



IAC-AH-CJ-V1

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

Appeal Number: PA/06292/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 8 October 2019 and 11 March
2020
*Extempore decision***

**Decision & Reasons Promulgated
On 21 April 2020**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

**AR
(ANONYMITY DIRECTION MAINTAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Jones, Counsel, instructed by Jein Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, AR, is a citizen of Sri Lanka, born on 21 June 1986. On 21 June 2017, the Secretary of State refused his claim for asylum and humanitarian protection. The appellant claimed to be at risk from the government of Sri Lanka on account of his suspected LTTE connections and *sur place* political activities in this country. The appellant has had two appeals against that refusal decision dismissed by the First-tier Tribunal,

most recently by Judge Wylie in a decision and reasons promulgated on 3 July 2019.

2. Following a hearing on 8 October 2019, I found that the decision of Judge Wylie involved the making of an error of law and set it aside in its entirety with no findings preserved. Given that this matter had already been before the First-tier Tribunal on two separate occasions, I considered that it was appropriate for the matter to be reheard in this tribunal rather than to be remitted to the First-tier Tribunal. My error of law decision is in the **Annex** to this decision.
3. At the outset, I should note the helpful and realistic indication on the part of Mr Bramble that the Secretary of State did not oppose the appellant's appeal, in light of the materials he now relies upon. I set out my reasons for accepting that concession, below.

Immigration History

4. The appellant arrived in the United Kingdom by plane on 25 December 2016 and claimed asylum the same day.

Procedural Matters

5. At the hearing before me, the appellant attended and participated in the proceedings with the assistance of an interpreter in Tamil. At the outset, I established that the appellant and interpreter were able to understand one another and communicate through each other.
6. A significant feature of the appellant's case before me involves the experiences that he claims to have suffered at the hands of the Sri Lankan government on a number of occasions, prior to his departure for this country. His case is that those experiences have left him experiencing a range of significant and detrimental health conditions, most notably post-traumatic stress disorder. Pursuant to the Joint Presidential Guidance Note No 2 of 2010, I took into account the considerable vulnerabilities of the appellant at the hearing before me and in particular in relation to my assessment of his evidence when considering the concession made by the Secretary of State.

Appellant's Case and Reasons for Refusal Letter

7. At [3] to [5] of my error of law decision I outlined the appellant's case in the following terms:
 - "3. It is accepted by the respondent that the appellant fought for the LTTE during the Civil War in Sri Lanka, and that he was detained and mistreated from September 2009 to July 2010 following cessation of hostilities. The appellant's case is that he returned to work as a fisherman following his release in 2010, but that he was rearrested in September 2011 and detained for a week, and that he was again detained from September 2015 to December 2016. This detention was said to have been catalysed by the appellant

returning to an LTTE arms dump with a friend. Although the appellant claims that he did not retrieve anything of significance during the visit, his case is that he was later falsely implicated by the authorities in the discovery of some gunpowder at a friend's house, leading to his subsequent detention.

4. He claimed he was able to escape from detention through the payment of a bribe facilitated by his uncle, and that the services of an agent were used to enable the appellant to depart from the country on a flight without encountering difficulties at the airport. His uncle arranged for an agent to provide him with travel documents, leading to him travelling to the United Kingdom shortly after his escape from detention. He claimed asylum immediately upon arrival.
 5. The appellant's brother also fought for the LTTE during the Civil War. He has been recognised as a refugee in this country following his own successful appeal before the First-tier Tribunal."
8. The respondent did not accept the appellant to have provided a credible account of his most recent claimed detention experiences but did accept that he had been detained and mistreated in 2009 and 2010 following the cessation of hostilities upon the end of the civil war. The respondent also accepted in the refusal letter that the appellant had been a member of the LTTE.

Legal Framework

9. The burden is on the appellant to establish that applying the lower standard of proof he meets the requirements of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 ("the Qualification Regulations"). The appellant must establish to the reasonable likelihood standard that he falls within the definition of "refugee" contained in Article 1(A) of the Geneva Convention as incorporated into domestic law by Regulation 2(1) of the Qualification Regulations.

