



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

RR (Challenging evidence) Sri Lanka [2010] UKUT 000274 (IAC)
THE IMMIGRATION ACTS

Heard at Field House

Determination Promulgated

On 28 June 2010

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Before

**THE HON. MR JUSTICE BURNETT
SENIOR IMMIGRATION JUDGE PERKINS**

Between

RR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Mr R Solomon, Counsel instructed by Shan & Co., Solicitors

For the Respondent: Ms Z Kiss, Home Office Presenting Officer

1. In a case where there are obvious but not necessarily determinative difficulties in an appellant's oral evidence the Tribunal is likely to be helped considerably by independent expert evidence that supports the appellant's story.
2. If the respondent seeks to challenge such evidence then, ideally, the challenge should be supported by evidence put before the Tribunal.
3. If the appellant or expert chooses to give oral evidence then the respondent's cross examination should fearlessly and clearly include the suggesting to the appellant or expert that, for example, an injury was not caused in the way alleged by the appellant but by a different mechanism.
4. If the respondent does not put its case clearly it may well be very difficult for the Tribunal to decide against an appellant who has not been given an opportunity to deal with the respondent's concern.

5. If a party has no basis for challenging evidence so that a challenge to the evidence would appear to be abusive or foolish then that party must think very carefully before making the challenge. It will probably be fairer to abandon the point.

DETERMINATION AND REASONS

Introduction to Appeal

1.

The appellant is a citizen of Sri Lanka. He was born on 27 December 1978 and so is now 31 years old. He appeals the decision of the respondent on 16 September 2009 to make him the subject of a deportation order on the grounds that he is a refugee and that removing him is contrary to his protected human rights.

2.

His appeal was dismissed by Immigration Judge Kelsey and Mr D C Walker, a non-legal member, in a determination promulgated on 30 December 2009. Reconsideration was ordered by Senior Immigration Judge Freeman on 2 February 2010 and the appeal came before Senior Immigration Judge Perkins on 16 April 2010.

3.

The conclusion was that the Tribunal had made an error of law for the following reasons given on 19 April 2010:

“1. I am satisfied that the original Tribunal erred materially in law by not making clear findings on the evidence supporting the appellant’s claim that he breached bail conditions in Sri Lanka by failing to report and that the appellant’s father had been required to give evidence as to his whereabouts.

2. If this evidence is believed it could impact on other findings and, in any event, should be considered expressly in the context of the appellant’s claim to be at risk on return.

3. As fact finding has to be made “in the round” none of the existing findings on points of controversy can stand.”

4.

Directions were given about the proper future conduct at the hearing.

5.

We have an additional bundle dated 15 April 2010 and a supplementary bundle dated 25 June 2010 as well as a bundle provided to the Immigration Judge.

Immigration History

6.

The papers show that the appellant arrived in the United Kingdom on 15 May 2006 using an Australian passport with a substitute photograph. He came to the attention of the authorities on 29 June 2006 when he was encountered by French police at Waterloo International Station when he presented a Canadian passport containing a substituted photograph as he attempted to embark for France. He claimed asylum the same day.

7.

The application was not decided until 15 September 2009.

8.

On 11 August 2006 he was convicted at the Crown Court sitting at Middlesex of an offence of possessing a false identity document with intent to deceive. He was sentenced to twelve months' imprisonment.

9.

By letter dated 22 March 2007 his solicitors sent a Home Office form ICD 0350 and ICD 3067 and an asylum statement and Statement of Additional Grounds. The additional grounds shown at G5 in the bundle are very similar to additional grounds shown at D3. They complain that in the event of his return the appellant would be detained without access to a magistrate. Otherwise they are formal and show an intention to rely on Articles 2, 3, 5, 9, 11 and 14 of the European Convention on Human Rights. Before us Mr Solomon's submissions were directed towards Article 3.

Evidence sent with the application

10.

In the questionnaire the appellant identified himself as a citizen of Sri Lanka who was born in Polikandy in Jaffna. He said that he arrived in the United Kingdom on 15 May 2006 to save his life. The appellant claimed that he did not know the port or even the country from which he embarked to travel to the United Kingdom. He knew that he had arrived by air.

11.

He travelled on an Australian passport that had been taken back by his agent. He said that he had left Sri Lanka on 16 December 2005 and arrived in the United Kingdom on 15 May 2006. He had been taken by his agent to "some unknown country".

12.

He supported his claim with a statement dated 22 March 2007. It is at G7 and G8 in the respondent's bundle and is exactly the same as a statement at E1 and E2 in the bundle except that the statement at G8 is dated "2006" and is not endorsed with the appellant's name in block capitals. He said there that he was one of five brothers and two sisters. All of his siblings had now left Sri Lanka. They had gone because of political problems. Immediately before he left Sri Lanka the appellant was the only child of his parents still living there. He had a shop in Sri Lanka connected to his house.

13.

The shop was used both by members of the LTTE and members of the army.

14.

On 7 January 2005 he was taken to the army camp by the Sri Lankan armed forces. He was locked in a room. He was interrogated. When he insisted that he was not an LTTE member he was beaten up. He claimed to have suffered a severe beating so that his eardrum was damaged and he sustained a serious head injury.

15.

