



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

Appeal Number: PA/01849/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 5th October 2021**

**Decision & Reasons
Promulgated
On 14th June 2022**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**JMPS
(ANONYMITY ORDER MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah of Counsel, instructed by David Benson Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In my decision promulgated on 4 February 2020, an error of law was found in the decision of First-tier Tribunal Judge Davison promulgated on 18 July 2019, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 27 January 2019 was dismissed. The error of law decision is annexed to this decision, setting out the background and history of this appeal.

2. An anonymity order is made in this case in light of the Appellant's mental health and nature of his asylum claim. The Appellant has in the past been known by other names, one which he used to enter the United Kingdom on a false identity and another which he used for a number of years after arrival which is referred to in this decision as 'DA'. In evidence the Appellant was also referred to by a nickname 'P'; both of which have been used in this anonymised format to ensure anonymity in relation to all identities used.
3. There are two issues in this appeal, first, whether the Appellant would be at real risk on return to Sri Lanka due to his *sur place* activities in the United Kingdom; and secondly a new matter (consented to by the Respondent) as to whether the Appellant has established twenty years' continuous residence in the United Kingdom such as to satisfy the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules.

The appeal

Applicable law

4. It is for an Appellant to show that he is a refugee. By Article 1A(2) of the Refugee Convention, a refugee is a person who is out of the country of his or her nationality and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion, is unable or unwilling to avail him or herself of the protection of the country of origin.
5. The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This was expressed as a "reasonable chance", "a serious possibility" or "substantial grounds for thinking" in the various authorities. That basis of probability not only applies to the history of the matter and to the situation at the date of decision, but also to the question of persecution in the future if the Appellant were to be returned.
6. The current country guidance in relation to Sri Lanka is contained in KK and RS (Sur place activities: risk) Sri Lanka CG [2021] UKUT 00130 (IAC), which so far as relevant to the present appeal, states:
 - (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 Appellant's claim

7. In summary, the Appellant's claim is that he is at risk of persecution on return to Sri Lanka on the basis of past persecution due to his and his family connections to the LTTE and on the basis of his *sur place* activities, including attending demonstrations and protests (specifically one on 4 February 2018 in relation to Brigadier Fernando and a subsequent police complaint), membership of and involvement with the TGTE.
8. In addition to his asylum claim, the Appellant appeals under Articles 3 and 8 of the European Convention on Human Rights, the latter on the basis that he has been continuously resident in the United Kingdom since 2000 such that he satisfies the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules.

Respondent's explanation for refusal

9. The Respondent refused the Appellant's asylum and human rights claims, which were considered within the framework of a fresh claim and paragraph 353 of the Immigration Rules, first by relying on submissions having previously been considered, including the findings of fact made by the First-tier Tribunal in 2013 and secondly with consideration of the submissions since that time. The Respondent did not accept that there was any evidence to support the Appellant's claims that the Sri Lankan authorities were searching for him in Sri Lanka; the photographs and newspaper articles lacked details of the events and any evidence to show that such activity would bring the Appellant to the adverse attention of the Sri Lankan authorities, nor that they are in any event aware of any activity

in the United Kingdom, nor that the Appellant had any significant profile. At its highest, the Respondent considered that the Appellant was no more than a low-level member of the TGTE and there was little evidence of demonstrations organised or attended, or that in any event as a result, the Appellant would be of adverse interest to the authorities on return.

10. The Respondent did not accept that the Appellant was personally at risk in relation to the protest on 4 February 2018 or from any other demonstrations. Overall, the Appellant's circumstances were considered in accordance with country guidance in GJ and others (post-civil war: returnees) Sri Lanka [2013] UKUT 00319 (IAC) with the conclusion that the Appellant did not fall within any of the risk categories set out therein. The Respondent specifically noted that the TGTE has been a prescribed terrorist organisation by the Sri Lankan authorities since 21 March 2014 but the respondent stated that there was no evidence as to how the provisions in relation to that were being implemented and the Appellant had not provided any substantial evidence to show that he was a high-profile activist such that he would be specifically targeted on return.

Determination of First-tier Tribunal Judge Foudy, 2013

11. The Appellant's first appeal was heard on 10 July 2013, in the name of DA, in which he appealed against the Respondent's refusal of his asylum claim dated 11 April 2013 on the basis that he had a well-founded fear of persecution in Sri Lanka because of his political opinion and that his removal would be in breach of Articles 2, 3 and 8 of the European Convention on Human Rights. Specifically, that the Appellant's brother had helped the LTTE, the Appellant himself had been detained and tortured by the Sri Lankan authorities and then fled to Europe and reliance was placed on his physical health problems. The decision notes that the Appellant entered the United Kingdom in 2000 using a false identity who had previously claimed asylum in Germany in his real name. The Appellant was due to be removed to Germany under the Dublin convention, however he absconded until late 2009 and therefore was not removed as planned.
12. The findings of the Tribunal in this first appeal were that the Appellant was not credible, having displayed a considerable degree of dishonesty with the use of two different false identities and having absconding for a period of nine years without making any contact with the Respondent. The evidence of the Appellant's mother that the Sri Lankan authorities visited her and were looking for the Appellant was not considered credible due to internal inconsistencies within her statement and inconsistency with a statement from another individual about where she was living and who with. Overall, the Tribunal attached no weight to the Appellant's claim of being or being suspected of being an LTTE supporter and that he did not fall within any of the risk categories in the then current country guidance in GJ and Others (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319. The Appellant had claimed that he had participated in processions for the LTTE, but he could not identify where or when and there was no

supporting evidence of him attending any such events. It was found that even if he had attended, it would be as no more than a person in the street and he would not be seen as a member of the diaspora agitating against the Sri Lankan government.

13. In relation to the human rights claims, the Tribunal rejected the evidence of the Appellant having any mental health problems but accepted his physical health problems and found that he would have access to ongoing medical care in Sri Lanka as needed. The Appellant was found to have established modest private life in the United Kingdom, with very little evidence of anything significant by way of employment, education or social integration (specifically, there was essentially no evidence of what the Appellant had been doing since 2000 other than in relation to healthcare). The human rights claims were dismissed.

The witness evidence

14. In his first written statement signed and dated 20 June 2019, the Appellant states that he was forced to flee Sri Lanka in 1995 after he had been arrested, detained and tortured by the Sri Lankan authorities for helping the LTTE. The only remaining family he has in Sri Lanka is his mother, his brother is missing and it is unknown whether he is alive or not. The Appellant previously used the name of DA given to him by an agent to enter the United Kingdom and this was then used when he claimed asylum with the Home Office.
15. The Appellant suffered multiple strokes following heart surgery in 2010 which changed his life significantly and affected his memory, becoming withdrawn, feeling hopeless and needing support of his friends. He has since concentrated on improving his health and trying to reintegrate and socialise more, including attending Church, working with the BTF and then the TGTE.
16. In Sri Lanka, the Appellant helped the LTTE having always supported the Tamil fight for justice and freedom, believing in a separate Tamil Eelam. He has continued this in the United Kingdom through the TGTE and his involvement with them is a sort of therapy which has helped lift his mood. The Appellant has attended every Hero's Day and Mullivaikal Remembrance day and goes to Sunday meetings whenever possible.
17. On 4 February 2018, the Appellant protested outside the Sri Lankan High Commission against independence day, during which Brigadier Fernando made gestures at protesters of throat cutting to threaten them. The Appellant complained to his MP and then to the police (with two friends and a TGTE MP). Following which, the Appellant attended an emergency protest starting at the Sri Lankan High Commission, then marching around London. The Appellant marched alongside MP Rasalingam Thurikumar, a leading member of the TGTE, with media coverage online and in Sri Lanka about the protest.

