



IAC-AH-SC/SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07298/2018**

THE IMMIGRATION ACTS

**Heard at Field House
On the 1 September 2021**

**Decision & Reasons Promulgated
On the 28 October 2021**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**PA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. McKenzie, Counsel instructed by A.J Paterson
Solicitor

For the Respondent: Mr E. Tufan, Home Office Presenting Officer

DECISION AND REASONS

**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.

1. The Appellant is a citizen of Sri Lanka. His date of birth is 3 December 1988. In a decision dated 3 November 2020 (promulgated on 11 November 2020) following a hearing at Field House on 14 October 2020 I found that First-tier Tribunal Judge Shand materially erred in law when dismissing the Appellant's claim on protection grounds. I set aside the judge's decision.
2. There was no cross-challenge by the Secretary of State to the judge's finding that returning the Appellant to Sri Lanka would breach the UK's obligations under Article 3 of the ECHR as a result of his mental health. The judge accepted having taken into account the medical evidence that there is a high risk of the Appellant committing suicide if he learns that he is to be returned to Sri Lanka. She found that his mental health problems could be managed in the UK but in Sri Lanka he would not have the support of his family as a protective factor. However, she accepted that there is a reasonable chance or serious possibility that he has been tortured in the past. The judge found that there is a real risk that the Appellant has a subjective fear of torture.
3. My error of law decision reads as follows:-
 - "31. The findings of fact are not challenged. It is the assessment of risk which is challenged with reference to GJ. The judge did not make adequate findings about the Appellant's activities in the United Kingdom. The judge set out the evidence set out at [68] to [70] (annual Martyrs' Day events, distributing candles in 2015 and garlands in 2016, assistance at events in 2014, distribution of leaflets in 2018, annual attendance at Mullivaikal Remembrance Day and further distribution of leaflets, he joined the TGTE in October 2018 and helped run a sports day for the organisation in August 2019).
 32. However the judge did not make clear which aspects of this account she accepted when concluding that his attendance at diaspora events was 'intermittent and of low level'. At [110] she made findings on the basis that 'even if he attended all annual Tamil events in London the Appellant is one of many ...'. This casts doubt on what if any of the evidence of sur place activity the judge accepted. In addition, there was evidence from four witnesses which was capable of supporting the Appellant's evidence of recruitment. The judge did not make any reference to this evidence.
 33. I accept that the judge did not make adequate findings of fact concerning the Appellant's sur place activities.
 34. I set aside the decision of the judge to dismiss the Appellant's appeal on protection grounds.
 35. A new GC case on Sri Lanka is expected. The matter will be listed for a remote CMHR in the beginning of January 2021".
4. For one reason or another the matter was not listed for a CMHR in January 2021. When this came to my attention I arranged for the matter to be listed for a resumed hearing on 1 September 2021, following the

promulgation of KK and RS (Sur place activities: risk) Sri Lanka CG [2021] UKUT 0130.

5. On 14 July 2021 I issued a number of directions to the parties as follows:-
- “1. The appeal is listed for a substantive hearing on 1 September 2021.
 2. Should the Appellant wish to rely on live evidence an updated witness statement should be filed and served within 21 days of the sending of these directions.
 3. If the Appellant intends to rely on any other evidence including expert evidence that was not before the Tribunal, this should be filed and served within 21 days of the sending of these directions.
 4. The parties are to prepare a statement of agreed facts which should be served and filed not later than 21 days before the substantive hearing.
 5. The parties are to prepare skeleton arguments not to exceed three pages of A4 within five days of the substantive hearing. If an interpreter is required the Appellant must request an interpreter not later than seven days before the hearing”.

KK and RS (Sur place activities: risk) Sri Lanka CG [2021] UKUT 0130

6. The Upper Tribunal has recently promulgated country guidance in respect of Sri Lanka and those engaging in sur place activities. The headnote reads as follows:-

“COUNTRY GUIDANCE

In broad terms, GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC) still accurately reflects the situation facing returnees to Sri Lanka. However, in material respects, it is appropriate to clarify and supplement the existing guidance, with particular reference to sur place activities.

