

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76228

AT AUCKLAND

Before: A N Molloy (Member)
Counsel for the Appellant: C Curtis
Appearing for the Department of Labour: No Appearance
Date of Hearing: 9 September 2008
Date of Decision: 8 December 2008

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DECISION

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INTRODUCTION

[1] The appellant, a young Muslim man of Tamil ethnicity in his late-20s, is a national of Sri Lanka. He appeals against the decision of a refugee status officer of Refugee Status Branch (RSB) of the Department of Labour (DOL) declining his application for refugee status.

[2] This is the second time the appellant has applied for refugee status. A different panel of the Authority (the first Authority panel) declined the appellant's first appeal in *Refugee Appeal No 75723* (13 December 2006).

[3] Because this is his second appeal, the Authority is required to determine, as a preliminary matter, whether it has jurisdiction to consider the merits of his second appeal. For reasons set out below, the Authority finds that it does have jurisdiction. The second appeal therefore turns in part upon the appellant's credibility and in part upon whether his claim is well-founded. This is also assessed below.

JURISDICTION OF THE AUTHORITY TO HEAR THE SECOND APPEAL

[4] Neither a refugee status officer nor the Authority has unlimited jurisdiction to receive and determine a further refugee claim after a first claim has been finally determined. Section 129J(1) of the Immigration Act 1987 (“the Act”) sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim for refugee status:

“129J. Limitation on subsequent claims for refugee status—

(1) A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.”

[5] Where the refugee status officer declines the subsequent claim, or finds that there is no jurisdiction to consider the claim on the basis that the statutory criteria are not met, the claimant has a right of appeal to the Authority. Section 129O(1) of the Act provides:

“A person whose claim or subsequent claim has been declined by a Refugee Status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision.”

[6] Jurisdiction to hear and determine subsequent refugee claims under s129O(1) of the Act is determined by comparing the previous claim to refugee status with the subsequent claim: *Refugee Appeal No 75139* (18 November 2004).

[7] Where jurisdiction is established, the subsequent claim will be heard by the Authority. This hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim under section 129P(9) of the Act, which prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim. The Authority has a discretion as to whether to rely on any such finding.

[8] In order to determine whether it has jurisdiction, the Authority therefore needs to compare the appellant's first and second claims for refugee status. A summary of each is set out below. The appellant's first claim for refugee status is set out in more detail in the decision of the first Authority panel in *Refugee Appeal No 75723* (13 December 2006).

THE APPELLANT'S FIRST CLAIM FOR REFUGEE STATUS

[9] The appellant claimed that he was born and raised in a village in western Sri Lanka where he lived with his mother and siblings. His father worked abroad for many years, returning home periodically.

[10] He claimed that he was at risk of being persecuted by the Liberation Tigers of Tamil Eelam (LTTE). That risk arose because of his close friendship with XY, a young student from the north of Sri Lanka who was involved with a rival Tamil organisation, the Tamil Eelam Liberation Organisation (TELO).

[11] The two became friends while attending a tertiary institute in Colombo. The appellant had only a peripheral awareness of XY's political activities until one evening in early 2002 when two or three men from the LTTE broke into their Colombo accommodation. XY was warned to bring his involvement with TELO to an end. He was severely beaten to the point of requiring hospital care.

[12] The appellant was so frightened by that incident that he returned to his home village. After being released from hospital, XY joined the appellant briefly before leaving Sri Lanka. The incident had caused the appellant such concern that he too left Sri Lanka. He travelled to Malaysia, where he enrolled as a student.

[13] XY returned to Sri Lanka in late 2003, after a ceasefire had been negotiated between the government and the LTTE. He stayed with the appellant's family for a short time before moving on to his own home in the north. Within days of returning to his village, XY was murdered.

[14] The appellant returned to Sri Lanka after XY's death, believing that the LTTE would have no further interest in him. He was wrong. Several Tamil men came to the appellant's family home early one morning in early 2004, looking for him. Because the appellant was not home, the men abducted his brother. The appellant's family lodged a complaint about the abduction with the police, but his brother has not been seen since. The father took steps to ensure that the mother and sister went into hiding in Colombo.

[15] The appellant decided that it was not safe to remain in Sri Lanka and returned to Malaysia. While he was there, he decided to travel to New Zealand. After arriving here in late 2004, the appellant applied for refugee status.