On 10 November 2005 he was taken by the LTTE. He was beaten by them. Just as the army quizzed him because the shop was visited by LTTE members the LTTE quizzed the appellant because the shop was visited by members of the armed forces.

16.

He said that he was tortured. He was ordered to pay Rs.700,000 representing Rs.100,000 for every member of the family and he was required to join the LTTE.

17.

The LTTE also required him to go to Vanni. If he did not he would be shot and killed.

18.

They rejected an offer by his father to go to Vanni in his place. Somehow his father found the Rs. 700,000 and handed it to the LTTE.

19.

However, according to the appellant, the army discovered that the appellant's father had paid the LTTE Rs.700,000. The army arrested the appellant on 26 November 2005 and took him to Mandan camp. His father was also beaten by the army. He was then taken to Malusanthi Camp where he was tortured. They wanted to know why he had given the LTTE large sums of money. He denied making any such payment. His interrogators told him to identify LTTE members which he agreed to do to save his life. They made him sign papers to say that he agreed to be an army informer and he was subsequently released.

20.

The appellant went into hiding. His parents were harassed. The LTTE went to the family home to enquire about his whereabouts. They warned his parents that they would kill him on sight.

21.

On 14 December 2005 he fled as he feared for his life. His father arranged for him to go.

Screening Interview

22.

The appellant attended a screening interview on 11 May 2009. There he confirmed his claim to be a Sri Lankan national born in Polikandy in Jaffna and to have last worked in Sri Lanka as a shop owner.

23.

He was asked if he had any medical conditions. He said that he had a "numb head and severe headaches caused from severe beatings in Sri Lanka" and that his "left ear ligament is broken due to the beatings and I had treatment in Sri Lanka". He also said that he had the misfortune of falling in snowy weather in the United Kingdom and he dislocated his shoulder.

24.

He repeated his claim to have been taken to an unknown country by an unknown airline where he was effectively held under house arrest by his agents who looked after his needs.

25.

The appellant said he did have a Sri Lankan passport but he did not use that to travel to the United Kingdom. He explained that he was not allowed to leave the house. His agent had told him that he could not claim asylum in the country in which he was staying and if he was caught there he would be returned to Sri Lanka.

Asylum Interview

26.

The appellant was interviewed on 11 May 2009. He began by saying that he had left Sri Lanka because of problems he experienced with the LTTE and the army. He concluded the interview by saying that after he arrived in the United Kingdom his father died of a heart attack because his father received a letter requiring him to attend an inquiry on 10 December 2007 concerning the appellant's

whereabouts. The appellant believed that his father died of shock on 9 December 2007. While he was away from Sri Lanka his father had been reporting to the police in his place. His father was threatened and beaten on several occasions.

27.

In his interview the appellant said his problems started on 7 January 2005 when he was arrested at his shop. He was suspected of being an LTTE member and giving information to the LTTE.

28.

The appellant said that his brothers were in the LTTE. They had left and run away.

29.

He said that when he was arrested he was beaten inside his shop and then dragged to a nearby army camp. His parents saw him being ill-treated and followed him to the camp. He said that he was beaten with fists in the shop and then with a broom used to clean the shop.

30.

He went to the Mandan camp which was about twelve minutes away from his home. He described the appearance of the camp. He described how he was interrogated. He was taken to a room where there were blood marks on the wall. He was questioned about the LTTE coming to his shop. When he denied that the LTTE came to his shop (his answer to question 34 is best understood as a denial) he was beaten.

31.

He was beaten when he denied being a member of the LTTE.

32.

He was beaten with a small stick and a small PVC pipe.

33.

In the course of interrogation he was told that they had heard he had passed information to the LTTE.

34.

He was interrogated for about six hours. He said that during interrogation he was beaten with a large branch from a tree which had rough edges. He was hit once very hard on the head and began to bleed and then lost consciousness. He believed that his "ear ligament" was broken as a result of this treatment.

35.

He was released and warned about his future conduct. He was particularly told that he would be shot if he passed on any information to the LTTE.

36.

He was treated for his injuries at the Manthikai General Hospital.

37.

Stitches were put in his ear for the ear ligament damage and he was transferred to Jaffna General Hospital where he was admitted as an inpatient and stayed there for three days.

38.

His parents looked after the shop in his absence. He went to the clinic every week for checkups.

39.

He had further trouble on 10 November 2005 when he was arrested by the LTTE. He gave a detailed account of his experiences there. He was beaten when he did not give the desired answers in interrogation.

40.

He was also asked for a donation of 7 lakh Sri Lanka Rupees and required him to present himself to Vanni and join the LTTE there.

41.

The appellant did not want to go to Vanni. A friend of his had gone to Vanni and had not been heard of since.

42.

He was told he would be shot if he did not co-operate.

43.

The appellant's father became involved and they made a similar request to him. His father offered to go to Vanni in the appellant's stead but this was not acceptable to the LTTE.

44.

His father paid the money on "Hero's Day" that is 25 November 2005.

45.

The appellant returned to his shop on 26 November 2005 and at about 4 o'clock in the afternoon he was arrested by the army.

46.

He gave details of his arrest. When his father asked why the appellant was being arrested they hit his father.

47.

He was taken to Mandan camp and after about two hours he was taken to Mallisanty.

48.

He was questioned and told his interrogators that he had not paid the LTTE any money.