18. The Appellant also took part in the Black July protests in Westminster on 23 July 2018 and a protest outside of Westminster Magistrates Court on 15 March 2019 in relation to the case to issue an arrest warrant against Brigadier Fernando; at which he stood together with two TGTE MPs, including Mr Yogalingam. Photographs of the latter event were published in a Tamil newspaper in Sri Lanka called Kalaikkathir on 16 March 2019, which include the Appellant holding a placard. The Appellant's mother was visited in Sri Lanka and shown a clip from the newspaper. The Appellant fears return to Sri Lanka because of this and on the basis that it is not safe for any Tamil to return after time in the west.
19. In his second written statement signed and dated 22 April 2021, the Appellant states that he has lived continuously in the United Kingdom since 20 March 2000 with the support of friends and has been outside of Sri Lanka since 1995. The Appellant describes suffering during the Covid-19 lockdown, being unable to travel and missing meals, such that he considered leaving and returning to Sri Lanka but did not do so due to fear of return, as a victim of torture and ill-treatment there in the past.
20. The Appellant stated that he previously claimed asylum in Germany, using a false travel document and ID given to him by an agent which he used to travel to the United Kingdom. Throughout his time here he has been known as DA or his real name.
21. The Appellant is a member of the TGTE and he has worked closely with the TGTE MP Sockalingam. He describes himself as a frontline worker to organise protests and campaign for the Sri Lankan government to be taken to the International Criminal Court for genocide and war crimes. The Appellant raises funds for the TGTE collecting money from shops and selling tickets for events. He participated in the Mullivaikkal Remembrance Day on 19 May, Black Tigers Day on 5 July, the Thileepan Remembrance Annual Sports Meet on 18 July and the Tami Pongal Vizha and Heroes Day on 27 November.
22. The Sri Lankan authorities work to stop all advocacy and protests against the government, which included the Appellant's mother being targeted by the Sri Lankan authorities in a local Tamil newspaper as an attempt to stop the Appellant's activities. The authorities also visited her home and she is required to report the first Monday of every month at the Kalmunai police station.
23. In 2008, the Appellant's friend obtained an international driving licence for him from Sri Lanka. He was able to do so as he is an influential person within the Sri Lankan Driving Licence Agency and only needed a copy of the Appellant's Sri Lankan driving licence and a passport photograph to obtain this for him without having to be present in Sri Lanka.
24. The Appellant attended the oral hearing, adopted his written statements dated 20 June 2019 and 22 April 2021 and gave oral evidence through a Court appointed Tamil interpreter.

25. In cross-examination, the Appellant stated that he started attending events with the TGTE in 2015 and obtained his ID card from them in 2017. He joined the TGTE in the name of DA as he was asked to provide his Home Office ID and that was the name he was registered with them, although it was a false name. Once the Appellant had changed his name, he used his real name and obtained a new TGTE card in that name. When asked about why there was no evidence of any involvement from 2015, the Appellant stated that he had started attending events, but did not register initially, he met someone half way through, started following him and attending. There were a number of documents that were lost on a bus and a file lost on a train and the Appellant forgets things. He further stated that there were no documents of his claimed possessions for the LTTE prior to 2013 as he did not do this with the intention of providing anything about it to the Home Office.
26. The Appellant came to the United Kingdom because of problems in Sri Lanka, people had been killed there and had gone missing, including the Appellant's brother and he described himself as having a zeal for Tamil Eelam. The Appellant would continue his activities on return to Sri Lanka to demand Tamil Eelam and to find the missing people. He has attended events of which there are pictures and he has been involved in significant fundraising. The photographs are on a Tamil website.
27. Mr Lindsay asked the Appellant why he should be believed when he has lied about his identity in the past. The Appellant stated that he used a different name because he feared for his life and could not even remember how to write his own name and he did not know what steps to take after he first arrived in the United Kingdom, relying only on help from friends.
28. The Appellant stated that he did not travel to the United Kingdom in the identify of DA, but with the help of an agent who used a different fake ID for him, but the Appellant did not see it and only knew that it was a dutch name on it. The Appellant used the name DA as he was told to register under that name, he told the Home Office and explained that DA was not his name and kept giving his real name but does not know why it was not registered. The Appellant was able to change his name in 2018, although he had a Sri Lankan driving licence before that in his real name that he got with help from a friend back home, but never used it for ID. The Appellant had to use a UK document and provide proof of ID to register his membership with the TGTE. Initially he was known to the TGTE as DA and after his name was changed, the Appellant used his real name and had his documents reissued. The TGTE required ID for the Appellant to help organise events and arrange things, with this being issued after he showed them a document from the Home Office for reporting which had his photo on it.
29. In relation to TGTE events, the Appellant stated that he receives information through *whatsapp* which he sends on to others and arrives first at events to help. He was responsible for arranging attendance and where people were at the demo in front of the Sri Lankan embassy and

outside parliament. The Appellant was given a timeframe for the arrangements and had to clear up at the end of the event within that.

30. The Appellant undertakes fundraising for the TGTE. He is given a bus ticket and attends shops to place charity boxes in (obtaining permission in advance), registering their location and returning to collect them; as well as selling tickets and collects money from tickets and stalls at sports meetings.
31. In re-examination the Appellant clarified that he attended a demonstration in Westminster in 2009 when the LTTE leader Prabhaka died and after that continued to fight for Tamil Eelam despite the setback and belief that this could only be achieved through his guidance and leadership.
32. In a letter dated 14 March 2019, Mr Sockalingam Yogalingam wrote in his capacity as a TGTE MP, Director of "Act Now" and Executive Committee member of "National without States" in support of the Appellant. The letter includes generic information about the TGTE and states that the Appellant is a victim working with the TGTE, volunteering in organising public events supporting the creation of a free Tamil Eelam in Sri Lanka as well as attending meetings and demonstrations. The Appellant has been given responsible roles organising events and fundraising, playing a key role, including the TGTE national sports meet 2018, Mullivaikkal Remembrance day, Maveerar Naal, a signature campaign and various protests.
33. In a written statement signed and dated 20 June 2019, Mr Yogalingam, an MP of the TGTE, confirmed that the Appellant has been attending TGTE events and demonstrations in the United Kingdom and has become an official volunteer member, organising and being involved in public events supporting the creation of a free Tamil Eelam in Sri Lanka, as well as fundraising. He participated in the Black July protest in front of 10 Downing Street, protests against Sri Lankan visits and against Brigadier Fernando outside Westminster Magistrates Court.
34. In paragraph 6, Mr Yogalingam states, *"Among many, Mr Kanesathas was a key figure in the election campaign of 2019. He has helped out whenever necessary to the best of his abilities. He was involved in the protest in front of the Sri Lankan High Commission against 'Sri Lanka's 70th Independence Day'."* In the following paragraphs he goes on to state that "he" attends TGTE meetings whenever possible, helps organise and plan upcoming events and demonstrations and is a very strong activist for Tamil Eelam, actively participating to raise awareness of Tamil suffering and the rights of Tamils to live freely in Tamil Eelam.
35. In a letter dated 5 August 2021, Mr Yogalingam stated that the Appellant had actively participated in blood donation for "Maaveerar Naal"; protest at Westminster Magistrates Court for the arrest of Brigadier Fernando; leafleting and putting up posters for the Wales to Westminster walk to lift the ban on the LTTE and participation in the walk; protests in front of

Amazon HQ, the Oval cricket ground, 10 Downing Street and the Sri Lankan High Commission for “Remembering Black July 1983” on 23 July 2021. The Appellant is said to continue to express his political aspiration publicly and his photos often appear in the media.

36. Mr Yogalingam attended the oral hearing, adopted the matters stated in three documents from March 2019, June 2019 and 5 August 2021 and gave oral evidence in English. He stated that the Appellant was involved in the TGTE as he was committed to the cause and had been photographed near each other at the protest by the oval cricket ground, by the Sri Lankan authorities, at which the Appellant risked his life by attending. The walk referred to in the documents was a five day walk from Wales to Westminster to highlight the lifting of the ban on the LTTE and a court case.
37. In cross-examination, Mr Yogalingam stated that as part of the TGTE, the Appellant had given out leaflets for events, sold raffle tickets, attended sports events, shouted slogans at protests, helped organise events and campaigned for a lifting of the LTTE ban. In terms of organisation, he brought banners and flags from the office to the protest site and returned them afterwards. Mr Yogalingam worked closely with the Appellant, giving him jobs to do and they did the walk from Wales to Westminster together, meeting at the office in London and travelling to the starting point together. The Appellant worked on the sports meet in 2018. Mr Yogalingam described the Appellant as a quiet man who had been tortured in Sri Lanka and who he pushes to work for the TGTE cause.
38. The Appellant had started with the TGTE in May 2015 according to Mr Yogalingam’s records. TGTE membership cards were not issued between 2015 and 2017 due to technical issues, so it is possible that the Appellant could not be issued with one until 2017. Mr Yogalingam’s letters referred to activity with the TGTE since 2018, but he stated in oral evidence that the Appellant came and worked before but when writing the letters, he did so from activities he saw in photos but often there would not be photos available due to fear. The TGTE records were described as school like records of who attended meeting and who came to the office, where there is a book to write down the name of attendees.
39. Mr Yogalingam was asked the Appellant’s name in 2015, which he did not recall but stated that if he knew different names had been used, the records would have been checked closely. When asked if he had ever used a different name with the TGTE, Mr Yogalingam stated that he was called by ‘D’ and his Tamil name, but he could not initially recall it. I asked Mr Yogalingam for the Appellant’s full name, but he did not know it, only referring to a nickname for the Appellant, ‘P’. Mr Yogalingam had checked the TGTE records about three months prior to the hearing and Mr Lindsay suggested such checks could not have been accurate if Mr Yogalingam did not know the two full names used by the Appellant. He stated that at the time of checking the records, he would have checked using the name given to him, ‘D’ something.

