with him on 19 January 2015, in his opinion the appellant was unfit to attend court hearings, and to give evidence at present.

60. In the light of this diagnosis, it is reasonable to question the reliability of the appellant's second supplementary witness statement, which presents as being made by someone who is in full possession of their faculties and is not suffering from any cognitive impairment.

61. In any event I do not find the explanation which is attributed to him to be a credible one. His explanation is that his legal representative asked for the contact details of people who had "a reputation" and who were aware of what was happening to his wife in Sri Lanka. But he could not get those details earlier, because his wife wanted to obtain consent from these people before passing their details to him. She was concerned that lawyers from the UK contacting these people would endanger her if the authorities became aware of such contact. In addition, the lawyers and the Grama Sevaka officer were hesitant to give their consent "due obviously to security concerns."

62. I infer from the undisputed evidence that T is very anxious to be reunited with her husband in the UK. So I do not find it credible that she would have delayed or obstructed this commonly desired outcome by refusing requests from the UK to provide corroborative evidence of the authorities' alleged ongoing adverse interest in her. It is also not at all obvious why the lawyers and the Grama Sevaka officer should initially be hesitant in giving the required information due to security concerns. If it were true that the authorities had an ongoing adverse interest in the appellant and his wife for the reasons which they report, they would not be breaking any confidence or breaching their country's security by making such disclosure to an English court.

63. The evidence of Mrs Vijayalingam falls into a different category, in that she was apparently in Sri Lanka at the time of the hearing before Judge Cameron. So she could not have given the testimony to Judge Cameron which she gave to me.

64. I do not consider that she was an independent witness. Although not a family member, her family is close to the appellant's family, and she has known the appellant since childhood. When she went to Sri Lanka in August 2014, she knew that the appellant was claiming by way of appeal that he was wanted by the authorities in Sri Lanka, and that in his absence his wife was being targeted.

65. It is reasonable to question whether in practice she would have needed to go three times to the police station in Vavuniya in order to report the loss of her baggage in an auto-rickshaw, and in any event there is no documentary evidence, such as a police report or insurance claim, which supports this aspect of her account. But the main reason for disbelieving her account is that in her witness statement she referred to the appellant sitting at "the desk" whereas in her oral evidence she said the appellant was sitting on a bench; and each time she was asked to explain how she knew that T

was at the police station for the purposes of complying with her reporting conditions she gave a different explanation. Initially, it was that T had indicated by a non-verbal gesture that this was the purpose of her attendance. On the second occasion, Mrs Vijayalingam said that there was a notice above the bench where she was sitting which made it clear that persons sitting on the bench were there to sign on. On the third occasion, she said that she had gone there with her friend's son, who she said went on her behalf to speak to a police sergeant in order to confirm that T was there to report. Mrs Vijayalingam had not gone to Sri Lanka with instructions to gather evidence to support the appellant's claim, and it is wholly incredible that she would have made a point of obtaining confirmation from the police sergeant as to why T was waiting in the police station. Moreover, on her own evidence, she already knew that T reported every week, and T had already communicated to her that this was just such a visit. So she would not have perceived the need to obtain "proof" of this from the police sergeant who was in attendance.

*Conclusion on refugee claim*

66. In conclusion, for the reasons given above, I find that the appellant has not discharged the burden of proving to the required standard of proof that he is of ongoing adverse interest to the authorities in Sri Lanka, or that he was of ongoing adverse interest to the authorities when he left Sri Lanka in the spring of 2011. Accordingly, there are not substantial grounds for believing that on return to Sri Lanka the appellant would be on a stop list or wanted list, or that he would otherwise face a real risk of persecution as a suspected terrorist. By the same token, there are not substantial grounds for believing that on return to Sri Lanka the appellant would face a real risk of intentionally inflicted ill-treatment of such severity as to cross the threshold of Article 3 ECHR.

*Suicide Risk*

67. The appellant is on much stronger ground in his pursuit of relief on Article 3 (mental health/suicide risk) grounds. This arises in part because there has been deterioration in the appellant's condition since the hearing before Judge Cameron. According to Judge Cameron the appellant was fit to give oral evidence, and did so. But, as previously noted, Dr Dhumad opined in January 2015 that the appellant was no longer fit to give evidence. In the same report, Dr Dhumad opined that he was very likely to suffer serious deterioration in his mental health if he was to be returned to Sri Lanka now and this was not a course that he would recommend. Indeed, in his opinion the appellant was currently unfit to fly. At the time when he was seen by Dr Dhumad, the appellant was taking 50mg of amitriptyline per day, which in Dr Dhumad's opinion was a very low dose. According to the medical notes generated at the time of the appellant's recent overdosing incident, his description of amitriptyline had increased three-fold to 150mg per day. Nonetheless, the appellant impulsively ingested ten paracetomal tablets with the consequence that he collapsed outside a tube station, and was taken to hospital.