49.

He was again asked about LTTE operatives coming to his shop and he was asked to identify LTTE members. When he refused to cooperate he was beaten.

50.

In answer to question 88 he said "I was repeatedly asked if I had paid money to the LTTE, when they were questioning me they were lighting cigarettes, with these cigarettes they stubbed them out in my hand (left hand) I have scars to prove this."

51.

He then explained how he was knocked to the ground and a particular kind of belt attached to his legs and he was suspended from a tree upside down. He was repeatedly beaten with sticks and warned that if he did not tell the truth he would be killed.

52.

He said he was suspended from the tree for “two to three hours”. They then put chilli powder in a bowl of fire and brought it near to his face. The appellant found the pain altogether too much and he agreed to identify LTTE operatives.

53.

The appellant said in answer to question 89: “when I was suspended upside down they also beat me badly on my legs, my right leg was damaged and I have scars to prove this”.

54.

The appellant said he had signed some papers before he left. It was a condition of his release that he reported to the police station every week. He did not report to the police station. He went to Paththamany and hid.

55.

He said he hid from 27 November 2005 until 14 December 2005 when he went to Colombo.

56.

On 14 December 2005 the LTTE and the police went to his house in search of him. The LTTE left a message that they were going to shoot him. The police said they were going to arrest him.

57.

He believed his life was in danger.

58.

There is no need to record such details in the determination but it is right to note that the appellant was asked to indicate the times it took to travel to the particular places of detention. Presumably this was because the answers could be checked against known data and there is nothing before us to suggest that the answers, which were given freely and without difficulty, are in any way unreliable.

59.

It is also right to say that he explained in considerable detail the process by which he was interrogated including the number of people involved. We have noted particularly his answer to question 88 where he described how the officer interrogating him left him when he had refused to identify LTTE members. It was after that that four or five people came in to question him and beat him. It might be thought that the appellant was describing rather clearly an incident whereby an officer absented himself from the scene in the anticipation that people of lower rank would behave in a way that the officer did not wish to see.

Statement 16 November 2009

60.

The appellant also made a statement dated 16 November 2009 in response to points raised in the Reasons for Refusal Letter.

61.

He said there that he did not know if customers at his shop were involved with the LTTE. He said that on the occasion that he was beaten in the shop and then at Mandan camp he sustained an injury that needed seven or eight stitches on his head.

62.

He said that on 26 November when he was arrested for the third time (the second time by the authorities) he was “severely tortured” and the documents he was forced to sign were in Sinhalese

which he did not understand. He was told that the documents were an agreement promising to pass on information about the LTTE. He said that at the time he signed the document he was in no position to argue because he was being tortured.

63.

He believed the LTTE would be still more interested in him after he had signed the document.

64.

He said that his father had paid for him to be taken to Canada where he would be reunited with four of his siblings.

65.

He explained how his agent had given him the false passport and given him instructions. He was told that if he was caught with the false passport he should claim asylum. He said that that was the first time he realised he could claim asylum in the United Kingdom which is why he did not claim when he entered. He emphasised that he claimed asylum after he was detained by the police in London and not after he was served with a notice telling him he was liable to removal.

66.

He said he did not leave Sri Lanka after his first arrest because he did not realise "the gravity of what was happening". He was arrested only a day after 7 lakh Rupees had been paid to the LTTE and it was after that treatment he decided he had to leave.

67.

He said that he did not know he had relatives in the United Kingdom until after he arrived in the United Kingdom. His uncle in the United Kingdom is maintaining him and has taken on the role of parent. He claimed to have a strong relationship with his uncle and also his uncle's children.

68.

He was candid about his conviction at the Crown Court in Middlesex. He said he had pleaded guilty. He was worried about being returned to Sri Lanka but he knew he should not have assumed a false identity.

69.

He believed he would be arrested and ill-treated and maybe even killed in the event of his return.

Appellant's Oral Evidence

70.

The appellant gave evidence before us. He adopted answers given at his screening interview and for the asylum interview. He adopted the witness statement dated 23 March 2007 and a witness statement dated 16 November 2009.

71.

He also drew our attention to something called the "summons notice from Sri Lankan police and translation" which was dated 7 December 2007 but not produced until 25 June 2010. The translation shows the document to be entitled "Authorised to Summon for inquiry over a complaint under the provision of Section 109(06) of the Criminal Act of the 1979 year." It records that an army officer has made a complaint against "(1) RRR and (2) KRR both living in your Grama Sevaka Division" requiring the officer to inform them to present themselves at the police station on 10 December 2007 and

warning them that if they did not report, a case will be filed under a particular section of the Sri Lankan Criminal Law Act.

72.

The appellant produced the original of that document. He said it had been sent by his brother in Canada who received it on 18 June 2010. He understood his brother in Canada had got it from a contact of a relative of that brother's wife in Sri Lanka. He said his brother in Switzerland had informed him about the existence of the letter. His family in Sri Lanka were frightened to send it out of Sri Lanka.

73.

We note that the original document is very mundane. It is printed in a language we do not recognise except for the date (07/12/2007) and words in English placed by a rubber stamp "M.O. Branch Police station Nrlliyady". It appears to be torn from a larger sheet of paper and appears to be a photocopy of a printed form to which words have been added in manuscript written by ballpoint pen.