40. There were photos of the Appellant in the media, in the Kalaikahti and Urramai papers of the protests on 4th February and in front of Westminster Magistrates Court. The Sri Lankan authorities were taking photos of the Brigadier Fernando case and protests in front of the Sri Lankan High Commission. The officials wore ID badges at the protests and Brigadier Fernando wore his Sri Lankan army uniform, they were openly there.
41. I asked Mr Yogalingam some supplementary questions. With reference to his letter dated 6 June 2019, I asked who Mr Kanesthas is, which Mr Yogalingam did not know. I also asked him to explain why he referred to the Appellant as a victim. He stated that many of them are victims of the Sri Lankan government with many tortured and victimised. On the walk from Wales to Westminster, the Appellant had complained that he had a bullet or piece of aluminium in his leg which left him struggling to walk, although he refused an offer to travel in the car. The Appellant is very forgetful such that Mr Yogalingam can see that he has been tortured or damaged but hadn't asked more. When asked if he knew what had happened to the Appellant, Mr Yogalingam said no, but maybe his memory issues were from being beaten by government forces.
42. To obtain a TGTE card, a person needs to submit two photographs, proof of their address and £15, following which there are background checks on whether a person is from Sri Lanka and if so, from where. To check where a person is from, locals in the claimed home area would be asked if they knew a person, where they lived and if they recognised the person or their family. It usually takes two to three months to issue a card. In terms of identification, a person is normally asked for a Home Office letter to check, but an NHS letter or similar would could be taken. Mr Yogalingam does not issue the cards himself, this is done by another MP and he was not sure if Sri Lankan identity documents would be accepted. I asked how the Appellant could have obtained two different TGTE ID cards in different names, which Mr Yogalingam stated maybe a person wanted to change his name and went through solicitors to do so, but this would need to be checked and proved as it would be dodgy to have two different identities. A Home Office letter would be checked and a letter from a solicitor would be needed to issue an ID card in a different name.
43. The Appellant's mother made a written statement by phone with the assistance of the Appellant's solicitors in the United Kingdom, signed and dated 20 June 2019. In it, she states that the contents of the Appellant's first statement had been read to her and she confirms it is true. Further, the Appellant was forced to flee Sri Lanka in 1995 after his father arranged for his release from detention through payment of a bribe. The Appellant's brother was detained by the Sri Lankan authorities and it is not known what happened to him.
44. On 14 February 2018 the Sri Lankan authorities visited the Appellant's mother in search of the Appellant and asking about his activities. Two men visited and asked about what the Appellant was doing, whether he was a British citizen and stated that they knew he was fighting against the Sri

Lankan government in the UK and therefore in trouble. The Appellant's mother was to inform the authorities when the Appellant returned to Sri Lanka. The Appellant's mother then left town for a bit and returned home in September 2018. She did not initially tell the Appellant what had happened out of concern for his health, but he had found out from a neighbour having not been able to contact his mother. On 3 May 2019 there was a further visit to the Appellant's mother by the authorities, at which time she was shown a newspaper cutting which contained a picture of the Appellant and informed that he was still involved in political activities in the United Kingdom and must be stopped. The Appellant was sent a copy of the newspaper after this.

45. There is a written statement from the Appellant's cousin, signed and dated 22 April 2021 which confirms the Appellant has been in the United Kingdom since 2000 and he supports him with food, maintenance, sometimes accommodation, moral and emotional support. A similar written statement from a friend signed and dated 21 June 2021 was submitted confirming support has been provided since 2006.

The medical and documentary evidence

46. Dr Dhumad, a Consultant Psychiatrist provided a report on the Appellant dated 20 June 2019 and an addendum report dated 30 June 2021. In the first report, Dr Dhumad sets out the documents he was provided with and details of information obtained from the Appellant. This included that the Appellant registered with a GP within months of his arrival in the United Kingdom and told his GP of his history of torture and mental health problems for which he was prescribed medication. The Appellant's mental health has fluctuated, worsening after his stroke and heart surgery in 2010, with poor concentration. The Appellant reported feeling hopeless and anxious after discovering his mother had been visited in Sri Lanka in May 2019, with intense nightmares, flashbacks and feeling suicidal. The Appellant has continued to be under the care of his GP.
47. Dr Dhumad assessed the Appellant against the ICD 10 criteria for PTSD and records that he started having psychological distress and PTSD after torture in Sri Lanka and his symptoms were consistent with a response to trauma such as torture. Symptoms are described and it is said the Appellant is suffering from PTSD symptoms and there is evidence of cognitive impairments, worse since the Appellant suffered multiple strokes. In Dr Dhumad's opinion, the Appellant presented with symptoms consistent with a severe depressive episode and feeling suicidal; in addition to PTSD and physical health problems. The suicide risk was assessed as moderate but likely to increase in the context of deportation, with the risk increasing the closer to deportation he gets. The Appellant was not on any anti-depressant medication and had not received any cognitive behavioural therapy. Dr Dhumad considered the possibility that the Appellant was feigning or exaggerating his mental illness and found that his presentation was consistent with a diagnosis of depression and PTSD.

48. In Dr Dhumad's addendum report, he records that the Appellant stated his mental health had fluctuated and gradually worsened since May 2019, with nightmares and flashbacks of torture and he observed a deterioration with the Appellant having become more hopeless, worthless and helpless with a depressed and anxious mood; poor concentration; erratic sleep; suffering from PTSD symptoms and with some evidence of cognitive impairment. In Dr Dhumad's opinion, the Appellant's presentation was consistent with a Recurrent Depressive Disorder, currently a severe episode without psychotic symptoms and continues to suffer from PTSD as well as physical health problems following a cardiac bypass and type A Aortic dissection and stroke. The Appellant was assessed as at a moderate risk of suicide which is likely to increase in the context of removal to Sri Lanka with the threat of removal likely to trigger a significant deterioration in mental suffering.
49. The Appellant's GP records and NHS correspondence, in the name of DA have been provided which includes details of physical health problems, including cardiac problems and surgery. There was no specific reliance on any part of the GP records by the Appellant, but it is noted that there are a number of references to memory problems and a referral for the same; a mental health referral and a single reference to medication given for the same following the First-tier Tribunal appeal in 2013; to no depression in 2015 and 2016; discussion on accessing IAPT counselling in August 2016 (due to poor motivation following life changes after the CVA) but the Appellant did not attend the appointment; and a reference in May 2017 to stress relating to asylum claim; and to struggling with memory and concentration in April/May 2018.
50. The Appellant's evidence includes a copy of two Tamil Eelam National Cards, one in the name of DA issued July 2017 (although the copy is not that clear) and one in the Appellant's name issued in March 2020. It also includes a copy of a TGTE Sports 2017 card in the name of DA, dated 30 July 2017. There is also a copy of the Appellant's international driving permit issued on 13 March 2008 and Sri Lankan driving licence issued in 1993.
51. There are a number of photographs said to be of the Appellant at various events, some (but not all) of which are annotated by hand to identify the date, location and Appellant within them. These included a protest on 4 February 2018 in London; 9 February 2018 at Wembley Park police station and generally in London; TGTE event on 4 March 2018 at Wembley Park; protests on 23 July 2018 for Black July in London; Mullivaikkal Remembrance day on 18 May 2019 in London; at a 2019 election campaign; a photograph within a document which appears to be a newspaper; photographs/leaflets in relation to a protest in front of the Oval cricket stadium on 1 July 2021 (in which the Appellant has not been identified specifically) and photographs on a walk from Wales to Westminster on 27 April 2021. There were also a number of other of untranslated documents in the bundle.