68. Dr Okeke of the Lewisham Crisis and Home Treatment Team reviewed the appellant's case on 17 November 2015 with among others, Mr Revendran, who is described as a friend and interpreter. Dr Okeke recorded that the reason why V was unable to go back home was because of his fear of future torture. V said he would rather die by taking ten paracetomal tablets but when asked how he felt currently, he stated he preferred to be allowed to see his family again and he rated his chances of taking another overdose as five out of ten.

69. After a four year history of contact with mental health services he was discharged to the care of his GP who provided prescriptions of amitriptyline. He had apparently not attended a number of appointments with IPTT who were going to offer him psychological intervention.

70. Dr Zapata saw the appellant on 23 November 2015. The appellant's presentation was still symptomatic in terms of his PTSD, but he had worsened in this respect since he last saw him in July 2014. His depression now seemed less well treated and clinically much more evident. The most concerning aspect in his presentation was now his marked suicidal risk which he deemed to be very high, with evidence of suicidal planning and intent. The appellant had been re-referred to the Community Mental Health Team because he had stopped attending appointments. His friend had been ensuring that he attended, but the same friend had been travelling and staying in Sri Lanka for some months. As a result the appellant had stopped attending as he had nobody to accompany him. He could not attend meetings alone as he could not travel to places on his own due to severe anxiety and a tendency to get lost. In the last seven months without CMHT mental health support, the appellant had worsened in terms of his psychiatric symptoms.

71. Much damage had been caused to his mental state and the support he had been receiving from his friend and his friend's family, his GP, his consultant psychiatrist and his psychotherapist has been interrupted. Deportation would completely sever these important emotional and therapeutic links, and be yet another loss event in the patient's hitherto traumatic life. This would contribute yet more stressful and traumatic life events, raising the risk of suicide even further. In his opinion, his risk of self-harm, risk of completing suicide was very high indeed. If he were to fail in his asylum appeal, his risk would suddenly increase to extremely high. His overall suicide risk had increased further since he had last assessed him in July 2014.

72. I consider that the appellant's circumstances are similar to those of the third appellant in **GJ and Others**, whose mental health claim was analysed by the Tribunal at paragraphs [447] onwards. The appellant bears on his body the scars of significant ill-treatment in Sri Lanka. He suffers from post traumatic stress disorder of such severity as to have made a recent suicide attempt. Although not objectively well-founded, the appellant has a genuine fear of return. He is too ill to give reliable evidence. It would be possible for the respondent to return him to Sri Lanka without him coming to harm, but once there, he would be in the hands of the Sri Lankan mental health services. The Tribunal in **GJ** found that the resources of Sri Lanka

were spare and were limited to the cities, and cited the respondent's own evidence in her OGN that the facilities did not provide appropriate care for mentally ill people.

73. Given the severity of the third appellant's mental illness, the Tribunal was not satisfied on the particular facts that returning him to Sri Lanka in his current state of health would comply with the United Kingdom's international obligations under Article 3 ECHR.

74. I do not consider that the material relied upon by Miss Isherwood justifies a different approach being taken to this appellant as against the third appellant in **GJ and Others**. The out-patient treatment that the appellant requires would be potentially available in Colombo, but he would not be returning to live in Colombo but in Mullaitivi. The Med COI Report states that there are no psychiatrists or registered psychologists available in Mullaitivi. There are also no suicide prevention crisis intervention centres established in the northern districts. There is the potentially compensatory factor of the appellant having the support of close family members in Mullaitivi, but I note that the presence/absence of family support was not treated by the Tribunal in **GJ and Others** as being a decisive consideration. Accordingly, I find that the appellant has made out his claim for relief on Article 3 mental health (suicide risk) grounds.

**Notice of Decision**

The decision of the First-tier Tribunal dismissing the appellant's appeal on all grounds raised contained an error of law, and accordingly the decision is set aside and the following decision is substituted: the appellant's appeal on asylum grounds is dismissed, but his appeal is allowed on mental health grounds under Article 3 ECHR, and the respondent is directed to grant appropriate leave to the appellant in the light of this outcome.

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

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

Signed Date

Deputy Upper Tribunal Judge Monson