74.

The appellant was cross-examined.

75.

He repeated that the document had been produced because his brother in Switzerland had told him that his mother had received the letter, that his mother was too afraid to send it from Sri Lanka and that he had contacted the brother in Canada and asked the brother in Canada to ask somebody to ask the appellant's mother to forward the letter. It arrived in the appellant's possession by post. He did not keep the envelope in which it had arrived because he did not think that important.

76.

His mother thought it would be incriminating or dangerous to forward the letter because the appellant was still being sought.

77.

He did not know when his mother had last been approached about the whereabouts of the appellant. The appellant confirmed that he had never contacted his mother directly. He was asked why he could not contact his mother directly whereas his brother did. He believed that his mother would be at risk if the authorities learned that he had contacted her. He said that his brother had left Sri Lanka 25 years ago. The authorities were not interested in his brother but they were still searching for him.

78.

He was then asked about his arrests or detentions.

79.

He was asked to explain why he was arrested but his father was not. He said that the appellant was a businessman although his father sometimes worked in the shop.

80.

He said that when he was first detained he was kicked by men wearing boots. He was asked to explain why this complaint was not raised in his first interview. He just said that he could not remember exactly. It was pointed out that he talked about his father being hit by someone's hand rather than by a stick. He insisted his father was beaten by sticks and fell to the ground.

81.

He was asked about his detentions. He said when he was taken to Malusanthi Camp there were twelve other people in the truck.

82.

He talked about chilli powder being rubbed in his eyes and his being beaten over a two to three hour period. However, when asked to explain in more detail he talked about a bowl of burning chilli being put close to his face when he was hung upside down.

83.

He said after he was released he went to the home of his aunt. That was only about three miles away from the family home. He was asked why he thought it was safe to seek refuge in a place so close to the family home. He said he could not go to his parents and he thought his aunt's place would be safe. He soon went to Colombo. He travelled to Colombo pretending to be a cleaner on a lorry. He went through checkpoints on the journey. He had no form of identification but the driver of the lorry made arrangements with the checkpoint operators.

84.

He used an Australian passport to leave the country.

85.

He was asked what he did from arriving in the United Kingdom on 1 May and leaving on 21 June. He said he was taken by an agent to a place of his father's choosing.

86.

He was asked how he made contact with his mother's cousin. He said that after he was arrested for using a false document he contacted his family member in Switzerland who told him about the cousin in the United Kingdom.

87.

He was asked about the signing of the document. He said it was in the Sinhalese language and he could not read it.

88.

He said he started living with his cousin in the United Kingdom on 12 February 2007. His cousin runs a grocery and off-licence business. His cousin was married with children. His wife helped in the business. He was unsure of the age of the children. He said the first was nearly 10, the second was 8 and there was a son aged about 4.

89.

He did not help in the business but he did help to look after the children.

90.

He believed his cousin left Sri Lanka in 1999 when the appellant was aged 11.

91.

The appellant was not re-examined.

92.

In answer to questions from the Tribunal he said that his brother in Switzerland did not have regular contact with his mother but sometimes there were phone calls to an uncle's house and the mother would go and speak to her son, the appellant's brother, there. His brother spoke to his mother shortly after their father died. The appellant did not.

93.

The appellant knew he had arrived in the United Kingdom by aircraft but claimed not to know the country from which he travelled or even if it were in Europe. He did not notice the name while he was waiting at the airport. He knew he travelled from a different time zone and he believed he was in the air for seven or eight hours.

VT's evidence

94.

VT gave evidence before us. He adopted his statement of 19 November 2009.

95.

He lives at an address in Ilford. He was born in Sri Lanka on 20 April 1963 and arrived in the United Kingdom in 1989. He said the appellant's mother is his cousin and then, somewhat incongruously, "the appellant is therefore my nephew". He said he ran his own business.

96.

The appellant had been living with them since 12 February 2007 and had been supported by the witness. He claimed to have taken over the role of parent and formed a strong relationship as had his wife and their children who were very affectionate towards him.

97.

In answer to supplementary questions he said that he would feel he was losing a family member if the appellant was returned to Sri Lanka.

98.

The witness did not feel he could go and settle in Sri Lanka. He had three children in school and his business was sound and he did not feel the situation in Sri Lanka had calmed down to the point where he could start a new life there.

99.

He was cross-examined. He said he came to the United Kingdom in 1989. In Sri Lanka he lived in the village where the appellant lived. He had not kept in touch with his family and only learned of the appellant's arrival in the United Kingdom when he received the telephone call from a relative. His shop had two employees as well as help from his wife. His wife normally looked after the children who were aged 10, 6 and 5 and were all at school. He could not explain why the appellant did not know their ages.

Medical Evidence

100.

There is a medical report from Mr J Taghipour who qualified as a medical practitioner in 1979. His relevant qualifications for the purposes of giving the report include his being a Fellow of the Royal College of Surgeons, Edinburgh, specialising in accident and emergency medicine and surgery.

101.

He noticed two scars on the appellant's head, one on the top the other on the front. There were also three "relatively circular in shape" scars on the appellant's left forearm and evidence of damage to his left eardrum. Concerning the scars on the appellant's forearm Dr Taghipour said they were "typical of" burns with hot solid objects such as cigarette stubs. He said "this is an appearance that is usually found with this type of trauma, but there are other possible causes".