52. The Appellant's bundle contains a number of items of background country evidence, none of which were specifically referred to or relied upon by the Appellant. In light of the country guidance in KK & RS, I do not refer further to these individual documents.

Closing submissions on behalf of the Respondent

53. On behalf of the Respondent, Mr Lindsay relied on the reasons for refusal letter and the findings of fact from the First-tier Tribunal in 2013 and 2019. The Appellant has not been found to be credible by successive Tribunals, he has used false identities, has absconded and was a failed asylum seeker in Germany. In 2013, any *sur place* activities undertaken by the Appellant were found to be opportunistic at best and would be seen as such by the Sri Lankan authorities. There is nothing to suggest that anything would have changed that perception since then.
54. In 2019, it was found that the Appellant sought to mislead the First-tier Tribunal about his identity and there were express findings that he was being dishonest. There was a further finding that photographs were staged to support the Appellant's claim, with the Appellant's only activity being to support a weak asylum claim. It was also found in 2019 that the Appellant had not resided continuously in the United Kingdom since 2000, but had returned to Sri Lanka in 2008 and the Appellant could not therefore satisfy any long residence requirements for a grant of leave to remain.
55. Further, in 2019, the Tribunal found that the Appellant's mother's statement was a fabrication and his continued reliance on the same document further damages his credibility. There is no further evidence since 2019 to show any risk to the Appellant on return to Sri Lanka, there being no independent or cogent supporting evidence to his claim.
56. Mr Lindsay submitted that there is only a narrow issue in this appeal as to the Appellant's *sur place* claim. At its highest, that is that he has undertaken limited activity for the TGTE but there is no real risk that this would result in him being perceived as having any significant role in relation to the Tamil separatist cause. As in KK & RS, such limited activity for a proscribed organisation is not determinative of risk. On the facts of this case, the Appellant's activities would not be perceived as genuine and in any event are at a very low level without creating any risk that he would be stopped or detained on return to Sri Lanka. The Respondent accepts that there is extensive security services surveillance of activities, but no real prospect in this case that they would think the Appellant had any substantive involvement. At its highest, the Appellant has been a marshal at street events but has had no role in organising protests. The Appellant's claim to have undertaken fundraising activities was not supported by Mr Yogalingam's evidence and in any event was low level with no substantial or notable sums involved.

57. The length of the Appellant's involvement with the TGTE is also unclear on the evidence, he claims activity since 2015 but the supporting evidence is only from 2018 onwards. The records with Mr Yogalingam stated in oral evidence were checked are entirely unclear and it is not known how there could be any such checks when the witness did not know the Appellant's full name, neither his real one or false one. The evidence from Mr Yogalingam as to the Appellant's activities was generic and mostly referred to attending protests.
58. Mr Lindsay submitted that considering and applying the country guidance in KK & RS to the facts of this case, there was no real risk to the Appellant. The authorities have a nuanced approach to persons of interest and at most, the Appellant may be subject to some sort of monitoring but there is nothing to suggest he is on a stop list for detention at the airport. In light of the lack of genuine activity, there is no realistic prospect of the Appellant pursuing any political views supporting Tamil separatism on return to Sri Lanka and therefore any monitoring would not identify him as an activist or of interest after return.

Closing submissions on behalf of the Appellant

59. On behalf of the Appellant, Ms Jegarajah invited the following findings of fact in this appeal. First, that the Appellant was a volunteer with the TGTE, on the basis of the letters from and evidence of Mr Yogalingam who had met the Appellant and been photographed with him at a protest and undertook the Wales to Westminster walk with him. It was accepted that there was no medical evidence of the leg injury Mr Yogalingam described the Appellant having and submitted that the issue of identifying the Appellant by name was of limited relevance given the meetings in person on numerous and critical occasions.
60. Secondly, that the Appellant had attended protests on 4 February 2018 and 9 February 2018 in relation to the 'throat cutting' incident, reporting the incident with the police and attending both the Sri Lankan High Commission and Westminster Magistrates Court hearing in relation to proceedings against Brigadier Fernando. The number of protests attended by the Appellant is not determinative, but the significance of those attended are, particularly given the high profile nature of these particular events and the monitoring of them by the Sri Lankan authorities.
61. Thirdly, whilst accepted that the Appellant's previous claim was not genuine, that is not to say that the current one is not as well. It is entirely possible for a Tamil such as the Appellant to act with integrity against genocide in Sri Lanka and be involved against it.
62. Ms Jegarajah submitted that the most compelling evidence from the Appellant was when he became emotional about the death of the LTTE leader and his support of him in the wider cause. Further, the Appellant need not be identified by name at the events he attended, but by surveillance and photographs. In addition, the Appellant would be asked

about his background and diaspora activities, to which he would respond truthfully and the Sri Lankan authorities equate the TGTE with the LTTE and his activities would not be viewed different even if undertaken opportunistically.

63. Finally, the written grounds of appeal and submissions were relied upon.

Findings and reasons

64. The Appellant's asylum claim relies on a combination of past persecution in Sri Lanka in around 1995 and *sur place* activities in the United Kingdom, albeit Counsel for the Appellant accepted in closing submissions that his previous asylum claim on the basis of past persecution and LTTE involvement was not genuine, this remained part of the Appellant's evidence and for completeness I consider this.

65. The starting point in this appeal, particularly in relation to the past persecution claim but also in respect of claimed *sur place* activity in the past is, in accordance with the principles in *Devaseelan*, the previous Tribunal decision of Judge Foudy in 2013. A summary of the findings is set out in paragraphs 12 and 13 above, of particular importance are the findings that the Appellant was not credible, that he was not previously an LTTE supporter in Sri Lanka, nor was he suspected of being one; that there was no evidence of any *sur place* activities in the United Kingdom (and even if he had attended any processions here, he would not be seen as a member of the diaspora acting against the Sri Lankan government); and that the Appellant did not have any mental health problems.

66. Whilst the Appellant in evidence maintains his claimed past links to the LTTE in Sri Lanka and detention for that reason in 1995; there is no new evidence in relation to this that was not considered by the previous Tribunal and no basis to depart from those findings. Similarly, there is no new or further evidence as to any *sur place* activities in the United Kingdom prior to 2013 (the brief reference to something in 2009 in the Appellant's evidence is not accepted). These findings are therefore maintained. Neither the Appellant nor his family have any previous links to the LTTE in Sri Lanka; there was no past detention or persecution of the Appellant in Sri Lanka and therefore no release on payment of a bribe from detention. As such, he would not appear on any stop list for detention on return. It is not in the Appellant's favour that he has continued to maintain a claim based on past persecution before the Upper Tribunal.

67. There is further evidence of before me as to the Appellant's mental health from the report by Dr Dhumad following his assessment of him in 2019 and 2021. On the basis of this and the Appellant's GP records, I have treated the Appellant as a vulnerable witness in accordance with the guidance, primarily on the basis of his memory difficulties following his heart surgery and strokes in the early 2010's, as opposed to the further mental health difficulties set out in Dr Dhumad's report as to which I have a number of concerns as follows. In relation to the memory difficulties, I

have taken this into account when considering the Appellant's written and oral evidence and without requiring corroborative evidence, note in these circumstances the importance of supporting evidence from other witnesses and/or documentary evidence.