The Hearing

10. At the hearing before me the appellant adopted his witness statement prepared for the First-tier Tribunal and a subsequent statement prepared for the hearing before me.

Discussion

11. I find that the appellant has a well-founded fear of being persecuted on account of his suspected LTTE connections in Sri Lanka. In reaching this finding I take into account the following matters. First, I take into account the analysis of the Secretary of State in the refusal letter of 21 June 2017. There the respondent set out why she considered the appellant to have given a credible, consistent and plausible account of his detention and mistreatment by the Sri Lankan authorities in late 2009 and early 2010. In addition, at an earlier hearing before the First-tier Tribunal, the respondent accepted the appellant to have been a member of the LTTE during that

time. In isolation, those findings would be unlikely to merit a finding at this stage, some ten years after the civil war ended, that the appellant continues to suffer a well-founded fear of being persecuted.

12. However, in light of the additional evidence that the appellant provided ahead of his appeals before the First-tier Tribunal and before this tribunal, I find that the totality of the evidence adduced on behalf of the appellant demonstrates that he does now have a well-founded fear of being persecuted. Mr Bramble's concession was realistic and entirely appropriate.
13. The scarring that the appellant displays upon his body has been outlined in the report of Dr Andreas Izquierdo-Martin. Mr Bramble highlighted several extracts of this report which led to his concession before me. At [5.5.1] the appellant is described by Dr Martin as bearing scars consistent with being burnt with a hot cigarette during his detention. Those scars and the pattern of them were, according to Dr Martin, "highly consistent" of the unwilling and intentionally caused injuries with a hot round object. Similarly, scar number 4, at [5.5.2], is said to have been caused after the appellant was repetitively kicked, hit with gun butts and beaten with blunt implements such as sticks during his detention. Dr Martin wrote at [5.6] of his report that dating the scars is not a "precise science" and it is not usually possible to give anything other than an approximate range of time. He concluded that in the appellant's case the scars were without any doubt older than six months.
14. The appellant's scarring lends credibility to his overall account. The medical evidence does not permit a distinction to be drawn between the two different phases of the appellant's torture narrative. In other words, it is not clear whether the scarring is attributable to his first (accepted, by the Secretary of State) account of torture, or his latest (initially rejected) second account.
15. The appellant also relied on a report of Dr Dhumad. At [16.2], Dr Dhumad concluded that the appellant suffers from post-traumatic stress disorder and that the cause of those symptoms was most likely to be attributed to the appellant's torture experiences in Sri Lanka.
16. One of the reasons that the previous findings of the First-tier Tribunal were that the appellant had not given a credible account of his claimed torture and being the subject of the authorities' continued interest in Sri Lanka was because he had managed to leave the country unhindered through the airport.
17. Mr Bramble realistically accepts that the background information considered in GJ and Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) was that the prevalence of bribery and corruption in Sri Lanka enables barriers which would otherwise be placed in the way of an individual's departure from the country to be lifted. For example, see the summary of Professor Good's report at [113] which was in these terms:

“Corruption and bribery were widespread; release through payment of a bribe was extremely common.”

18. At [262], the Upper Tribunal accepted Professor Good’s evidence. In addition, the Tribunal analysed the report of Dr Smith at [128] which described bribery and corruption as “prevalent”. The Upper Tribunal also considered the evidence of Anton Punethanayagam, a respected Sri Lankan attorney (see [143]). His evidence was that bribery can facilitate the departure of even wanted persons through the airport, see the following extract from [28] of his evidence which was quoted at [146] of GJ:

“It is possible to leave the country using bribery with the help of an agent. The security officers and immigration officers at the international airport are no exception to the widespread bribery and corruption in Sri Lanka. It is always possible for a person to use influence or bribery to get through the airport without being detained as an LTTE suspect. I have been contacted by approximately 30 clients who managed to flee the country via the international airport whilst in the adverse interest of the authorities and I provided evidence in their asylum cases in the UK, Canada, France, Norway and Australia. Therefore leaving through the airport either with his/her own passport or false identity does not necessarily indicate a lack of interest on the part of the authorities.”