The country guidance is restated as follows:

- (1) The current Government of Sri Lanka (‘GOSL’) is an authoritarian regime whose core focus is to prevent any potential resurgence of a separatist movement within Sri Lanka which has as its ultimate goal the establishment of Tamil Eelam.*
- (2) GoSL draws no material distinction between, on the one hand, the avowedly violent means of the LTTE in furtherance of Tamil Eelam, and non-violent political advocacy for that result on the other. It is the underlying aim which is crucial to GoSL’s perception. To this extent, GoSL’s interpretation of separatism is not limited to the pursuance thereof by violent means alone; it encompasses the political sphere as well.*
- (3) Whilst there is limited space for pro-Tamil political organisations to operate within Sri Lanka, there is no tolerance of the expression of avowedly separatist or perceived separatist beliefs.*

- (4) *GoSL views the Tamil diaspora with a generally adverse mindset, but does not regard the entire cohort as either holding separatist views or being politically active in any meaningful way.*
- (5) *Sur place activities on behalf of an organisation proscribed under the 2012 UN Regulations is a relatively significant risk factor in the assessment of an individual's profile, although its existence or absence is not determinative of risk. Proscription will entail a higher degree of adverse interest in an organisation and, by extension, in individuals known or perceived to be associated with it. In respect of organisations which have never been proscribed and the organisation that remains de-proscribed, it is reasonably likely that there will, depending on whether the organisation in question has, or is perceived to have, a separatist agenda, be an adverse interest on the part of GoSL, albeit not at the level applicable to proscribed groups.*
- (6) *The Transnational Government of Tamil Eelam ('TGTE') is an avowedly separatist organisation which is currently proscribed. It is viewed by GoSL with a significant degree of hostility and is perceived as a 'front' for the LTTE. Global Tamil Forum ('GTF') and British Tamil Forum ('BTF') are also currently proscribed and whilst only the former is perceived as a 'front' for the LTTE, GoSL now views both with a significant degree of hostility.*
- (7) *Other non-proscribed diaspora organisations which pursue a separatist agenda, such as Tamil Solidarity ('TS'), are viewed with hostility, although they are not regarded as 'fronts' for the LTTE.*
- (8) *GoSL continues to operate an extensive intelligence-gathering regime in the United Kingdom which utilises information acquired through the infiltration of diaspora organisations, the photographing and videoing of demonstrations, and the monitoring of the Internet and unencrypted social media. At the initial stage of monitoring and information gathering, it is reasonably likely that the Sri Lankan authorities will wish to gather more rather than less information on organisations in which there is an adverse interest and individuals connected thereto. Information gathering has, so far as possible, kept pace with developments in communication technology.*
- (9) *Interviews at the Sri Lankan High Commission in London ('SLHC') continue to take place for those requiring a Temporary Travel Document ('TTD').*
- (10) *Prior to the return of an individual traveling on a TTD, GoSL is reasonably likely to have obtained information on the following matters:*
 - i. whether the individual is associated in any way with a particular diaspora organisation;*
 - ii. whether they have attended meetings and/or demonstrations and if so, at least approximately how frequently this has occurred;*
 - iii. the nature of involvement in these events, such as, for example, whether they played a prominent part or have been holding flags or banners displaying the LTTE emblem;*