68. Dr Dhumad's first report sets out the documents that he was provided, which included the Appellant's full medical GP record (which is presumably the same or very similar to the GP records provided to the Tribunal) and asylum/Home Office documentation including the previous Tribunal determination in 2013. There is however no engagement at all with any of these documents in the course of the report or the subsequent addendum report, which instead proceeded on the basis that the Appellant has engaged with his GP as to his mental health problems since arrival in 2000 and that his claims of past persecution and detention in Sri Lanka are true.
69. In relation to the GP records, it is important to note that despite very extensive records and very regular engagement by the Appellant with his GP and other health services particularly since 2010; there is almost no mention in these as to the Appellant having or reporting any significant mental health problems, save for a mental health referral in 2013 which seems not to have been pursued and a reference to IAPT counselling in August 2016 which the Appellant did not pursue; both of which appear from the records to be related either to stress and anxiety linked to immigration matters and/or following the life changes resulting from physical health problems, specifically the heart surgery and strokes suffered. There were express notes in 2015 and 2016 to the effect that the Appellant was not suffering from depression at this time. The Appellant's medical records make no reference to any claim of past persecution or any of the symptoms complained of to Dr Dhumad; nor is there any record of any medication being prescribed for mental health purposes other than a very brief single prescription being given many years ago.
70. The importance of an expert engaging with GP records has been set out in HA (expert evidence, mental health) [2022] UKUT 00111. This includes that where the expert's opinion differs from the GP records, the expert will be expected to say so in the report. In the present case, there is a significant difference between the Appellant's extensive medical records which do not indicate any current or past mental health problems of any significance or duration and the reports from Dr Dhumad which find the Appellant to have symptoms consistent with depression and PTSD, as well as a risk of suicide. There is simply no engagement by Dr Dhumad at all with these records which were provided to him with instructions for the original report and instead, the Appellant's claim to have engaged with his GP and been prescribed regular medication for mental health problems has been accepted without question, despite it also being contrary to the medical records available; and contrary to the findings in 2013 that the Appellant had no mental health problems at that date. These issues significantly undermine the credibility of the report, particularly in circumstances where, as HA reminds us, a meeting with an expert is

necessarily directly concerned with an individual's attempt to remain in the United Kingdom and it would be naïve to discount the possibility of an individual fabricating or exaggerating symptoms of mental illness.

71. The second difficulty with Dr Dhumad's report is that his view that the Appellant is suffering from depression and PTSD is based on the Appellant's claim that he was tortured and detained in Sri Lanka. A claim which was rejected by the previous Tribunal in 2013 (as set out in documents provided to Dr Dhumad) and which the Appellant's own Counsel before me accepted was not a genuine claim. Whilst it is not for an expert to assess the Appellant's credibility, it is reasonable to expect an expert to engage with the fact that the Appellant's claim of the source of his mental health problems has been entirely rejected and found not to be credible. A diagnosis of PTSD including reference to symptoms of avoidance, flashbacks and nightmares is significantly undermined by the events that these are said to refer to not having been found to have actually happened. There is a complete failure to consider or even refer to the lack of objective basis to the Appellant's claimed symptoms.
72. In his first report, Dr Dhumad at paragraph 16.7 states that he has expressly considered the possibility that the Appellant might be feigning or exaggerating his mental illness. He states that he has not taken the Appellant's story at face value but carefully examined his symptomatology and his emotional reactions and his clinical presentation was consistent with depression and PTSD. However, in substance, it is clear throughout the report both in relation to claimed mental health problems since 1995, engagement with his GP and in relation to claimed past persecution, Dr Dhumad has done the exact opposite and simply taken the Appellant's account at face value, without engaging in any of the evidence which is contrary to those claims. There is nothing in substance in either report to show that Dr Dhumad has properly complied with his obligations in providing expert evidence to the Tribunal by considering all relevant factors and addressing them in his reports. For these reasons I attach no weight to his view that the Appellant is suffering from depression and/or PTSD, nor to the view that the Appellant is at any risk of suicide on notification of or actual removal to Sri Lanka. At its highest, I accept the medical evidence, primarily from the GP records, that the Appellant has memory difficulties following his heart surgery and strokes, together with ongoing physical health problems, but do not find that he has any mental illness.
73. I turn next to consider the Appellant's credibility before addressing the detail of his evidence in the round with the other witness and documentary evidence. I have not taken as adverse to the Appellant's credibility any minor discrepancies in his evidence or lack of specific detail about certain matters in light of the medical evidence of his memory and concentration difficulties (albeit there is no medical assessment of the severity or impact of this).

74. There are a number of factors which adversely affect the Appellant's credibility. First, he has used deception on a number of occasions and at least three different identities since his arrival in the United Kingdom, as well as having absconded for a period of around nine years between 2000 (when he was due to be removed to Germany where he had made a previous asylum claim) and 2009. The Appellant lived for a significant period as DA, despite the name which he is currently using, said to be his true identity, being known to the Respondent in 2000 as it was used in his asylum claim in Germany. The Appellant has offered no credible explanation for his continued use of the identity of DA for more than seventeen years and I do not accept that he did not know how to change his name with the Home Office, despite being legally represented for at least part of this period and having photographic identity from Sri Lanka available to him in the form of his international driving licence issued in 2008.
75. Secondly, the Appellant has continued to maintain his initial asylum claim with reliance on past torture and detention in Sri Lanka; without engaging in any of the reasons why this was rejected in 2013 and without any further evidence in support of his claim.
76. Thirdly, whilst as above I accept the Appellant has some memory difficulties, he has presented himself to Dr Dhumad as an individual who has consistently engaged with his GP about his poor mental health and on the basis of mental health symptoms triggered by past persecution which did not happen. This presentation is not credibly explained by memory difficulties, but is in essence a false presentation made to an expert for the purposes of this appeal.
77. Fourthly, the Appellant's claim is in material parts, vague and significantly lacking in detail and in supporting evidence which it would be reasonably expected would be available to him to submit to the Tribunal. I address particular examples of this below, but it is also a general point as to credibility which I do not find is entirely explained by his difficulties with memory.
78. I turn next to the evidence of Mr Yogalingam. Mr Yogalingam has given evidence a number of times before the First-tier Tribunal and the Upper Tribunal, including in the country guidance case in KK & RS in which his evidence was considered to be candid and consistent with no concerns as to exaggeration of the specific involvement in activities in that particular case. However, in the present case, I do not find Mr Yogalingam to have given credible evidence as to his knowledge of the Appellant or his *sur place* activities for the reasons set out below.
79. First and most importantly, Mr Yogalingam could not identify the Appellant by his full name, either his actual name or as DA, the false name he had used for many years including initially with the TGTE. Whilst it may be that Mr Yogalingam can identify the Appellant by sight and perhaps by reference to photographs in which he appears, it is to be expected that a

person who writes a statement about an individual and attends the Tribunal to be able to give at least one of the full names he has used.

80. The confusion as to the Appellant's identity is also evident in the letter written on 20 June 2019 from Mr Yogalingam which towards the end refers to the activities of "Mr Kanesathas" and what he does within the TGTE. This is not one of the identities used by the Appellant and Mr Yogalingam was not able to identify who this person was or their relevance to the Appellant or this appeal. The letter of 20 June 2019, adopted in oral evidence by Mr Yogalingam without correction, appears at best to include copied and pasted sections from another letter and at worst gives patently false information about the Appellant in this appeal. Either way, it is not credible and I attach no weight to it.
81. Secondly, the failure of Mr Yogalingam to identify the Appellant by his full name also undermines the evidence of what involvement he is said to have had with the TGTE given that Mr Yogalingam stated that he had consulted TGTE records for this information. If unaware of either of the Appellant's names, it is not possible that he could have accurately checked TGTE records for these details to include in his written or oral evidence.
82. Thirdly, Mr Yogalingam gave evidence as to the process undertaken by the TGTE when someone applies for an ID card, which involves a check on that person's identity and specifically background checks in Sri Lanka to confirm the same. It is not credible that this occurred for the Appellant for his first card issued in the false name of DA - there could be no record of such a person in Sri Lanka as they do not exist. It remains entirely unexplained how the Appellant obtained the first ID card in a false name and how he then obtained a second card in his real name.
83. Fourthly, regardless of Mr Yogalingam's failure to identify the Appellant by name, he also gave evidence as to physical attributes which were not consistent with what is known or said about the Appellant. For example, Mr Yogalingam referred to the Appellant have a bullet or shrapnel in his leg and difficulty walking, but the Appellant has never claimed any such injury or impact consistent with this and his extensive medical records make no reference to any such thing either. Further, Mr Yogalingam referred to the Appellant as being a victim of past persecution, which was not accepted by the previous Tribunal and not pursued by Counsel on his behalf, and inferred that his memory problems were due to this. It is however clear from the medical evidence that the Appellant's memory was affected by his heart surgery in 2010 and subsequent strokes, with no suggestion of any difficulties predating this from as far back as 1995 when he claims to have left Sri Lanka.
84. Finally, Mr Yogalingam's evidence contained inconsistencies as to when the Appellant is said to have first been active with or involved in the TGTE, said at different points to be from 2015, 2017 or 2018. The activities that the Appellant was said to have been involved with are not consistent

between the different letters and oral evidence (with no single clear list of activities given) and are given in fairly generic terms and without identifying any specific role or responsibility undertaken by the Appellant.