19. For my own part I note that the appellant claimed asylum immediately upon his arrival in this country. Not only is such conduct the absence of an adverse credibility factor pursuant to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, but in my view, it is a positive credibility factor of the sort which tends to reflect the behaviour of a person genuinely seeking international protection.
20. Since the appellant’s arrival in this country, he has engaged in an extensive range of sur place activities. He has joined a number of anti-Sri Lankan unitary state protests organised by the Transnational Government of Tamil Eelam. At pages 160 and 161 of his bundle, he has provided a letter of support from Mr Sockalingam Yogalingam, a prominent leader in the Tamil diaspora, dated 23 May 2019. That letter outlines the different protests which the appellant has attended in order to demonstrate against the post-conflict unitary Sri Lankan state. At page 164 of the bundle, there is a copy of the appellant’s TGTE identity card. There are a number of photographs of the appellant demonstrating at events taking place in this country outside prominent locations such as No 10 Downing Street.
21. Drawing this analysis together, the question for my consideration is whether the appellant’s account of the subsequent detention incidents is something which I can ascribe significance to, when assessed to the lower standard. I see no reason not to. Although the refusal letter raised some purported inconsistencies in the answers the appellant had given in his extensive and lengthy asylum interview, in my view when this evidence is considered in the round to the lower standard, taking into account his vulnerabilities and mental health conditions, those are not inconsistencies

which have the effect of totally depriving this appellant's account of any credibility whatsoever. By contrast they are the sort of inconsistencies which one would readily expect to feature in any account given by someone fleeing persecution at the hands of the state of their nationality. It is common for people experiencing vulnerability of the sort experienced by this appellant to have difficulty in recalling precise details or precise dates giving consistent accounts of minor details on every occasion. I find that the evidence of the *sur place* activity in this country is such that when combined with the continued interest that the authorities in Sri Lanka plainly have in the appellant is such that he would be placed at a real risk of being persecuted on account of his suspected political opinion. In the headnote to GJ one of the indicative risk criteria factors was 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.”

In light of the interest on the part of the Sri Lankan authorities in this appellant as recently as 2015 and 2016, combined with the evidence of his *sur place* activities about which he could not be expected to lie upon questioning on his return, I find that he does suffer a well-founded fear of being persecuted on a Convention ground namely his political opinion. For these reasons I find that the appellant satisfies the definition “refugee” in the Qualification Regulations and this appeal is allowed on asylum grounds.

22. In light of these findings it is not necessary for me to consider the appellant's humanitarian protection claim in the alternative nor is it necessary for me to reach a view on his separate Article 3 ECHR health-based claim.

Notice of Decision

This appeal is allowed on asylum grounds.

Anonymity direction maintained.

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 *Stephen H Smith*
Upper Tribunal Judge Stephen Smith

Date 6 April 2020

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable (adjusted where full award not justified) for the following reason. The appellant has succeeded in his appeal, the effect of which has been to recognise his underlying status as a refugee.

Signed *Stephen H Smith* Date 6 April 2020
Upper Tribunal Judge Stephen Smith

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent" is that appearing on the covering letter or covering email



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

Appeal Number: PA/06292/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 8 October 2019**

Decision & Reasons Promulgated

.....

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

**AR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B. Jones, Counsel, instructed by Jein Solicitors

For the Respondent: Ms A. Everett, Home Office Presenting Officer

ERROR OF LAW DECISION AND REASONS

1. The appellant, AR, is a citizen of Sri Lanka, born 21 June 1986. He appeals with the permission of First-tier Tribunal Judge Hollingworth against a decision of First-tier Tribunal Judge Wylie promulgated on 3 July 2019, dismissing his appeal against a decision of the respondent dated 21 June 2017 to refuse his asylum and humanitarian protection claim. The appellant claims that he had been detained in Sri Lanka on a number of occasions, most recently from 2015 to 2016, and that he will be at risk upon return on account of his role in the LTTE.