[16] After the interview with the first panel of the Authority, the appellant provided the Authority with documents corroborating various aspects of his claim, including

the death of XY. The documents also included extracts from the police information book referring to the family's complaint about the brother's abduction.

[17] The Authority wrote to the DOL, pursuant to s129P(4) of the Act, to request that it make various enquiries with a view to verifying the authenticity of the documents relating to the police complaint.

[18] The DOL engaged a Sri Lankan agent (the DOL agent) who visited the police station where the particular complaints were said to have been laid. The DOL agent subsequently provided a report which stated that no such complaint had been made at the police station concerned.

[19] In response, the appellant's family engaged a Sri Lankan attorney (the first attorney) who acted as the appellant's agent. The first attorney provided an alternate report contradicting that provided by the DOL agent. The first attorney's report confirmed the first attorney's attendance at the police station in question, accompanied by the appellant's paternal uncle. The first attorney spoke to the officer in charge and personally viewed the complaint. The first attorney's report cast doubt on the suggestion that the DOL agent had ever visited the police station. Extracts from the relevant police information were submitted.

[20] The DOL provided its agent with copies of the information supplied by the first attorney, and asked him to respond. The resulting report provided by the DOL agent is set out at para [51] of the decision of the first Authority panel and bears repetition:

"On the instructions of yours I visited the AA police station on or about 13 June 2006 to enquire about the alleged complaint made by [the appellant's mother] at the said Police station and allege. (*Sic*)

On that date I enquired from Mr [], the Officer in Charge of the Police station about the said complaint of which you have furnished me a copy. It was revealed by the inspection of the complaint books that there has not been a complaint made by such named person at the police complaint book CIB II, dated 02/02/2004 and on the page 240 and this was informed to you by me immediately.

Later on, on or about the 25th of August 2006 you informed me about the letter which had been sent by an attorney named [] of [] addressed to Mrs Emily Griffin of McLeod Associate stating that she visited the Police station personally and enquired about the said complaint and she witnessed the complaint. You have asked me the clarification of the above said letter as well as about the complaint.

In the interest of the parties I again visited the AA Police station on the 8th September 2006 and met the Officer in Charge [Mr]. The facts he came across were:

1. No one had come to meet the OIC to enquire about the said alleged complaint made by [the appellant's mother] and especially informed that a lawyer called [the first attorney's name] didn't visit him to enquire about this.

2. That there is no such complaint in the said CIB II for the date of 02/02/2004.
3. The signature appears at the bottom of the complaint given to me is not his signature and he was the officer in charge of this Police Station from year 2001.
4. There is no such police officer called [] in this Police Station.
5. There is no such Police Officer called [] in this Police Station.
6. According to the Copy provided to me it appears that this complaint was written on the 02/02/2004 in page 204 at paragraph 368, but what he inform to me was that in each and every month the numbering of the complaints will begin with a new page and as that by the second day of the month it is impossible that a complaint will be written neither at page 240 nor paragraph 368 as appears specially in this Police Station.

Therefore he informed me that this complaint is a false and a fabricated one and what was recorded in the given page are some other complaints.

Therefore I reconfirm that this complaint is a false complaint which is not recorded in the said police complaint book.”

THE DECISION OF THE FIRST AUTHORITY PANEL: *REFUGEE APPEAL NO 75723* (13 DECEMBER 2006)

[21] The first Authority panel accepted both that the appellant had a friend called XY, and that XY had been killed. However, the first Authority panel concluded that the appellant had embellished the nature of his friendship with XY in order to use his death as a pretext for claiming refugee status. The Authority rejected the remainder of the appellant’s core account.

[22] In particular, the Authority found his claim that XY’s killers would regard the appellant as a significant political opponent to be implausible and did not believe his claim that his brother had been kidnapped by the LTTE as a result of the friendship. The Authority also found that documentary evidence produced in order to corroborate his claim that his brother had been abducted by the LTTE was fabricated.

APPEAL TO THE REMOVAL REVIEW AUTHORITY (RRA)

[23] After the appellant’s appeal was declined by the first Authority panel, the DOL commenced the process of removing him from New Zealand. The appellant appealed to the Removal Review Authority (RRA) to overturn the decision to do so in December 2006. The RRA declined the appellant’s appeal in a decision delivered in November 2007.