85. In addition, Mr Yogalingam's evidence as to the Appellant's status in the TGTE was not consistent with the evidence he gave in KK & RS. In the present appeal, Mr Yogalingam stated that the Appellant has become "*an official volunteer member*" of the TGTE; however in the country guidance case, he stated that only MPs were members of the TGTE, a normal member of the public would be regarded as a "supporter" and there is no reference at all to an official volunteer member. Mr Yogalingam also clarified in the country guidance case that the TGTE cards were not membership cards for the organisation but were Tamil ID cards which were available upon payment of £15 and a person did not need to be part of the TGTE to obtain one.
86. Overall, for these reasons I attach no weight to the evidence of Mr Yogalingam in relation to the activities of this Appellant, whom he could not properly identify by either his real or false name, nor by physical attributes or history. This evidence offers no credible support for the Appellant's claimed involvement in the TGTE and much of the evidence is in any event inconsistent with the Appellant's evidence, with both the list of events and detail in relation to activities not matching that claimed by the Appellant and with only limited overlap of particular events.
87. The statement from the Appellant's mother is relatively brief. I note that her evidence was previously found not to be credible and that she, like the Appellant, continues to maintain an account of past persecution and LTTE involvement in Sri Lanka which has been rejected by the Tribunal and even the Appellant's own Counsel has accepted that this previous claim was not genuine. In all of the circumstances, I attach very little weight to the remaining parts of the Appellant's mother's statement in relation to visits from the Sri Lankan authorities about the Appellant, which in any event, even at its highest, would not take the Appellant's account much further.
88. In terms of the Appellant's profile and *sur place* activities, I consider these in line with the factors set out in paragraphs 10 and 21 of the headnote to KK & RS containing the current country guidance as to the Sri Lankan authorities' likely knowledge of the Appellant and whether he would be considered to have a significant role in a diaspora organisation.
89. The Appellant is associated with the TGTE, but is not a member (as set out in evidence in KK & RS, only MPs are members) and I do not find that he has any formal role or title within the organisation. The Appellant called himself a member and described himself as a frontline worker, but this is not supported by any specific evidence and it is inconsistent with Mr Yogalingam's evidence both in the present appeal and the evidence before the Tribunal in the country guidance case. The Appellant's Tamil Eelam National Card, although issued by the TGTE, does not signify membership of the organisation or of holding any role within it.

90. There is no composite list of all of the meetings or events that it is said that the Appellant has attended, which would have been helpful, instead there are multiple references to different events, some without dates and some with only partial dates across a variety of statements and documents, together with a vague reference by the Appellant to attending Sunday meetings when he can. As to TGTE meetings, there is a lack of evidence as to the Appellant's attendance at these (although Mr Yogalingam stated that there was a school like attendance register for them) and the Appellant's evidence did not include any details as to how frequently he attended or for how long he has been doing so; nor was there any such detail in Mr Yogalingam's evidence. The Appellant has not established that he has had any, let alone any regular attendance at TGTE meetings.
91. As to other events and protests, the Appellant's first written statement refers to protests on 4 February 2018, 23 July 2018 and 15 March 2019 and his second refers to protests on 19 May, 5 July, 18 July and 27 November that he attended but did not say which year. Given the statement was made in April 2021, these were presumably either in 2019 or 2020 updating events attended from the first statement. There are a number of photographs of later events including on 27 April 2021 and 1 July 2021.
92. Counsel for the Appellant submitted that there were events of particular importance that he attended, namely the protest on 4 February 2018 outside the Sri Lankan High Commission and the protests/proceedings against Brigadier Fernando which followed it, including that outside Westminster Magistrates Court on 15 March 2019.
93. There are photographs of the events said to be on 4 February 2018, 9 February 2018, 4 March 2018, 23 July 2018, 18 May 2019, 27 April 2021 and 1 July 2021; some identify the Appellant but many do not identify him; and no other individuals in the photographs have been identified. There is also a photograph in a Sri Lankan newspaper with the Appellant identified (from the photograph, not by name) at an event on 16 March 2019. In a number of these photographs the Appellant can be seen either holding or within a group holding an LTTE flag and/or banners/signs and in one he is holding a megaphone.
94. On the basis of the witness evidence and photographs, I find that at most the Appellant has attended less than 10 events with the TGTE, primarily protests/walks and one or two campaign events held indoors; over the course of four years between 2018 and 2021 (albeit during the latter part of this period there were restrictions in place due to Covid-19 and less events taking place, particularly in 2020). The Appellant has held a flag or a banner at some of these events which display an LTTE emblem and/or slogan for Tamil Eelam. I do not find that the Appellant attended any events prior to 2018, nor has he established attendance at any specific commemorative events.

95. I do not find that the Appellant has established that he played any organisational or promotional role in relation to these events or any others. At its highest, the Appellant's claimed organisational involvement was through messages on a *Whatsapp* group and collecting/returning flags/banners at either end of a protest; without specifying for which events or how regularly he did this. As above, the evidence of Mr Yogalingam does not support that given by the Appellant generally or of him having any specific organisational role for any events. The practical movement of banners/flags is not an organisational role of any significance, if at all, and the Appellant has not provided any examples or evidence of messages as claimed to support his claim to have been involved with organising events, which it would be reasonable to expect, particularly given the Appellant's memory difficulties.
96. As to any meaningful fundraising, there is again little evidence of the Appellant's role and contribution. He stated that he sold tickets for events, but did not specify which events or give any details about them, such as how many, where tickets were sold or who to; or for how many events he did this. Whilst as above I accept that the Appellant has memory difficulties, this does not explain an almost complete lack of detail in his evidence. There is no reliable support for such ticket sales in Mr Yogalingam's evidence which even if credible in relation to this Appellant gave no details of any specific fundraising activities by the Appellant. Similarly there is a lack of evidence of any fundraising by way of collection boxes placed and collected by the Appellant beyond his own statement which refers to records being made of this, but none have been submitted as examples, no names of shops or areas have been given and no amounts. Again, there is also no timeframe over which this activity is said to have occurred. There is no evidence at all from the Appellant or otherwise as to the sums involved in selling tickets or from collection boxes and I find that even if the Appellant had undertaken such activities, the amounts of money involved are likely to be fairly small and would not in any event amount to meaningful or significant fundraising for the TGTE.
97. The Appellant has not claimed to have any social media presence or posts in relation to political views/the TGTE and he has not been named as being involved with the TGTE. There is a single newspaper article about one protest containing the Appellant's photo alongside others. The Appellant has also not claimed to have undertaken any political lobbying (beyond the protests attended) nor signed any petitions against the Sri Lankan government.
98. As to the further factors in paragraph 21 of the headnote to KK & RS, I would add that the TGTE is a proscribed organisation and that as above, the Appellant has no relevant history in Sri Lanka or familial connections of any adverse interest to the Sri Lankan authorities.
99. In summary, the Appellant is associated with the TGTE, a proscribed organisation, and has attended less than ten events linked to them over the period between 2018 and 2021. At some he has had some

prominence by holding an LTTE flag and/or banner promoting Tamil Eelam, of which there are photographs and it is likely that the Sri Lankan authorities will have similar photographic evidence of at least some of these events. The Appellant does not have any organisational role within the TGTE, nor has he undertaken any significant fundraising. The Appellant has not been named in any material linked to the TGTE, nor has he claimed any relevant social media presence. Neither the Appellant nor his family have any relevant history in Sri Lanka and no LTTE involvement or connections. Having considered all of the evidence in the round, particularly the Appellant's history, lack of credibility and relatively recent association with the TGTE and activities which coincides with the timing of the Appellant's latest fresh claim; I do not find that the Appellant has any genuinely held views for a separate Tamil Eelam or against the Sri Lankan authorities. As in 2013, I find that any involvement has been opportunistic on his behalf to bolster his claim to remain in the United Kingdom rather than based on any genuinely held political views. As such, it is expected that if questioned about his involvement with the TGTE or more generally whether he holds separatist views, the Appellant will reply honestly that he does not and that he would not undertake any further such activities on return to Sri Lanka. However, as set out in KK & RS, it is not necessarily the case that the Sri Lankan authorities would, when considering an individual's *sur place* activities, consider whether or not their involvement is genuine or not.