- iv. *any organisational and/or promotional roles (formal or otherwise) undertaken on behalf of a diaspora organisation;*
 - v. *attendance at commemorative events such as Heroes Day;*
 - vi. *meaningful fundraising on behalf of or the provision of such funding to an organisation;*
 - vii. *authorship of, or appearance in, articles, whether published in print or online;*
 - viii. *any presence on social media;*
 - ix. *any political lobbying on behalf of an organisation;*
 - x. *the signing of petitions perceived as being anti-government.*
- (11) *Those in possession of a valid passport are not interviewed at the SLHC. The absence of an interview at SLHC does not, however, discount the ability of GoSL to obtain information on the matters set out in (10), above, in respect of an individual with a valid passport using other methods employed as part of its intelligence-gathering regime, as described in (8). When considering the case of an individual in possession of a valid passport, a judge must assess the range of matters listed in (10), above, and the extent of the authorities' knowledge reasonably likely to exist in the context of a more restricted information-gathering apparatus. This may have a bearing on, for example, the question of whether it is reasonably likely that attendance at one or two demonstrations or minimal fundraising activities will have come to the attention of the authorities at all.*
- (12) *Whichever form of documentation is in place, it will be for the judge in any given case to determine what activities the individual has actually undertaken and make clear findings on what the authorities are reasonably likely to have become aware of prior to return.*
- (13) *GoSL operates a general electronic database which stores all relevant information held on an individual, whether this has been obtained from the United Kingdom or from within Sri Lanka itself. This database is accessible at the SLHC, BIA and anywhere else within Sri Lanka. Its contents will in general determine the immediate or short-term consequences for a returnee.*
- (14) *A stop list and watch list are still in use. These are derived from the general electronic database.*
- (15) *Those being returned on a TTD will be questioned on arrival at BIA. Additional questioning over and above the confirmation of identity is only reasonably likely to occur where the individual is already on either the stop list or the watch list.*
- (16) *Those in possession of a valid passport will only be questioned on arrival if they appear on either the stop list or the watch list.*
- (17) *Returnees who have no entry on the general database, or whose entry is not such as to have placed them on either the stop list or the watch list, will in general be able to pass through the airport unhindered and return to the home area without being subject to*

any further action by the authorities (subject to an application of the HJ (Iran) principle).

- (18) *Only those against whom there is an extant arrest warrant and/or a court order will appear on the stop list. Returnees falling within this category will be detained at the airport.*
- (19) *Returnees who appear on the watch list will fall into one of two sub-categories: (i) those who, because of their existing profile, are deemed to be of sufficiently strong adverse interest to warrant detention once the individual has travelled back to their home area or some other place of resettlement; and (ii) those who are of interest, not at a level sufficient to justify detention at that point in time, but will be monitored by the authorities in their home area or wherever else they may be able to resettle.*
- (20) *In respect of those falling within sub-category (i), the question of whether an individual has, or is perceived to have, undertaken a 'significant role' in Tamil separatism remains the appropriate touchstone. In making this evaluative judgment, GoSL will seek to identify those whom it perceives as constituting a threat to the integrity of the Sri Lankan state by reason of their committed activism in furtherance of the establishment of Tamil Eelam.*
- (21) *The term 'significant role' does not require an individual to show that they have held a formal position in an organisation, are a member of such, or that their activities have been 'high profile' or 'prominent'. The assessment of their profile will always be fact-specific, but will be informed by an indicator-based approach, taking into account the following non-exhaustive factors, none of which will in general be determinative:*
 - i. the nature of any diaspora organisation on behalf of which an individual has been active. That an organisation has been proscribed under the 2012 UN Regulations will be relatively significant in terms of the level of adverse interest reasonably likely to be attributed to an individual associated with it;*
 - ii. the type of activities undertaken;*
 - iii. the extent of any activities;*
 - iv. the duration of any activities;*
 - v. any relevant history in Sri Lanka;*
 - vi. any relevant familial connections.*
- (22) *The monitoring undertaken by the authorities in respect of returnees in sub-category (ii) in (19), above, will not, in general, amount to persecution or ill-treatment contrary to Article 3 ECHR.*
- (23) *It is not reasonably likely that a returnee subject to monitoring will be sent for 'rehabilitation'.*
- (24) *In general, it is not reasonably likely that a returnee subject to monitoring will be recruited as an informant or prosecuted for a refusal to undertake such a role.*