2. The appellant originally appealed against the respondent's decision to Judge Kelly of the First-tier Tribunal. In a decision promulgated on 5 January 2018, Judge Kelly dismissed the appellant's appeal. In a decision promulgated on 11 May 2018, Deputy Upper Tribunal Judge Peart set Judge Kelly's decision aside, and remitted the case to the First-tier Tribunal. It was in those circumstances that the matter was listed before Judge Wylie, and it is that decision which the appellant now challenges before me.

Factual background

3. It is accepted by the respondent that the appellant fought for the LTTE during the Civil War in Sri Lanka, and that he was detained and mistreated from September 2009 to July 2010 following the cessation of hostilities. The appellant's case is that he returned to work as a fisherman following his release in 2010, but that he was rearrested in September 2011 and detained for a week, and that he was again detained from September 2015 to December 2016. This detention was said to have been catalysed by the appellant returning to an LTTE arms dump with a friend. Although the appellant claims that he did not retrieve anything of significance during the visit, his case is that he was later falsely implicated by the authorities in the discovery of some gunpowder at a friend's house, leading to his subsequent detention.
4. He claimed he was able to escape from detention through the payment of a bribe facilitated by his uncle, and that the services of an agent were used to enable the appellant to depart from the country on a flight without encountering difficulties at the airport. His uncle arranged for an agent to provide him with travel documents, leading to him travelling to the United Kingdom shortly after his escape from detention. He claimed asylum immediately upon arrival.
5. The appellant's brother also fought for the LTTE during the Civil War. He has been recognised as a refugee in this country following his own successful appeal before the First-tier Tribunal.
6. Judge Wylie did not accept the appellant's account of having been detained in 2015 to 2016 to be credible. The judge found that the medical evidence provided by the appellant did not support his claim, and that any scarring on his body was attributable to either his accepted periods of detention from 2009 to 2010, or from injuries sustained in battle during the war. Similarly, the judge found that the post-traumatic stress disorder symptoms displayed by the appellant were attributable to his first, accepted, detention experience, and his experiences of active combat. His father and sister were two of the many thousands who lost their lives during the war.
7. The judge did not accept that the appellant is now a member of the Transnational Government of Tamil Eelam ("the TGTE"). The judge rejected his case that he will be identified as a significant member of the

post-conflict, pro-separatist Tamil diaspora upon his return. As such, found the judge, the recent proscription of the TGTE as a terrorist organisation in Sri Lanka will not adversely impact the appellant.

Grounds of appeal

8. There are six grounds of appeal:

- a. Ground 1: The judge erred when attempting to distinguish the appellant's brother's successful asylum appeal from the appellant's case;
- b. Ground 2: The judge failed to take account of witness evidence, including the evidence Mr S and Mr A, two Sri Lankan witnesses who have each been recognised as refugees in this country, following their own successful appeals before the First-tier Tribunal. The judge also failed to make any or adequate findings concerning a letter from the appellant's mother in support of his claim;
- c. Ground 3: The judge erred in her assessment of the consistency and plausibility of the appellant's 2015 arrest, in particular by failing to have regard to the accepted background evidence recorded in GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) that escapes from detention, and subsequent departure through airports as a wanted person, are possible upon the payment of bribes;
- d. Ground 4: The judge erred in her assessment of the medical evidence, in that she was critical of the appellant for having provided detailed accounts of his claimed torture experiences to Dr Martin (Consultant in Emergency Medicine) and Dr Dhumad (Consultant Psychiatrist), the appellant's scarring and psychological experts respectively, in circumstances when he had not given a detailed account to his own solicitors for the purposes of his witness statements, or to the respondent;
- e. Ground 5: The judge failed to make an "explicit" finding concerning the appellant's claimed TGTE membership, in light of the membership card he provided, and the letter of support from Mr Sockalingam Yogalingam, the Deputy Minister of Sports and Community Health, TGTE;
- f. Ground 6: The judge erred in her assessment of the appellant's suicide risk.

Discussion

9. What took place subsequent to the appellant's detention in 2009 and 2010 holds the key to identifying whether the appellant will continue to be at risk upon his return. Central to that assessment is whether he was

detained as claimed from 2015 to 2016. As such, the judge's approach to this issue lies at the heart of this appeal.