100. The Appellant claims to have left Sri Lanka in 1995, arriving in the United Kingdom in 2000. There is nothing to suggest that he has a valid Sri Lankan passport and therefore he would need to be interviewed at the Sri Lankan High Commission for the issue of a Temporary Travel Document to enable any return to Sri Lanka. In advance of that, it is reasonably likely that the Sri Lankan authorities will have gathered information about the Appellant in line with the findings I have made above as to his involvement with the TGTE, in particular it is likely that there will be photographic evidence of the Appellant attending some events and at such events, carrying an LTTE flag or banner with a slogan supporting Tamil Eelam.
101. On return, there is nothing to suggest that the Appellant would be on a stop list for detention at the airport as he has no prior relevant history in Sri Lanka, for example he was not detained, not released from detention on payment of a bribe and has never claimed to have been subject to an arrest warrant. The question is therefore whether he would likely appear on a watch list and subject to further questioning on arrival or on return to home area/place of resettlement for that reason. As in KK & RS, returnees who appear on a watch list will be either (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; or (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 of place of resettlement. Inclusion in the first category depends on whether the individual has or is perceived to have undertaken a "significant role" in Tamil separatism, with

consideration of the factors set out in paragraph 21 of the headnote in the country guidance, upon which factual findings have been made above.

102. Having considered all of the evidence in the round and in accordance with the country guidance in KK & RS, I do not find that the Appellant would be considered by the Sri Lankan authorities to have any significant role in diaspora activities to be considered a person of sufficiently strong adverse interest to warrant detention on return to Sri Lanka, either at arrival or on return to home area/place of resettlement; even if evidence they are likely to have is considered at face value without further consideration of whether the Appellant has done so out of genuine political beliefs, or as I have found, opportunistically to support a claim to remain in the United Kingdom. Although it is likely that the Appellant has been photographed by the Sri Lankan authorities attending a number of TGTE events (with the TGTE being a proscribed organisation and considered adverse by the Sri Lankan authorities), with some prominence from holding a banner or LTTE flag; the number of these events is small over a relatively short period coinciding with his fresh claim (and relative to the time that the Appellant has been in the United Kingdom or outside of Sri Lanka, with his first *sur place* activity taking place some eighteen years after he claimed to have left Sri Lanka); the Appellant has not had any organisational role in such events; he has not been involved in any significant fundraising; he has no relevant social media presence; neither he nor his family have any adverse history of LTTE involvement in Sri Lanka and the Appellant has not been named and can only be identified using face recognition software or further intelligence gathering. As above, I have not attached weight to the Appellant's mother's evidence that the Sri Lankan authorities visited her in relation to the Appellant's activities and do not find that this happened.
103. As such, the Appellant is not at risk on return to Sri Lanka from the authorities for being on a watch list and even if monitored on return, given I have not found that he has any genuine political opinions for a separate Tamil state, he would not undertake any activities on return which would otherwise place him at risk. For these reasons, the Appellant has not established, even to the lower standard of proof, that he would be at real risk of persecution on return to Sri Lanka such that his asylum appeal is dismissed. For the same reasons the Appellant is not entitled to humanitarian protection and his removal would not breach Article 3 of the European Convention on Human Rights.
104. The remainder of the Appellant's claim is based on Article 8 of the European Convention on Human Rights, essentially on the basis that he has been continually resident in the United Kingdom since 2000 and therefore meets the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules. I do not find that the Appellant has established on the balance of probabilities that he has been resident in the United Kingdom since 2000. There is very little evidence at all as to the Appellant being in the United Kingdom between 2000 and 2009 and during this time he was issued with a Sri Lankan international driving licence in early 2008. I do

not find that the Appellant has given a credible explanation for this being issued through an unnamed friend in Sri Lanka without him having to be present and find it more likely that this points to the Appellant having returned to Sri Lanka and obtained it himself in 2008. In any event, there is no documentary evidence of the Appellant remaining in the United Kingdom during the period he absconded and I attach very little weight to the letters from his cousin and a friend about supporting him given they lack detail, being only a few sentences long; and very little weight to the Appellant's bare assertion. Overall, he has not established that he meets the requirements of the Immigration Rules for a grant of leave to remain on the basis of private life.

105. The Appellant has not otherwise claimed that his removal would be in breach of Article 8 and I do not find that any interference with his right to respect for private life would be disproportionate. The Appellant does not have any established family life in the United Kingdom and there is only very limited evidence of any private life of significance here either. There are two very brief letters of support from a cousin and a friend which contain very little detail; there is nothing to suggest any employment, education or significant community involvement and the only real evidence of any interaction or engagement here is with the health services. The Appellant has not claimed that he would be unable to access available health care on return to Sri Lanka.

106. There are a number of factors that have to be taken into account in the public interest in accordance with section 117B of the Nationality, Immigration and Asylum Act 2004, including that the maintenance of immigration control is in the public interest; the Appellant has not established that he speaks English and it does not appear that he is able to financially support himself (together with significant use of public health resources) and he has never had any lawful leave to remain in the United Kingdom, as such, little weight is given to his limited private life here. Overall, the public interest in removal clearly outweighs the interference with the Appellant's private life.

Notice of Decision

For the reasons set out in the decision dated 31 January 2000, the making of the decision of the First-tier Tribunal did involve the making of a material error of law and as such it was set aside. The decision is remade as follows.

The appeal on protection grounds is dismissed.

The appeal on human rights grounds is dismissed.

Anonymity order

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

Signed G Jackson

Date 10th June 2022

Upper Tribunal Judge Jackson



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

Appeal Number: PA/01849/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 16th January 2020**

**Decision & Reasons
Promulgated**

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Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**JMPS
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah of Counsel, instructed by David Benson Solicitors

For the Respondent: Mr W Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Davison promulgated on 18 July 2019, in which the Appellant's appeal against the decision to refuse his asylum and human rights claims dated 27 January 2019 was dismissed.
2. The Appellant is a national of Sri Lanka born on 6 May 1974 who claims to have entered the United Kingdom 21 March 2000, claiming asylum the

same day. The Respondent refused the claim on 11 April 2013 and the Appellant's appeal against refusal was dismissed by the First-tier Tribunal on 15 July 2013. The Appellant made an application for leave to remain on human rights grounds on 12 August 2013, which was refused by the Respondent on 24 September 2013. Further submissions were lodged on 4 July 2014, refused on 16 December 2016 and again on 9 July 2018, the refusal of which on 27 January 2019 is the subject of this appeal.

3. The Respondent refused the Appellant's asylum and human rights claims, which were considered within the framework of a fresh claim and paragraph 353 of the Immigration Rules, first by relying on submissions having previously been considered, including the findings of fact made by the First-tier Tribunal in 2013 and secondly with consideration of the submissions since that time. The Respondent did not accept that there was any evidence to support the Appellant's claims that the Sri Lankan authorities were searching for him in Sri Lanka; the photographs and newspaper articles lacked details of the events and any evidence to show that such activity would bring the Appellant to the adverse attention of the Sri Lankan authorities, nor that they are in any event aware of any activity in the United Kingdom, nor that the Appellant had any significant profile. At its highest, the Respondent considered that the Appellant was no more than a low-level member of the TGTE and there was little evidence of demonstrations organised or attended, or that in any event as a result, the Appellant would be of adverse interest to the authorities on return.
4. The Respondent did not accept that the Appellant was personally at risk in relation to the protest on 4 February 2018 or from any other demonstrations. Overall, the Appellant's circumstances were considered in accordance with country guidance in GJ and others (post-civil war: returnees) Sri Lanka [2013] UKUT 00319 (IAC) with the conclusion that the Appellant did not fall within any of the risk categories set out therein. The Respondent specifically noted that the TGTE has been a prescribed terrorist organisation by the Sri Lankan authorities since 21 March 2014 but the respondent stated that there was no evidence as to how the provisions in relation to that were being implemented and the Appellant had not provided any substantial evidence to show that he was a high-profile activist such that he would be specifically targeted on return.
5. The Appellant's appeal was pursued only on the basis of risk on return to Sri Lanka because of his *sur place* activities in the United Kingdom and not on any medical or Article 8 grounds. Judge Davison dismissed the appeal in a decision promulgated on 18 July 2019. The First-tier Tribunal considered the findings of the earlier Tribunal in 2013 as a starting point in accordance with principles in *Devaseelan*, setting out three findings which were considered in particular to be relevant in paragraph 19 of the decision. These included the Appellant's use of multiple identities; the finding that his claim was incredible; and the finding that even if the Appellant had attended demonstrations, it was on the basis that he was an opportunist who was appearing to be photographed for the purposes of an

asylum claim rather than a member of the diaspora who was agitating against the government.