THE APPELLANT'S SECOND CLAIM FOR REFUGEE STATUS

[24] The appellant lodged his second claim for refugee status on 5 March 2008. He claims that circumstances in Sri Lanka have changed since the final determination of his first claim on 13 December 2006, in that there has been a formal resumption of hostilities between the various factions in the Sri Lankan civil war since his first appeal was finally determined. He also relies upon a further incident which occurred in January 2008, when unidentified men attacked his parents.

FINDING WITH REGARD TO JURISDICTION

[25] The Sri Lankan Government formally withdrew from the ceasefire agreement with the LTTE in January 2008. While hostilities had begun incrementally before that time, the Authority is satisfied that the resumption of hostilities and the end to the ceasefire agreement between the government of Sri Lanka and the LTTE amounts to a change in circumstances sufficient to satisfy the jurisdictional requirement of s129O.

[26] Accordingly, the Authority has jurisdiction to determine the merits of the appellant's second appeal. His account is summarised below, and its credibility is assessed subsequently.

THE APPELLANT'S SECOND CLAIM

[27] The appellant decided that he would return to Sri Lanka after he received the decision declining his appeal to the RRA in early December 2007. When he expressed this intention to his father, the appellant's father told him to delay any decision about returning. The father wanted to return to Sri Lanka himself, from his place of work in the United Arab Emirates, to assess local conditions.

[28] The father returned to Sri Lanka in late December 2007. He collected the appellant's mother and sister from their hiding place in Colombo and, together, they returned to their home village in the west of Sri Lanka.

[29] During the early hours of the morning on 7 January 2008, several unidentified men forced their way into the family home and demanded to know the appellant's whereabouts. The appellant's father told them that the appellant was

overseas. The men responded by beating the appellant's father. His mother was also hit when she tried to intervene.

[30] The men did not identify themselves, nor did they say why they wanted to locate the appellant. The men issued a warning that they would "never forgive" the appellant and that he would be "punished severely". The appellant does not know who the men are or why they are looking for him.

[31] The appellant's parents were admitted to hospital overnight to receive treatment for their injuries. Before going to hospital, they lodged a complaint about the attack with the local police station. Police officers from that station came to the hospital to question them about the incident.

[32] After their discharge from hospital, the appellant's parents stayed with the appellant's uncle in a village some distance away from their own. After reflecting upon the attack, the parents decided that it was not safe for them to remain in the region. They sold their home in the village at the end of January and returned to Colombo, where they remain.

[33] Various further developments have underscored the appellant's predicament. The new owner of the appellant's former family home has told the appellant's uncle that the police return to the house from time to time. The police now suspect that the appellant and his family may be connected with the LTTE in some way. They wish to speak to the parents and they have delivered a notice requiring the appellant to attend for questioning at the police station. The uncle met with the police at the former family home in March.

[34] The new owner has also been visited by unidentified men who were looking for the appellant and his family.

[35] The appellant believes that he cannot safely return to Sri Lanka. He says that he will be readily identified at the airport upon his return because he no longer has a current passport. His previous passport expired in November 2006.

[36] Even if he were able to pass through the airport, the appellant believes that, as a young Tamil male, he will be stopped and questioned at checkpoints in Colombo. It will then become apparent that he has lost his National Identity Card (NIC). He claims that this would lead to him being detained, and that he would inevitably be mistreated by the police.

[37] The appellant also claims that the police wish to interrogate him about his supposed link with the LTTE and claims that he will be found and harmed by the unidentified men who attacked his parents in January 2008.

MATERIAL RECEIVED

[38] Counsel lodged a memorandum of submissions on 4 September 2008, prior to the second appeal interview on 9 September. Additional material was handed up to the Authority at the beginning of the interview. This included:

- a) an article downloaded on 8 September 2008 from the internet headed "Muslim fishermen abducted in Ampaa'rai" *TamilNet* (8 September 2008);
- b) a copy of a note from a doctor in Colombo, indicating that the appellant's mother is under treatment for asthma and anxiety;
- c) a copy of a photograph purporting to show the appellant's uncle being interviewed by a police officer;
- d) a two-page email, dated 4 September 2008, addressed to the appellant from the person who purchased the appellant's family home from his parents in January 2008;
- e) a copy of a police notice in Sinhalese (without translation); and
- f) a copy of a lease agreement entered into between the appellant's parents in respect of a residence in Colombo.