- (25) *Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or are associated with publications critical of the government, face a reasonable likelihood of being detained after return, whether or not they continue with their activities.*
- (26) *Individuals who have given evidence to the LLRC implicating the Sri Lankan security forces, armed forces, or the Sri Lankan authorities in alleged war crimes, also face a reasonable likelihood of being detained after their return. It is for the individual concerned to establish that GoSL will be aware of the provision of such evidence.*
- (27) *There is a reasonable likelihood that those detained by the Sri Lankan authorities will be subjected to persecutory treatment within the meaning of the Refugee Convention and ill-treatment contrary to Article 3 ECHR.*
- (28) *Internal relocation is not an option within Sri Lanka for a person at risk from the authorities.*
- (29) *In appropriate cases, consideration must be given to whether the exclusion clauses under Article 1F of the Refugee Convention are applicable.*

APPLICATION OF THE PRINCIPLE IN HJ (IRAN)

It is essential, where appropriate, that a tribunal does not end its considerations with an application of the facts to the country guidance, but proceeds to engage with the principle established by HJ (Iran) [2010] UKSC 31; [2010] 1 AC 596, albeit that such an analysis will involve interaction with that guidance.

When applying the step-by-step approach set out in paragraph 82 of HJ (Iran), careful findings of fact must be made on the genuineness of a belief in Tamil separatism; the future conduct of an individual on return in relation to the expression of genuinely held separatist beliefs; the consequences of such expression; and, if the beliefs would be concealed, why this is the case”.

The Agreed Statement of Facts

7. The agreed statement of facts submitted by the parties reads as follows;

- “1. As to the Appellant’s personal history, the parties agree that:
- (i) The Appellant (‘PA’) is a Sri Lankan national of Tamil ethnicity born on 3 December 1988.
 - (ii) PA was issued with entry clearance to the UK as a student and left Sri Lanka on 10 November 2010. Since arriving in the UK he has lived with his cousin NJ. PA began studying, but in 2012 his college was closed down and his leave to remain was curtailed. He claimed asylum in 2018. PA no longer has a valid Sri Lankan passport. He has suffered torture in Sri Lanka. He has a genuine fear of further torture on return. PA suffers from post-traumatic stress disorder

and is at risk of suicide if returned to Sri Lanka. In consequence of the First-tier Tribunal Judge having allowed his appeal on Article 3 'health grounds' he has been granted humanitarian protection in the UK. He has given the requisite notice to the Tribunal for the purpose of proceeding with his appeal on asylum grounds. PA is not currently at risk on return as a result of any events occurring in Sri Lanka before he came to the UK.

2. On the basis of the findings in KK and RS (Sur place activities: risk) Sri Lanka CG [2021] UKUT 0130 the parties agree that:-
 - (i) The TGTE is a proscribed organisation in Sri Lanka, which is committed to the establishment of Tamil Eelam (an independent Tamil homeland on the island of Sri Lanka) and is perceived by the Sri Lankan authorities as a 'front' for the LTTE.
 - (ii) There is no requirement to show that PA has had any formal role in the TGTE or that any sur place activities have been 'high profile' or 'prominent'.
 - (iii) The FtT Judge having rejected PA's claim that an arrest warrant has been issued in respect of him, PA is not likely to be on a 'stop list' or therefore to be detained at the airport on return. Any risk to him arises following return to his home country.
 - (iv) Whether PA is at risk of persecution in his home area, as a result of any sur place activities he is found to have carried out, depends primarily on whether the Sri Lankan authorities will regard him, on the basis of such activities, as constituting a threat to the integrity of the Sri Lankan state by reason of his committed activism in furtherance of the establishment of Tamil Eelam.
 - (v) Neither internal relocation nor the availability of state protection is relevant in this case.
3. For the sake of completeness, other factual matters are not agreed between the parties and require to be determined by the Tribunal, including what if any sur place activities PA has carried out; the extent to which any such activities will be known to the Sri Lankan authorities; and whether PA might wish to continue any such activities if returned to Sri Lanka".