102.

Concerning the longitudinal and linear scars on the appellant's head, Dr Taghipour said they are "consistent with trauma from blunt objects such as wooden sticks as described by [the appellant] and they could be described as "highly consistent" that is "the lesion could have been caused by the trauma described and there are few other possible causes". He continued that the age of the scars could also fit his description making the point that ageing scars after about a year since they were inflicted is very difficult to do. He also picked up "non-specific physical and psychological symptoms which could be described as "consistent with" as they can be caused by other causations and are non-specific in causation."

RK's Evidence

103.

The appellant also produced a statement from his brother in Canada, RK, this shows support for the appellant but contains no original evidence to assist us.

RKM

104.

There is a statement from RKM from an address in Switzerland. He identifies himself as the appellant's brother. He said that he is a recognised refugee in Switzerland and has lived there since claiming asylum in 1988. He says that he can confirm that the appellant suffered persecution in Sri Lanka but gives no indication of how he knows these things. He also said that he had been in contact with their mother and the authorities had issued an arrest warrant against the appellant.

105.

There is another statement from RKM dated 14 April 2010 explaining that he could not attend his brother's appeal in November 2009 because of work commitments and was unable to attend the appeal hearing at Field House on 16 April 2010 because he had booked a pilgrimage with a religious group to Egypt and Israel. At the time of writing he was in Israel.

Respondent's Submissions

106.

Ms Kiss began by relying on the refusal letter dated 15 September 2009. The letter set out the appellant's account accurately and in considerable detail. The letter included a long quotation from a Foreign Commonwealth Office Country Profile on Sri Lanka dated 31 March 2009 dealing with the demise of the LTTE. It was accepted before us that the LTTE present no threat to the appellant now and we have considered only in summary outline the appellant's complaints about his difficulties with that organisation.

107.

Paragraph 38 of the letter starts to deal with the substance of the appellant's claim namely his fear of the Sri Lankan army.

108.

The respondent notes that the appellant claimed that he had been ill-treated and was required to sign papers agreeing to act as an informer.

109.

The respondent in his letter recognises that young Tamil men were targeted and many were arrested and detained for short periods. However the letter said that “those who may be of continuing interest to the authorities would be those wanted for serious offences, these would normally be high profile members of the LTTE more active and influential” (paragraph 47) Of course it was never the appellant’s case he came into such a category.

110.

The letter then said that even if the appellant is the subject of a warrant for his arrest by the police in Sri Lanka there is no reason to conclude that he is therefore at risk of persecution in the event of his coming to the attention of the authorities. The refusal letter then referred to correspondence with the British High Commission suggesting that forged documents are easily obtainable throughout Sri Lanka but that an accused person would find it difficult to obtain copies of a genuine arrest warrant relating to them.

111.

At that time no such document had been produced but the Secretary of State indicated that it would be unlikely to impress.

112.

The letter then suggested that there would be proper mechanisms to defend the appellant’s interest in Sri Lanka. The letter then quoted the first summary paragraph of LP (LTTE areas - Tamils - Colombo - risk?) Sri Lanka CG [2007 UKAIT 00076. This states:

“(1) Tamils are not per se at risk of serious harm from the Sri Lankan authorities at Colombo. A number of factors may increase the risk, including but not limited to: a previous record as a suspected or actual LTTE member; a previous criminal record and/or outstanding arrest warrant; bail jumping and/or escaping from custody; having signed a confession or similar document; having been asked by the security forces to become an informer; the presence of scarring; return from London or other centre of LTTE fund-raising; illegal departure from Sri Lanka; lack of an ID card or other documentation; having made an asylum claim abroad; having relatives in the LTTE. In every case, those factors and the weight to be ascribed to them, individually and cumulatively, must be considered in the light of the facts of each case but they are not intended to be a checklist.”

113.

Paragraph 97 of the refusal letter is very important. There the respondent makes it plain that she does not accept that there is an outstanding arrest warrant against the appellant and therefore does not accept the authorities would have any adverse interest in the appellant in the event of his return.

114.

It was accepted the appellant had scars but found that these were of less interest now than had previously been thought to be the case.

115.

The letter then said that the respondent did not accept the appellant would be at risk because of his brother’s activities because they had left some time ago.

116.

It then referred to a letter from the British High Commission showing how people can be returned uneventfully. The letter then gave several reasons for saying that Tamils generally would not be at risk on return even if they were returned on emergency travel documents. It reported how many such

people had been observed at the airport where they were interviewed in a relaxed way and no reference appeared to have been made to computers.

117.

Dealing with the decision to deport the respondent, it asserted that the appellant was liable for deportation by reason of his conviction and sentence and indeed there was a presumption in favour of deportation by reason of paragraph 364 of HC 395. The respondent did not accept that removing the appellant would be a disproportionate interference with his private and family life.

118.

For the same reasons the respondent did not accept the appellant was a refugee. The respondent did not accept that the appellant's rights under Article 3 of the European Convention on Human Rights would be at risk.

119.

Ms Kiss then said it was the appellant's case that he went to the United Kingdom on a false passport. He was arrested trying to leave on another false passport. Rather than seeking asylum he tried to get to another country. She submitted this was simply not the conduct of a person seeking asylum and submitted further that we should have regard to s.8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

120.