10. The grounds of appeal are challenges to the judge's findings of fact. An appeal to this Tribunal lies only on a point of law. As such, it is necessary for the grounds of appeal to demonstrate that the judge's findings, or reasons for her findings, concerning the 2015 to 2016 detention were irrational, wholly unsupported by the evidence, or infected by some other error of law. The criteria for challenging findings of fact as an error of law are well established: see R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982 at, for example, [9] and [90].
11. I consider the judge's analysis of the 2015 detention incident to have involved an error of law.
12. At [103], the judge said, "the appellant appears to have given very little thought to how his family had been able to arrange his release and subsequent departure from the country." At [103], the judge made the following findings:

"Within less than three weeks after his escape from detention he claims to have been able to travel through the airport accompanied by an agent arranged by his uncle. I do not find it credible that, as a person who had escaped from detention, he was able to get through the airport without being identified by the authorities. He stated that his uncle was a bar owner in Vavuniya, and there is no suggestion that he was a person with influence such as being able to arrange this in such a short time."

In reaching the above findings, the judge did not have regard to the background evidence as set out in GJ. In GJ, the Upper Tribunal heard evidence concerning the prevalence of bribery and corruption, and the role it can play in (i) facilitating escapes from detention; and (ii) enabling free passage, even for wanted persons, through Sri Lankan airports. See the summary of Professor Good's report at [113]: "Corruption and bribery were widespread; release through payment of a bribe was extremely common". At [262], the Tribunal accepted Prof. Good's evidence. Similarly, in the summary of Dr Smith's report at [128], bribery and corruption are described as "prevalent".

13. The evidence of Anton Punethanayagam, a respected Sri Lankan attorney (see GJ at [143]), was that bribery can facilitate the departure of even wanted persons through airports. See the following extract from [28] of his evidence, quoted at [146] of GJ:

"28. It is possible to leave the country using bribery with the help of an agent. The security officers and immigration officers at the international airport are no exception to the widespread bribery and corruption in Sri Lanka. It is always possible for a person to use influence or bribery to get through the airport without being detained as an LTTE suspect. I have been contacted by approximately 30 clients who managed to flee the country via the international airport whilst in the adverse interest of the authorities and I provided evidence in their

asylum cases in the UK, Canada, France, Norway and Australia. Therefore leaving through the airport either with his/her own passport or false identity does not necessarily indicate a lack of interest on the part of the authorities.”

14. At [170] of GJ, the Tribunal recorded that counsel for the Secretary of State had conceded that, “given the prevalence of bribery and corruption in Sri Lanka, having left Sri Lanka without difficulty was not probative of a lack of adverse interest in an individual.”
15. The judge plainly had had regard to GJ in her findings but did not refer to the above material evidence when dismissing the possibility of the appellant’s unhindered departure from Sri Lanka. Instead, she expected the appellant himself to have detailed knowledge of the steps his family took while he was in detention. The test is not, as the judge suggested at [102], whether an appellant had given “very little thought” to how his family would have facilitated his detention. The issue is whether it is reasonably likely that they did so facilitate his detention. That was an issue which fell to be determined by reference to background evidence, which, as set out above, demonstrates that bribery and corruption are tried and tested methods of securing release from detention in Sri Lanka.
16. It is trite asylum law that judges should not bring their own subjective expectations of the likely conduct of an appellant or persons in another country to their objective analysis of the evidence in a case. The basis of the judge’s knowledge of what would have been likely to take place upon the appellant’s escape from detention and the likely processes at the airport are not clear. Certainly, the background evidence suggests that precisely that sort of activity did place. If the judge considered that there were grounds to depart from the extensive background evidence outlined in GJ, then she should have said so, and given reasons. She did not.
17. As to the extent to which the appellant knew about the steps his family had taken while he was in detention, it is not clear why the judge expected the appellant know about something which took place while, on his case, he was being detained and tortured. The judge had already reminded herself at [50] and [53] that those fleeing persecution may have difficulty remembering the events from which they seek refuge, and maybe affected by mental health conditions. However, having reminded herself of the inherent difficulties those in the position of the appellant were likely to experience, she has not calibrated her operative reasoning to take account of those factors. Instead, she held against the appellant his inability to speak about something he could not reasonably be expected to know, while simultaneously finding that is account was not credible, despite the balance of the objective evidence being that precisely such events took place. Perhaps what the judge meant was that the appellant should have found out from his family what steps they took on his behalf; if that was so, she should have said so, given reasons, and explained why the appellant’s lack of knowledge was instrumental in her dismissal of this aspect of his claim.