The hearing

8. The Appellant relied on a bundle that was before the First-tier Tribunal (AB). In addition, he relied on a supplementary bundle served for the purposes of the hearing before the Upper Tribunal (ASB). The Appellant relied on a skeleton argument and statement of agreed facts. There was an application under Rule 15(2A) of the 2008 Procedure Rules in respect of an up to date medical report and evidence of sur place activities since the

hearing before the First-tier Tribunal. There was no skeleton argument prepared by the Secretary of State. Mr Tufan indicated at the start of the hearing that this had not been possible as a result of lack of resources.

9. The Appellant was not in attendance at the hearing. There is an up-to-date medical report from Dr Singh of 3 August 2021 (ASB/17-18) which states that the Appellant is unfit to give evidence.
10. The witness NJ attended the hearing in order to give oral evidence. At the start of the hearing I raised with the parties what was agreed. The agreed statement of facts suggests that the Secretary of State does not accept that the Appellant engaged in any sur place activity. I queried this with Mr Tufan. I asked Mr Tufan whether he accepted any of the evidence of the Appellant (and NJ) in respect of the extent of the Appellant's sur place activity and whether it was a matter of application of the law to that evidence. I offered to rise to give him the opportunity to consider the Secretary of State's position which was not entirely clear to the Tribunal (in the absence of a skeleton argument). However, Mr Tufan accepted on behalf of the Secretary of State the Appellant's evidence of sur place activity and agreed that the only issue is whether or not the nature and degree of that activity puts him at risk properly applying the country guidance.
11. In the light of the above concession Mr Tufan indicated that he did not wish to cross-examine the witness NJ. The matter proceeded by way of submissions only.

The Evidence

The Appellant's evidence

12. The Appellant relied on his witness statement (AB/1-55) of 10 September 2019 and his more recent witness statement (ASB/1-5) on 29 July 2021.
13. His evidence in respect of sur place activities can be summarised. The Appellant describes his sur place activities in his first witness statement. He has been to Martyrs' Day events on 27 November every year since 2011. From 2012 until 2019 he has been to Mullivaikal Day commemorative events in Trafalgar Square on 18 May. He used to attend the two commemorative events every year and do voluntary work.
14. At Martyrs' Day on 27 November 2015 he distributed about 1000 candles to Tamil participants. It was a high profile activity as all the people could see him handing out candles next to a shrine commemorating LTTE martyrs. The Appellant performed supporting activities at Martyrs' Day in previous years. In 2014 he helped keep the dining area clean during the day.
15. In 2014 and 2015 (before Mullivaikal Day) at his friend's request he delivered leaflets to Tamil shops near to his home so that the local Tamil population were reminded to come to Trafalgar Square for the event. He

went to about fifteen local Tamil shops in each of those years. This was a high profile activity. The Appellant became known to the shopkeepers as a leading activist.

16. The Appellant encouraged other Tamils to go to Martyrs' Day on 27 November 2016 in the ExCeL Hall. About five or six of those who he approached agreed to come. The Appellant helped put up replica tombs at the event recreating a Maveerar cemetery. He helped manage garlands which was a high profile role.
17. From early April 2017 he began helping to make arrangements for Mullivaikal Day. He took leaflets around the Tamil shops in the Sutton area. He went to Tamil shops in Croydon, South Wimbledon, New Malden and Tooting. He handed out leaflets for Mullivaikal Day in front of Hindu temples.
18. In 2017 Martyrs' Day was not held in the ExCeL Hall. It was held in two or three places. He was in a group of people on a coach to an event in Oxford. He spread the word amongst Tamil friends about this. About fifteen young or middle aged Tamils attended the event as a result of the Appellant. They travelled together in a coach from Croydon on 27 November 2017.
19. The Appellant followed the instructions of a Tamil friend, M, who was the main organiser. About a month before Martyrs' Day in 2018 the Appellant resumed playing a leading role in organising the diaspora activity. He handed out leaflets to the Tamil public at the Hindu temple in Wimbledon on two days in November before Martyrs' Day. He handed out approximately 50 leaflets on each day. The leaflets had been issued by TGTE. He had been requested by M to distribute the leaflets. He telephoned about ten to fifteen Tamil friends in order to persuade them to attend. He does not know how many of them attended but he saw four of them at the event who thanked him.
20. The Appellant took leaflets to five Tamil shops in Sutton and Colliers Wood during the month of November 2018 to remind Tamils about Martrys' Day on 27 November.
21. About a month before Mullivaikal Day in 2019 the Appellant delivered TGTE leaflets to about five Tamil shops. He encouraged fellow Tamils to attend the event.
22. On 4 August 2019 he helped run a TGTE sports day in Roundshaw Playing Field in Croydon having telephoned Tamil friends beforehand and arranging for four of them to attend. M is in the TGTE. The Appellant has been an active supporter of the TGTE for quite a few years before joining them in 2019.
23. The Appellant wishes to continue his political activities if returned to Sri Lanka.