[39] During the morning of the appeal interview, it became apparent to counsel that she had further relevant documents in her possession, which she tendered. These included:

- a) a letter dated 3 March 2008, from the appellant's sister, together with a translation into English;
- b) a letter dated 2 March 2008, from the appellant's father to Immigration New Zealand, together with a translation into English;
- c) copies of two documents from a hospital in Sri Lanka, relating to treatment administered to the appellant's mother and father in January 2008; and

- d) a letter dated 2 March 2008, from the appellant's father to the appellant, together with a translation into English.

[40] Counsel had sought translations of some of these documents after the interview with the RSB in respect of the appellant's second application for refugee status. Despite notifying the RSB that the documents would be made available as soon as possible, the RSB published its decision before receiving those documents.

[41] Counsel then overlooked the existence of the documents in the lead-up to the second appeal interview. The Authority accepts that her oversight was inadvertent. It has had no substantive impact upon the outcome of the appeal.

[42] At the conclusion of the appeal interview, counsel was granted leave to adduce additional material and further country information. She was also invited to comment upon the content of the United Kingdom Home Office *Country Report: Sri Lanka* (June 2008) (the Home Office Report).

[43] Additional documents were forwarded to the Authority under cover of a letter dated 19 September 2008 from counsel. These include copies of three photographs said to depict the police officer investigating the complaint made by the appellant's parents following the attack in January 2008 and a letter, dated 16 September 2008, from another Sri Lankan attorney (the second attorney). The letter from the second attorney attached a copy of the complaint made by the parents in January 2008, together with a copy of the police warrant.

[44] In her letter, the second attorney confirms that she has been engaged by the appellant's uncle to attend at the police station in order to verify the complaint made by the appellant's parents, and the subsequent events.

[45] The second attorney confirms that she attended the Z police station and spoke to the officer in charge of the case. She verifies that a report was entered in the police complaint book and gave the serial number. She states that the police officer co-operated and showed her the original complaint and the warrant, copies of which have been provided. The second attorney also states that "due to lodging of the complaint, the local police wanted [the appellant] to be present at the ongoing investigation at the [Z] police station in the division of investigation in Sri Lanka".

[46] On 22 September 2008, counsel wrote to the Authority again, enclosing the original of the complaint made by the parents in January 2008, which had since

been received from the second attorney. Counsel also enclosed a translation of the complaint. It purports to be a complaint by the appellant's father following the attack at their house on 7 January 2008.

[47] On 23 September 2008, the secretariat of the Authority wrote to counsel to grant a further two weeks in which to provide any additional information. The letter contained the following paragraph:

"The Authority also notes that if any further country information is to be provided ... your covering submissions must identify the relevant extracts and the reasons why they are relevant to your client's appeal."

[48] Counsel wrote again on 30 September 2008. Her letter attached the original of the letter from the second attorney dated 16 September 2008 (a copy of which had been forwarded on 19 September). No submissions on the Home Office Report, additional submissions or country information has been provided.

THE ISSUES

[49] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:-

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[50] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

[51] Before turning to address the issues identified, it is necessary to determine whether the appellant is a credible witness. The Authority finds that he is not.

[52] For reasons set out below, the Authority finds that the appellant's second

claim is implausible and that his testimony was inconsistent in significant respects. The Authority rejects the appellant's claim that unidentified men attacked members of his family in January 2008 while trying to find the appellant. It also rejects his claim that those men have continued to seek information as to his whereabouts and his claim that the police have now taken an interest in the appellant as a result of their investigation into the attack on the parents.

RELIANCE UPON PREVIOUS CREDIBILITY FINDINGS

[53] Reference has already been made to the findings of the first Authority panel with respect to the appellant's credibility. Those findings were unequivocal. At paragraphs 58-60 of its decision the Authority found that:

"[58] The Authority is satisfied that the appellant's claims relating to the kidnapping of his brother in February 2004 by men believed to be from the LTTE who want to harm him because of his friendship with [XY], a fellow student, are not credible.

[59] The appellant has gone to considerable lengths in an endeavour to persuade the Authority that he is at risk of being killed by the LTTE because of his friendship with [XY]. His primary evidence in support of this contention was the kidnapping of his brother by members of the LTTE in retaliation for not being able to find the appellant. This claim, supported by much fraudulent documentary evidence, has been found to be untruthful. The Authority also rejects the appellant's associated claim of periodic visits to his family home by unidentified Tamil men who enquire of the neighbours as to the appellant's whereabouts.