18. The judge was also dismissive of what she described as the “tick list” of torture the appellant had described to both medical experts. She observed that the “tick list” was “often described in cases of people who have suffered at the hands of the Sri Lankan authorities.” See [101]. It is not clear why the judge used this terminology. The judge appears to have identified the fact that the appellant’s claim bore parallels with other claims of torture from the region. That is a factor which supports the plausibility and credibility of the appellant’s account. Yet the judge held it as a factor damaging his credibility. The use of the term “tick list” was an inappropriate way to describe the allegations made by a vulnerable appellant who – as was common ground – had been tortured in the past and had provided a scarring report which demonstrated extensive injuries. The terminology gave the impression that the judge dismissed his allegations as fabricated, or trivial, although she did not say so in terms (and nor could she realistically have done so, given the scarring report, and the previously accepted accounts of torture and detention).
19. I consider the above mistakes of fact, and the inappropriate casting off of the appellant’s injuries as a mere “tick list”, to have performed a material and tainting role in the judge’s overall analysis of the appellant’s credibility. The circumstances of his departure from Sri Lanka, and his claimed 2015 to 2016 detention experience, were central to his case. Although the analysis in the judge’s decision forms only a small part of her overall reasoning, it was pivotal to her rejection of the appellant’s case as a whole.
20. I also consider the judge’s findings concerning the impact of the appellant’s claimed TGTE membership to be tainted by her erroneous approach to the 2015 detention narrative. Superficially, the judge’s analysis of the letter from Mr Yogalingam and the TGTE membership card did not feature an error of law. However, the risk profile of the bearer of such a card could have been markedly different had the judge analysed the 2015 detention incident through the lens of the background evidence set out in GJ, and without dismissing the appellant’s torture experience as a “tick list” exercise. As the Court of Appeal noted in UB (Sri Lanka) v Secretary of State for the Home Department [2017] EWCA Civ 85 at [24]:

“...consideration of the risk to the Appellant turns not merely on him showing that he was actually a member of the TGTE, but relies on his membership being detected on arrival in Sri Lanka. There is no suggestion that this Appellant is on any list of individuals of interest to the authorities in Sri Lanka...”

Detention for a lengthy period of time as recently as 2016, followed by release and flight facilitated by bribery, may well have led to the appellant’s TGTE profile being detected in Sri Lanka. As such, I consider the judge’s findings in relation to the appellant’s risk profile from his claimed TGTE activity to be tainted by her assessment of his flight from Sri Lanka, as set out above.

21. For the above reasons, I consider that the overall credibility assessment of the judge was tainted and involved the making of an error of law such that it needs to be set aside. If the appellant had been (re)detained and tortured in 2015 to 2016, immediately prior to his departure for the United Kingdom, that would have been a material factor in the analysis of the appellant's claim as a person at post-conflict risk of persecution in Sri Lanka.
22. The remaining criticisms of the judge's reasoning have less merit and, in isolation, would be unlikely to demonstrate that the judge's overall findings of fact were irrational. However, in light of my findings above it is not necessary for me to determine those issues separately.
23. The decision of Judge Wylie involved the making of an error of law and is set aside.
24. Given the matter has already been heard twice by the First-tier Tribunal, I consider that the most appropriate course of action is for the matter to be reheard *de novo* in the Upper Tribunal.

Notice of Decision

This appeal is allowed.

The decision of Judge Wylie involved the making of an error of law and is set aside, with no findings of fact preserved.

The appeal is to be reheard in the Upper Tribunal, with a time estimate of 3 hours.

The appellant is directed to re-serve a full bundle and updated medical report within 14 days of the resumed hearing.

Anonymity

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 *Stephen H Smith*

Date 14 October 2019

Upper Tribunal Judge Stephen Smith