24. In the Appellant's most recent witness statement of 29 July 2021 (ASB/1-5) he describes sur place activities since the date of his last statement. His evidence can be summarised. The Appellant attended Martyrs' Day on 27 November 2019. He organised other Tamils to attend.
25. The scope of diaspora activities had been limited since March 2020 as a result of the pandemic. All gatherings, protest rallies and meetings were curtailed because of the virus.
26. An annual Tamil event Thileepan Ninaivu Naal (tribute to Thileepan who was a Tamil martyr - a lieutenant colonel who fasted to death on a hunger strike on 29 September 1987) is held each year on 26 September. The TGTE told the Appellant that they were producing leaflets for the commemorative event. The Appellant agreed to distribute the leaflets (ASB/23-25) on their behalf as their local co-ordinator. In late August 2020 the Appellant distributed 250 leaflet. He delivered 50 leaflets to each of the three Tamil shops in Sutton. He recruited two Tamil friends to deliver the remaining 100 leaflets. Each delivered 50 at the Appellant's request. Because of the pandemic there was no collective event. The Appellant had been appointed by the TGTE as co-ordinator for his area.
27. The Appellant distributed leaflets for Martyrs' Day on 27 November 2020. He persuaded the same two Tamil friends to help distribute the leaflets. Because COVID-19 prevented a collective event the leaflets encourage commemorating at home or on social media.
28. On 18 May 2021 on Mullivaikal Remembrance Day there was a small commemorative rally in Parliament Square. Not many people attended because of COVID. The Appellant did not attend. He did not think it was a good idea and he was mentally unwell at the time.

The Evidence of NJ

29. NJ has made two witness statements. The first statement (AB/1-8) is dated 5 September 2019. The most recent statement (ASB/7-8) is dated 30 July 2021. The witness attended the hearing, however following Mr Tufan's concession he did not give evidence.
30. It is not necessary for me to set out the witness's evidence in detail. The issue is the Appellant's sur place activities. NJ's evidence as well as the evidence of other witnesses whose statements were before the First-tier Tribunal are capable of supporting the Appellant's sur place activities.

The Respondent's submissions

31. Mr Tufan made the following submissions. He accepted that TGTE is a separatist and proscribed organisation and that membership is a relatively significant risk factor. The Secretary of State's case is that the activities that the Appellant has undertaken would not put him at risk or indeed the authorities would not be aware or interested in his activities.

32. Mr Tufan drew my attention to what he said was limited activity undertaken by the Appellant detailed in his witness statement (ASB/1 (paras 2, 10 and 14)). He referred to the photocopied document on which the Appellant relies (ASB/23-24) and the reference at the bottom of the posters to him being a “co-ordinator”. He submitted that it is not clear who appointed the Appellant to this position. He submitted that the Appellant’s involvement is limited and would not put him at risk on return. In any event, he is not being returned to Sri Lanka because he has been given four years’ leave.