She said it was the appellant's case that he had no contact with his mother yet he set out to prove that the authorities continued to be interested in him after he left Sri Lanka. The document described as a summons was used to support that claim. It was dated 7 December 2007 but not produced until very shortly before the hearing in copy form and at the hearing in its original form. She said it made no sense that the appellant's mother would be afraid to send documents to the appellant yet it was possible to coax her to send them to somebody who sent to somebody who sent them to the appellant.

121.

She referred to the COIS Report dealing with warrants, rather than summons, and said that forged copies already available but the original was hard to obtain.

122.

She submitted the appellant had not given a consistent account of his difficulties. It was significant for his father to have been beaten by sticks yet that was not mentioned until oral evidence.

123.

The medical report did not support the appellant's contention to have received scarring to his right leg.

124.

However, and we find very significantly, Ms Kiss did not suggest that the appellant sustained three cigarette burns in any way different from his account. He had not been challenged on that account.

125.

She submitted that it was unbelievable that the appellant would manage to travel from Jaffna to Colombo 200 miles away in December 2005 without any identification documents. The appellant said he had been stopped on only two occasions and it was not credible that he would pass through checks so easily.

126.

Any risk to the appellant's brother would have faded to insignificance by reason of the passing of time.

127.

It made no sense to suggest that it was too dangerous for the appellant to contact his mother but his brother was able to contact her.

128.

Ms Kiss said however that even if the case was taken at its highest there was no reason to think the appellant had ever raised funds for the LTTE. She said there was no evidence that returned Tamils generally had any difficulties.

129.

Additionally she said there was no reason to think the scar on the head or the burns on the arm were the kind of scars that would attract attention. Indeed the scars on the head were not particularly visible.

130.

Concerning the claim on Article 8 grounds she submitted that the evidence was exaggerated. She submitted that the appellant's relationship with his relative's children was much exaggerated. He was not close to them if he did not know their ages. She said it was relevant the appellant had never even tried to settle in the United Kingdom but wanted to go to Canada. It really was not hard to justify disturbing any private and family life the appellant had established in the United Kingdom.

Appellant's Submissions

131.

Mr Solomon relied on his detailed skeleton argument dated 20 November 2009. He submitted that the essential core account had been told consistently.

132.

He submitted that one of the inconsistencies in the account was the appellant's alleged ignorance of the countries through which he travelled and the country in which he stayed. Such a claim should not be dismissed out of hand. He was under the control of an agent who no doubt had been very influential.

133.

He submitted that the warrant or summons could be explained credibly. It was retained by the appellant's mother for some two or three years because it was an important and official looking document. Her son in Canada knew how to persuade her to send it so that it could be forwarded to the United Kingdom.

134.

Dr Taghipour's evidence was pertinent. It was unchallenged and expert and supported the case.

135.

The fact that the appellant wanted to travel to Canada did not mean he was not a refugee.

136.

He submitted the appellant would be at risk. He had left Sri Lanka illegally. He did not have an ordinary travel document so would be returned on an emergency document. He did have scars.

137.

He submitted the appellant had been telling the truth about his time in custody and was telling the truth when he said that he was required to sign blank forms and required to report.

138.

He submitted that it was not unbelievable that a driver had helped his passage down to Colombo from Jaffna.

139.

Neither was it unbelievable the appellant's father had died, possibly in fear of a forthcoming visit to the authorities.

140.

Concerning Article 8 he submitted the appellant had established a protected and private family life in the years that he had been in the United Kingdom. It went beyond ordinary social relationships but included a relationship between relatives and the appellant and small children who would miss him.

141.

He further submitted there was a delay of two years before any steps were taken. That sat uneasily with any claim that it was imperative to remove him. Finally he submitted that the appellant could not reasonably be expected to relocate.

Findings

142.

Although we have indicated our views on some of the evidence when we have outlined it above we must emphasise that we did not start writing the determination until we had decided on our conclusion and we made no findings about anything without first considering all of the evidence in the round and as a whole.

143.

We remind ourselves that our first task is to decide if the appellant is a refugee. Here it is for him to prove his case but it is sufficient if he proves it at a low standard and shows there is a real risk of his being persecuted for one of the reasons noted in the Convention in the event of his return to Sri Lanka.

144.

We have considered the statements from relatives who have not come to give evidence. They are of very little value. We accept that the appellant has a brother in Canada and another in Switzerland. That they appear to have persuaded the authorities there that they are refugees supports rather than handicaps the appellant's case but we do not know what details they gave during the course of their claims. They left some time ago and their status does not really illuminate the appellant's case.

145.

We are not impressed with the purported summons. As indicated above it is an undistinguished document. We do not know how it compares with an example from a known source and one of the reasons for this is that it was not disclosed until the last possible minute. It may be that summonses of this kind are routinely photocopied en masse and filled in using ballpoint ink as needs require. There is no reason to regard such a system as unbelievable. However the "summons" is not addressed to the appellant or his father but to a police officer. We do not understand how such a document would come to be in the possession of the appellant's family. Further, given the evidence that genuine documents

can easily be procured for illegal purposes we do not have any great confidence in the security of genuine documents held in the custody of the Sri Lankan government. We find that the summons represents a neutral rather than an informative strand of evidence.

