Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/07551/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 December 2019	**On 23 December 2019**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

VT
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton, of Counsel, instructed by Duncan Lewis Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. In a determination dated 25 October 2019, I set aside, in certain respects, the determination of First-tier Tribunal Judge Wylie, promulgated on 12 July 2019 following a hearing at Harmondsworth on 24 June 2019. Full details are provided in my decision of that date.

2. The appellant is a Sri Lankan national born on 1 December 1977. He first entered the UK in 1999/2000 and made an unsuccessful asylum

claim which led to an unsuccessful appeal before First-tier Tribunal Judge Chohan, following which he was returned to Sri Lanka in 2003. He then made an unsuccessful application for a visit visa using a false identity. In September 2009, he travelled to Malaysia where he stayed two months. He then entered the UK on 29 November 2009 using a false British passport and claimed asylum some months later. That was refused and his appeal was finally dismissed in July 2013 by Upper Tribunal Judge Craig. Two sets of further submissions were made; the refusal of the second resulting in these proceedings. The appellant claims to have mental health problems and suffers from epileptic seizures.

3. The appellant married in 2004 but he has not seen his wife since 2007. She entered the UK using a false passport on 18 June 2008 and claimed asylum the following day. Her appeal was heard by First-tier Tribunal Judge Drummond-Farrell and allowed on 29 October 2008 following a hearing at Taylor House on 29 August 2008 (AA/05964/2008).

4. Judge Wylie took the previous determinations as her starting point. She also carefully examined the medical evidence and concluded that it did not support the assertion that there was a valid explanation for the appellant's inconsistent evidence at the earlier hearings (at 89). She took account of the determination of the appellant's wife's appeal. She noted that the wife had stated that the appellant's brother had been suspected by the authorities of passing information to the LTTE and that he had been shot and killed. She noted that this accorded with what the appellant had earlier claimed, and that documentary evidence had been adduced to confirm the death. She accepted that the appellant's brother had been killed in August 2007 (at 105). She also accepted that he had attended three or four demonstrations in the UK but that he stopped going when he lost his appeal in 2013 (at 120). He then went to a few more in 2017 (122). She found, however, after considering GJ and for reasons set out at 106-136 that the appellant would not be of interest to the authorities and, accordingly, the appeal was dismissed.

5. Permission to appeal was granted on the basis that the judge arguably erred in failing to consider what impact, if any, the appellant's brother's death would have on him were he to be returned. The other parts of that ground 4 were found to be less persuasive but permission was given to argue them. They were that the judge had failed to consider whether the appellant's attendance at pro-Tamil protests would impact on how he would be perceived by the authorities on return.

6. When the matter came before me on 21 October 2019, I heard submissions from Mr Eaton for the appellant and Ms Everett for the respondent and set aside the decision of the First-tier Tribunal Judge on the basis that although Judge Wylie had accepted that the

appellant's wife had corroborated his account that his brother had been killed by the Sri Lankan authorities for his support for the LTTE, she had failed to make any findings on how this would, if at all, impact upon the appellant on return. The following findings were preserved: the judge's assessment of the appellant's physical and mental health and her conclusions at 86-89, her findings at 105 that the appellant's brother was shot and killed and at 112 that the appellant was not raped. Due to the lack of clarity in her finding over the appellant's claimed detention in October 2007 (at 105 and 115) I directed that the question of whether or not the appellant was arrested and detained in 2007 would have to be reassessed.

The Hearing

7. The appellant was present at the hearing before me on 20 December 2019 but was not called to give oral evidence. The matter proceeded on the basis of submissions only.

8. For the appellant, Mr Eaton submitted that there were accepted findings of fact which were sufficient to discharge the burden on the appellant to prove to the lower standard that he would be adversely viewed by the authorities if returned to Sri Lanka. These factors were: that his brother had been killed by the authorities for his alleged activities for the LTTE, that his wife had been detained in 2007 and tortured, that she had been questioned about the appellant and what action he had taken in respect of his brother's death and that he had been involved in some pro=Tamil activities. Mr Eaton submitted that the appellant's wife had been found credible in her appeal and he pointed out that her appeal had been heard in isolation from the appellant after they had been separated in 2007. He submitted that her account corroborated the appellant's story. He argued that the evidence suggested that the appellant would be interrogated on return and asked about his sur place activities. He could not be expected to lie and so his activities, whatever they might be, would be taken into account with his background and his brother's killing and would give rise to a suspicion that he was a risk to the integrity of the state. Mr Eaton referred me to the expert report on the situation for returnees and the view that the authorities took. He asked that the appeal be allowed.

9. Mr Tarlow submitted that there had been unchallenged findings of fact made in the appellant's favour and that his wife's account corroborated his evidence. He submitted that it was possible that the appellant and his wife had been in touch and were not estranged at all, and that it was a matter for the Tribunal as to whether the account was believed.
10. Mr Eaton did not wish to respond.

11. At the conclusion of the hearing I indicated that I would be allowing the appeal. I now give my reasons for so doing.

Discussion and Conclusions

12. In reaching my decision I have had full regard to the submissions made and the evidence submitted on behalf of the appellant.

13. Although I take Mr Tarlow's point that it is possible that the appellant and his wife were not estranged at all and had concocted their accounts, there is no evidence before me to support that suspicion. Whilst it may well be so, it has never been put to the appellant or his wife and no challenge was made to the successful outcome of the appellant's wife's appeal. I also find that had the appellant and his wife been in collaboration as is suggested, then it makes no sense that a copy of her determination was not made available in support of the appellant's past appeals. It was not adduced until the recent hearing before Judge Wylie even though it had been promulgated well before the hearings before First-tier Tribunal Judge Wyman and Upper Tribunal Judge Craig. I am not told how the determination eventually came to be in the appellant's possession.

14. The evidence before me is largely unchallenged and despite the strong adverse credibility findings made against the appellant in the past, the determination of his wife's appeal in 2008, impacts heavily on those conclusions and provides a compelling basis for departing from them. The First-tier Tribunal, after hearing the appellant's wife's appeal, made several positive credibility findings and I agree with Mr Eaton that the finding over detention in 2007 must be read in that context.

15. I, therefore, find that the appellant was detained along with his wife in October 2007 and that both were released, albeit separately, upon payments of bribes. His wife's account fully corroborates his and since hers was accepted and no reasons have been argued as to why those should not stand, I conclude that the appellant is able to rely on the positive fact finding by Judge Drummond-Farrell.

16. I am satisfied having regard to the guidance in MP [2014] EWCA Civ 829, UB (Sri Lanka) [2017] EWCA Civ 85 and GJ (post-civil war: returnees, Sri Lanka) CG [2013] UKUT 00319 (IAC) that the appellant would be questioned on return. I find that it would emerge that he was a person whose brother had been killed for his involvement with the LTTE, who had been detained as a person of interest, who obtained his release by illegal means and who had taken part in pro-Tamil activities in the UK. I find that in light of the guidance of those judgments and the other background evidence including the expert report, that those factors are sufficient to give rise to a real risk of persecution by the Sri Lanka authorities would are likely to consider the appellant to be a real threat to the unity of the Sri Lankan state. The appeal therefore succeeds on asylum and article 3 grounds. No

submissions were made on humanitarian protection or article 8 grounds.

Decision

17. The appeal is allowed on asylum and article 3 grounds.

Anonymity

18. I continue the anonymity order made by the First-tier Tribunal.

Signed

Upper Tribunal Judge

20 December 2019