The Appellant’s submissions

33. Mr McKenzie relied on his skeleton argument. The sole issue is whether PA is at risk of persecution on return to Sri Lanka on account of his sur place activities. Details of the Appellant’s sur place activities are set out in his first statement of 10 September 2019 (AB/40-43) and his further statement of 29 July 2021 (at ASB/2-4). In support of his sur place activities there are posters naming him as a co-ordinator for his local area in respect of two TGTE events on 26 September 2020 and 27 November 2020 (ASB/23-24), photographs of PA attending a demonstration on 18 May 2019 (AB/97-98) and his own evidence. There is also a Tamil Eelam national card issued by the TGTE (AB/108-109).

34. Properly applying KK and RS the Appellant would be seen by the Sri Lankan authorities as a “committed” activist, bearing in mind in particular his association with the proscribed TGTE, the duration of his activities (lasting some ten years); and the extent of his involvement, which goes beyond mere attendance at events and includes participating in publicity and recruitment. He could expect to be on a “watch list” on return and to be detained after passing through the airport.

35. The Appellant has attended demonstrations for a period of ten years. It is incumbent on the Tribunal to make a holistic assessment of all his activities. On doing this it will be established that he is a committed supporter of Tamil separatism. It does not need to equate to a high profile.

36. Mr McKenzie drew my attention specifically to the following paragraphs of KK and RS - 404, 406, 411, 412, 414, 439, 440, 457, 482, 486, 422, 493 to support his submissions that the Tribunal must conduct a holistic assessment of all activities, that the Appellant does not need to have a formal position in an organisation, that there is infiltration and surveillance and monitoring of sur place activity, that the Appellant will be interviewed by the Sri Lankan High Commission (SLHC) in London and will be asked about his own and his family’s LTTE connections and sympathies and sur place activities and cannot be expected to lie.

37. Prior to the Appellant’s return the Sri Lankan government is reasonably likely to have obtained information about his sur place activities. The appropriate touchstone for the assessment of risk in cases concerning sur

place activities is whether or not an individual has or is perceived to have undertaken a “significant role” in Tamil separatism. The Appellant has a significant role. The extent of his activities and duration of activity is relevant to the assessment of whether the Appellant has a significant role. Whilst motivation is not relevant there still exists the possibility of opportunistic “hangers-on” but this cannot act as a valid basis for rejecting a risk.

38. Further or alternatively, he would fall into the category of a person recognised in KK and RS at [520], for whom “the process of monitoring [by the authorities following return] will have such a detrimental impact as to permit them to succeed under the Refugee Convention”: see Dr Singh’s comments on the likely effect of removal on the Appellant’s mental health (at AB/182-184). Although the First-tier Tribunal did not accept that the Appellant was at risk as a result of his political activities it did accept that he had been tortured in the past and genuinely feared further torture.
39. In the further alternative, the Appellant would wish to continue his genuine and committed pro-separatist activities if returned to Sri Lanka and he would be at risk if he did so properly applying HJ (Iran) in accordance with KK and RS. It is to be expected that the authorities would find out about any pro-separatist activities in Sri Lanka (see KK and RS at [548]) and the expression of separatist views would be likely to result in detention [552].

Findings and reasons

40. The issue before me is limited. Essentially I must consider whether the Appellant has a significant role or will be perceived as having a significant role in relation to post-conflict Tamil separatism such as to bring him to the attention of the Sri Lankan authorities. I must assess his individual profile in accordance with what the Upper Tribunal said in KK and RS. The starting point is that the Appellant’s evidence about sur place activities is accepted. I have considered the Appellant’s activities and what was found by the UT in KK and RS. I have taken into account the specific paragraphs to which Mr McKenzie referred in his submissions.
41. The country guidance supports that the Sri Lankan authorities have an extensive intelligence gathering policy and monitors activity in the UK. It also establishes that the Appellant will be interviewed by the Sri Lankan High Commission in London as he will require a TTD (It is accepted that he does not have a current passport). During the interview with the High Commission, taking into account what the Upper Tribunal said, specifically at paragraph 412, I conclude that it is reasonably likely that the Appellant will be asked questions on diaspora activities and he cannot be expected to do anything other than tell the truth.
42. It follows that prior to the Appellant’s return it is reasonably likely that the Sri Lankan government will have obtained information concerning the Appellant’s diaspora activities. Having considered the country guidance I conclude that it is reasonably likely that the information gathered at this

stage would cause the Appellant to be placed on a “watch list”. In respect of this issue Mr Tufan said that the Appellant’s activities would not amount to a significant role so as to put him at risk, however he did not refer me to the country guidance in order to support his submission. In any event, considering the evidence holistically, I do not accept his submission.