146.

Dr Taghipour's evidence is more helpful. It should be noted that it is not particularly compelling evidence. It does not, and does not purport to, prove conclusively that the appellant was injured in any particular way. However it does not bear any signs of conspicuous exaggeration or empathy. We have clear photographs and it is apparent to the untrained eye that the appellant is scarred.

147.

Whilst the fact that the appellant is scarred does not need expert evidence, the causes of such scars is a matter of expert opinion and it is clear that Dr Taghipour is of the view that the appellant could have sustained the scars in the way that he has described.

148.

The apparent cigarette burns particularly interest us because it is very hard to see how injuries of that kind could be sustained unless they were inflicted deliberately.

149.

It was never suggested to the appellant that the scars were the result of voluntary mutilation and there is no reason to suggest such a thing except cynicism. This is a particularly important feature in the case. Clearly the appellant is scarred. He has a row of three small round scars on his lower arm which he says are the result of torture. We dismiss as irrelevant any concerns that may arise from the appellant saying that he had scars on his hand rather than his arm. There scars are there on his arm. If the appellant really did say that they were on his hand then it was clearly the result of a slip of the tongue. They have not moved and we can see no reason why he would have made a mistake about their whereabouts or deliberately given a wrong answer.

150.

We have no difficulty in accepting that the appellant is Tamil and that young Tamil men often were detained and ill-treated by the Sri Lankan authorities at the time the appellant said that he was ill-treated.

151.

We do find a broad consistency in the way he had told his story. Ms Kiss has found things where the story has not been told in entirely the same way. This is why we have looked so very carefully at the interview record and it is our view that it reads more sensibly as the words of someone recalling a bad experience that he had endured rather than recalling imperfectly an untruthful story he had learned to tell.

152.

We are also satisfied from Dr Taghipour's evidence that the appellant has been knocked about. There are areas of the evidence that surprise us. It is disturbing that the medical report makes no comment on the appellant's alleged injury to his leg. However the injuries to the head on their own, and particularly with the symptoms picked up by Dr Taghipour, clearly support the appellant's claim to have been knocked about.

153.

The injuries to his arm, mainly from cigarette burns, are highly suggestive of a person being tortured rather than simply being involved in a fight. We accept that Dr Taghipour does not exclude the possibility of these scars being caused in some other way but the best explanation before us is the one given by the appellant.

154.

Once it is apparent that the appellant is scarred we have to ask ourselves how he came to be scarred. He says that he was tortured. The other possibilities are that the scars were the result of some innocent but unimaginable mechanism, or that they are the result of torture in very different circumstances to those advanced by the appellant. One might speculate that they were self-inflicted, presumably to promote the appellant's case. None of these explanations is beyond belief but they do not appear to us to be likely.

155.

Ms Kiss was not able in her cross-examination to lay a foundation to support any suggestion that the scars were self-inflicted or otherwise the result of bad faith on the part of the appellant. As we have already mentioned it was not put to the appellant that the scars were self-inflicted or otherwise caused in a way inconsistent with the appellant's case. That implies no criticism of Ms Kiss. On the contrary, it seems to us to reflect the reality of the case.

156.

In the absence of any evidence tending to suggest a different mechanism we do not see how we can fairly reject the appellant's evidence about their cause when no alternative mechanism was put to him and he was not cross-examined on the basis that he was making up his entire case.

157.

We have no hesitation in saying, mindful of the low standard of proof, that on the totality of the evidence the appellant was telling the truth when he claimed to have been knocked about and to have been tortured by burning with cigarettes.

158.

Of course the appellant's claim does not depend upon his being beaten but on his still being at risk. We remind ourselves of paragraph 215 of LP (LTTE area - Tamils - Colombo - risk?) Sri Lanka CG [2007] UKAIT 00076 where the Tribunal said:

"We see no reason to depart from the established guidance set out in Selvaratnam that this can be a significant risk factor. Confession evidence, credibly deduced, was noted by Professor Goode at paragraph 47 of his specific report and indeed we note the relevant and significant comments of Dr Foster that many Tamils are released after signing statements made in Sinhala that they often do not understand. It is again a factor that must be considered in the totality of the risk."

159.

That this remains a risk factor was expressly endorsed at paragraph 142 of TK (Tamils - LP updated) Sri Lanka CG [2009] UKAIT 00049.

160.

This is important for two reasons. Firstly it shows that having signed a blank form remains a pertinent risk factor. Secondly it shows that it is a commonly made allegation and accepted as often being the case that Tamils were detained and made to sign documents that potentially incriminated them or created difficulties for them in exactly the way the appellant described.

161.

It follows that we have a story which is at its core inherently believable supported by real evidence of the appellant being injured and medical evidence showing that the injuries could well have been caused in the way described.

162.

There is much about the appellant's evidence that is unsatisfactory. We do not believe that he travelled out of Sri Lanka not knowing where he was going or lived in a country, even under something like house arrest, without realising the country in which he was living. He travelled through an international airport in Sri Lanka presenting himself for travel. He flew in an aeroplane and was then transported in the third country. Then he left that country again by international air travel. Furthermore it is discreditable for the appellant to have delayed making an asylum claim until confronted by the authorities. We understand that he wanted to go to Canada to be with the rest of his family and this does make more sense of his delay but he cannot avoid a finding that he was deliberately deceiving the authorities in the United Kingdom until he was caught and that does undermine his credibility generally.