6. The First-tier Tribunal considered the evidence of the Appellant's use of different identities and in particular that he held a TGTE identity card in an identity different to his real name and different to the name he was known as by the TGTE member who signed the Appellant's membership card and who attended the hearing to give evidence on his behalf. The First-tier Tribunal further found that the Appellant has not remained in the United Kingdom since 2000 as claimed because of his driving licence issued in Sri Lanka in 2008 and the potential for him to have travelled using one of his multiple identities. It was found that the newspaper articles were either forgeries or the photograph had been placed in the paper for the purposes of this application. In relation to the Appellant's mother's witness statement, this was found to be a fabrication and it was not accepted that the authorities had visited the Appellant's mother nor that there was any interest in the Appellant in Sri Lanka.
7. The First-tier Tribunal, in paragraph 28 of the decision, expressly refers to the Court of Appeal's decision in UB (Sri Lanka) v Secretary of State for the Home Department [2017] EWCA Civ 85" paragraph 24 of the same. It is then found that membership of the TGTE is insufficient to establish a real risk on return to Sri Lanka and at best the Appellant is a mere member. The Appellant's credibility was found to be low and he had sought to overemphasise his importance and relevance to the party.
8. The First-tier Tribunal then sets out the country guidance in GJ and others and highlights the sophisticated intelligence used by the Sri Lankan authorities. In paragraph 31 it was found that such an intelligence network would *"be able to tell the difference between a genuine threat to the fabric of Sri Lankan society who are seeking to destabilise the same and people such as the Appellant who claimed asylum in Germany and made a claim to asylum in the UK which are based on fabricated or embellished evidence."*
9. In conclusion, the Appellant's claims were found to be fraudulent and the Appellant had failed to establish that he was in need of international protection.

The appeal

10. The written grounds of appeal to the Upper Tribunal upon which permission was granted include seven distinct grounds of appeal on behalf of the Appellant. However, at the oral hearing, the Appellant's grounds of appeal were distilled by Counsel into a much shorter key point, which is in essence that the First-tier Tribunal had simply failed to make required findings of fact about the relevance of the Appellant's attendance at demonstrations/protests in February 2018 and his complaint to the police about the actions of Brigadier Fernando on 4 February 2018. These were significant events which were different to participation in other protests in

the United Kingdom and upon which the Appellant could be expected to be questioned both during the documentation process for removal and on return to Sri Lanka. Given that the Appellant is not expected to lie about his activities and that there is clear background evidence that the authorities will question the Appellant giving rise to a real risk of persecution or prosecution under the anti-terrorism legislation. Counsel submitted that it was accepted that the Appellant had attended the demonstrations and the key issue of risk in such circumstances is not determined by the Appellant's credibility or otherwise.

11. For the avoidance of doubt, although said to be of more limited consequence, Counsel did not formally withdraw the written grounds of appeal and maintained in particular that there were insufficient reasons given for finding that the newspaper articles were a forgery and that the Appellant had returned to Sri Lanka since being in the United Kingdom. In relation to TGTE membership, it was the whole organisation which had been proscribed by the Sri Lankan authorities and was not limited only to significant members and there was no authority in these circumstances and were proscription post-dated GJ for finding that only those with a significant profile would be at risk.
12. On behalf of the Respondent, the Rule 24 notice was relied upon to the effect that the First-tier Tribunal were fully aware of the narrow basis upon which the claim as being put and gave clear reasons for the lack of credibility found in the Appellant's claim. Mr Whitwell submitted that the focus of the Appellant's claim and submissions at the hearing before the Upper Tribunal airbrushed out the credibility issues in the claim, the Appellant's use of multiple false identities and the fact that his submissions on a fresh claim were relying in essence on a very similar claim to the one which had previously been found to be incredible.
13. It was accepted by the Respondent that the Appellant would not be expected to lie on return to Sri Lanka if asked about his activities but that he could truthfully say that he has used three separate identities; has unsuccessfully claimed asylum in Germany; held a membership card for the TGTE but not in his own name; that he was out of the country in 2000 and has not since done anything to seriously destabilise the unity of Sri Lanka. It was submitted that essentially the Appellant was a hanger-on. Overall, the First-tier Tribunal set out all of the evidence in detail, including about the prominence of the protests in February 2018 and concluded that at its highest, the Appellant was a low-level member of the TGTE who had been involved only to bolster his asylum claim and had produced the newspaper documents for the same purpose. There is no reason to think that sophisticated intelligence services in Sri Lanka would not draw the same conclusion.

Findings and reasons

14. It is not disputed that the focus of the Appellant's claim and appeal before the First-tier Tribunal was his *sur place* activities, namely his membership

(or at least perceived membership) of the TGTE and more specifically his involvement in the protests in February 2018 and related prosecution of Brigadier Fernando. It is evident from the decision that this was the Appellant's case and the evidence in relation to the Appellant's involvement in the TGTE and February 2018 protests is recorded in the decision. However, the findings focus on the Appellant's credibility and no findings at all are made as to the significance or otherwise of involvement in these particular protests; nor of the risk of the Appellant being questioned by the authorities on return to Sri Lanka about his *sur place* activities. There is no suggestion that credibility alone is determinative of these issues. I find the failure of the First-tier Tribunal to make findings of fact on these key issues in the Appellant's claim to be an error of law and despite the significant adverse credibility findings against the Appellant, it is not possible to say that the failure is immaterial to the outcome of the appeal.

15. In relation to the Appellant's TGTE activities, paragraph 24 of the Court of Appeal's decision in UB (Sri Lanka) is quoted but without any recognition that despite those facts (which are not dissimilar to those of the Appellant in terms of credibility and activities) the matter should be remitted for further hearing and fact finding because the possibility could not be excluded that the evidence relating to the proscription of TGTE and questioning on return may affect the outcome.
16. Further, the First-tier Tribunal did not make any findings as to the relevance or otherwise of the TGTE being a proscribed organisation, nor whether the Appellant would be identified as or perceived to be a member of it. The decision only goes so far as stating that mere membership of the TGTE is not sufficient to establish a real-risk on return, but no reasons are given for this conclusion. There is some force in Ms Jegarajah's submission that GJ can not be authority for this given that it did not expressly deal with proscribed organisations or the proscription of the TGTE which post-dated it. I find that the First-tier Tribunal further erred in law in failing to make findings on this issue, which again, despite the significant adverse credibility findings against the Appellant, it is not possible to say that the failure is immaterial to the outcome of the appeal.
17. For these reasons, it is necessary to set aside the decision of the First-tier Tribunal and for the decision on appeal to be remade. Given the relatively limited further factual findings required to determine this appeal in relation to the TGTE activities and involvement in the February 2018 protests, the appeal is retained in the Upper Tribunal for re-making. The findings of fact in paragraphs 19 to 25 of the First-tier Tribunal decision are preserved. I have not included paragraph 26 as a preserved finding given the challenge to this paragraph within the grounds of appeal, albeit not pursued with any vigour at the oral hearing.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is not necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

Directions

- (i) The appeal is adjourned to be listed on the first available date with a time estimate of 2 hours, before any Judge in the Upper Tribunal, to remake the decision on appeal.
- (ii) The Appellant to file and serve any further evidence upon which he wishes to rely no later than 14 days prior to the re-listed hearing.
- (iii) The Appellant's solicitors to confirm whether the Appellant will give evidence at the hearing and if so, whether an interpreter is required, no later than 14 days prior to the re-listed hearing.
- (iv) The Appellant and Respondent are at liberty (but are not required) to file and serve a skeleton argument no later than 7 days prior to the re-listed hearing.

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

31st January 2020

Upper Tribunal Judge Jackson