43. I have assessed the Appellant’s profile and concluded that he has or will be perceived to have a significant role having taken into account that in order to establish this an Appellant does not have to hold a formal position within an organisation or even be a member of an organisation. Moreover, an individual does not need to show that their role has been “high profile” or “prominent” although the Upper Tribunal rejected the suggestion that the most trivial level of diaspora activity would be sufficient.
44. I have considered the “indicator-based approach” (see paragraph 473 of KK and RS). The term “significant role” should be interpreted through the contextual prism that the Sri Lankan government’s objective is to identify those who are an actual or perceived threat to the integrity of the Sri Lankan state by reason of their committed activism in pursuit of the establishment of a separate Tamil state on the island of Sri Lanka.
45. I have taken into account the nature of the organisation which the Appellant is a member. It is a proscribed organisation. This is relatively significant in terms of the level of adverse interest reasonably likely to be attributed to the Appellant although it is not determinative of risk. The Appellant is active within the organisation TGTE, his activity cannot be described as passive. More recently he has been described as a co-ordinator, however before then although he did not hold a formal position within the organisation he has been given responsibilities, for example the distribution of promotional literature and specific responsibilities at specific events.
46. The type of activities undertaken by the Appellant are varied. He has attended a number of public demonstrations. He is a member of TGTE. More recently he has a role described as co-ordinator. He has distributed promotional literature. He has attended commemorative events. In addition to the above activities, which feature on the non-exhaustive list at paragraph 482 of KK and RS, the Appellant has undertaken activities to encourage others to attend events. The extent of the Appellant’s activities cannot be described as de minimis or in any way passive. He has attended a number of events and he has undertaken a number of informal roles. He has undertaken activities over a period of ten years. Considering the Appellant’s evidence holistically I conclude that there will be a perception by the Sri Lankan government that the Appellant constitutes a potential threat to the state.
47. The First-tier Tribunal did not accept the Appellant’s evidence in relation to previous involvement with the LTTE. A history of links to the LTTE is a relevant factor in the overall assessment, however the absence of such links is not determinative. The same can be said for the final factor in the

Upper Tribunal's non-exhaustive list, namely an individual's familial connections.

48. The risk to the Appellant in my view arises on return to the airport because he will be placed on a "watch list" and this means that there will be additional questioning at the airport over and above the confirmation of the Appellant's identity because all relevant information on sur place activities will have already been entered onto the general electronic database. I conclude that as a result it is reasonably likely that he will be of sufficiently strong adverse attention to warrant detention. However, even if that were not the case and that he will be of interest but not at a level sufficient to justify detention at that point in time, he remains at risk of being detained, persecuted and subjected to serious harm. He would be reasonably likely to be monitored following departure from the airport and would be picked up wherever he may seek to go (see paragraph 514).
49. In this case such monitoring in the light of the Appellant's very significant mental health problems would have such a detrimental impact as to permit him to succeed under the Refugee Convention because the monitoring will be as a result of the Appellant's actual or imputed political opinion and the threshold for persecution is to be assessed in the light of the individual's characteristics (see paragraph 520).
50. It is not necessary for me to consider whether the question of post-return monitoring in the context of HJ (Iran) in light of my findings in respect of risk on return to this Appellant.
51. The appeal is allowed on protection grounds.

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 Joanna McWilliam
Upper Tribunal Judge McWilliam

Date 1 October 2021