163.

The account of the escape from Jaffna to Colombo is startling. It, whilst not impossible, is improbable given his lack of documentation at the stage of his journey.

164.

Although we are not impressed by the so-called summons we are persuaded that the appellant did sign a false confession. This is the kind of thing that does cause problems in the event of his return.

165.

We remind ourselves that the situation in Sri Lanka has changed since some of the Tribunal's jurisprudence was published and the LTTE is a spent force. We remind ourselves as well that a very large number of Tamils are tainted with some kind of link to the LTTE and the evidence does not suggest they all risk persecution.

166.

However if this appellant is returned to Sri Lanka he will go back as a Tamil who has been in the United Kingdom for some years on a special travel document. This will attract attention at the airport. We recognise immediately that a lot of people return to Sri Lanka in similar circumstances and the evidence suggests that many of them are processed with reasonable efficiency and good humour and are certainly not persecuted. However there is no avoiding the finding that these features tend to attract attention. The days are certainly gone when any sort of scarring was regarded as a matter of grave concern and enormous interest to the authorities in Sri Lanka. The marks in the appellant's head are not immediately apparent and are not particularly indicative of torture to a lay person in any event.

167.

However marks on the arm are easily seen and do indicate the appellant has been tortured. They would not necessarily come to the attention of the authorities but they could only be hidden by wearing long sleeved clothing, which may itself be suspicious in the context of return to a hot country such as Sri Lanka.

168.

We accept that the appellant's family was linked to the LTTE and that his brothers were involved as claimed. We realise this is a long time ago. It is not a decisive factor but it points more in the direction of the appellant being at risk than of his having no difficulty.

169.

Not without some hesitation we do accept that the appellant's father was wanted by the authorities. We do not say that he was frightened to death but we accept that he did die at a time when the authorities were looking for him because of his links with the appellant. We accept this evidence because it is consistent with the idea of the authorities being interested in a person who was given instructions to attend and report and who signed a blank form but who disappeared. We think the authorities would be displeased with that and would have made enquiries and that is how the appellant's father would have been involved.

170.

For similar reasons we accept that the appellant was on some kind of bail or obligation to report when he left.

171.

The appellant has not done much to help himself but the objective evidence and the background material supports his case. We believe the appellant is in a group of people who are at risk for the reasons given in TK and other cases.

172.

It follows that the appellant is a refugee.

173.

That is sufficient to dispose of this appeal but we do consider separately his claim for protection under Article 8 of the European Convention on Human Rights. This is misconceived. We accept that in the time he has been in the United Kingdom he has established a protected private and family life with his relatives with whom he now lives. We do not accept there is any particularly close relationship here. We accept that he is welcome in the home and is being supported by them. We do not find it particularly significant that he did not know the age of his relative's children. One of them he got right. One of them he got about right. The age of the middle child, a daughter, he got wrong. We accept Ms Kiss's submission that a child whose family enjoyed western European, particularly British, social norms would be very aware of her age and keen to share the information with others. There is no evidence before us that that would be true of a child whose family came from Sri Lanka and we are aware that the celebration of birthdays varies enormously between cultures.

174.

Nevertheless the appellant's evidence fell short of showing especially strong links of the kind that would create the relationships that are hard to disrupt such as that between parents and minor child or husband and wife.

175.

Removing the appellant would disrupt relationships that are established. He would miss the family with whom he has lived and they would miss him. Article 8(1) would be engaged. However, unless he is entitled to international protection, the appellant has no right to be in the United Kingdom. The kind of delay here although unpraiseworthy, is not the kind of delay which materially changes a person's expectations or which shows acquiescence in his remaining. Immigration control is a proper purpose and it is meaningless if it is not enforced. Subject to the very important qualification of his

being a refugee the appellant has no right in the United Kingdom and should expect to be removed and the comfortable links with his family do not make his removal disproportionate. The respondent has satisfied us about that.

176.

It follows that although removing the appellant would contravene his Article 3 rights, for the same reason that he is a refugee, his removal but for that would not interfere with his rights under Article 8.

177.

We have reminded ourselves of the guidance given in EO (Deportation appeals: scope and process) Turkey [2007] UKAIT 00062 and particularly paragraph 5 of the Tribunal's head note where the Tribunal said:

"In determining an appeal against a deportation decision made on 'conducive' grounds on or after 20 July 2006 the Tribunal should first confirm that the appellant is liable to deportation (either because the sentencing judge recommended deportation or because the Secretary of State has deemed deportation to be conducive to the public good); if so, secondly consider whether deportation would breach the appellant's rights under the Refugee Convention or the ECHR; if not, thirdly consider paragraph 364."

178.

Mr Solomon properly and helpfully conceded that the appellant was liable to deportation.

179.

We do not consider paragraph 364 separately because we have decided the appellant is a refugee.

Decision

It follows that the original Tribunal erred in law. The following decision is substituted. The appeal is allowed on Refugee Convention grounds and for the same reasons on human rights grounds with reference to Article 3.

Signed

Senior Immigration Judge

(Judge of the Upper Tribunal)