[60] [XY's] unfortunate death, presumably at the hands of the LTTE, appears to have been used by the appellant as a pretext for claiming refugee status. In reality there is no credible evidence that the appellant is of any interest whatsoever to [XY's] killers because of his student friendship with [XY] or for any other reason." [Refugee Appeal No 75723 (13 December 2006)]

[54] The Authority is entitled to rely upon those findings for the purposes of determining the credibility of the appellant's second claim by virtue of Section 129P (9) of the Act, which provides that:

"In any appeal involving a subsequent claim, the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on any such finding."

[55] The Authority finds the reasoning of the first Authority panel to be persuasive. In all the circumstances of this second appeal, including the additional evidential concerns outlined below, the Authority finds that it is appropriate to rely upon the credibility findings of the first Authority panel. It therefore does rely upon them for the purposes of determining the appellant's second appeal.

THE APPELLANT IS AN IMPLAUSIBLE TARGET

[56] The appellant's second claim supposedly arose after an attack on his parents by a group of "unidentified" Tamil men. The appellant, however, tacitly asserts that the men *were* from the LTTE. In his written statement, dated 3 March 2008, the appellant stated that:

"LTTE is on one side and the Police are on the other side and my parents were confused and trapped between these two because of me".

[57] Nor does the appellant suggest that there is, in fact, any other Tamil group which views him with antipathy.

[58] It will be recalled that the first Authority panel found that the appellant had no political profile and rejected his claim to have been targeted by the LTTE, merely because of his friendship with XY.

[59] The appellant now claims that he is still the subject of adverse interest in Sri Lanka. That assertion must be viewed against the backdrop that, as the first Authority panel found, the LTTE did not, in fact, ever have any interest in the appellant. And there is no reason advanced to explain why the LTTE (or any other group) would develop an interest in the appellant during the time he has spent in New Zealand, or even to explain how they would learn of his existence.

[60] The appellant has spent only a short time in Sri Lanka since leaving for Malaysia in late 2002. It is implausible that the LTTE would have developed any interest in the appellant given the length of time which had elapsed. It is equally implausible that some hitherto unknown group has developed an antagonism towards the appellant which should suddenly manifest itself for the first time several years after he left Sri Lanka, despite his absence from the country and despite his lack of any political involvement. The appellant could not suggest any reason why such a group might now be looking for him. The sudden emergence of such an adverse interest in a person living in a country thousands of kilometres away is contrived.

[61] The appellant's account is also problematic in other respects.

CONTRADICTORY TESTIMONY

[62] At the beginning of the second appeal interview, the appellant identified two people in a photograph as his uncle and a police officer. He said that the

photograph was taken inside his family home in the village in March 2008, and asserts that it corroborates his claim that his family members had complained to the police about the attack which they had experienced in January of that year.

[63] However, the appellant told the Authority that his parents had sold their family home in the village in January 2008, several weeks before the photograph was taken. A copy of a document purporting to be a sale and purchase agreement of the house appears on the Immigration New Zealand file, recording this date.

[64] When the apparently anomalous timing was pointed out to the appellant, he did not suggest that his initial belief that the photograph had been taken in March was incorrect. Instead, he claimed that the police had arranged to meet his uncle at the family home, even though the house had been sold to a stranger.

[65] He could not explain why such an arrangement had been made, or why the new owner would agree to it. He also claimed that the photograph had been taken surreptitiously so that the police officer would not know, although again he was unable to explain why this had been done, or by whom.

[66] The appellant's evidence before the Authority was also contradictory in one other significant respect. The appellant claims that he no longer has a National Identity Card (NIC). However, he has given conflicting versions of how he came to lose it. The appellant told the Authority that he had brought the NIC to New Zealand in 2004, and said that he lost it when shifting house in New Zealand around the end of 2007. Yet when he was questioned by a refugee status officer only a few months earlier, the appellant stated that he had lost his NIC in Malaysia before he came to New Zealand in 2004.

[67] When asked to explain this discrepancy, the appellant insisted the version he had relayed to the Authority was correct. He explained that when he was interviewed by the RSB (and told the officer that he had lost the NIC in Malaysia), he "forgot" that he had actually lost the NIC in New Zealand several years later.

[68] It is implausible that the appellant would forget this. He had had the card in New Zealand for more than three years by the time it was supposedly lost. The Authority finds that it is more likely that the card is not lost but that the appellant is reluctant to disclose it, possibly because it records on its face the region of Sri Lanka from which he comes, as well as a wealth of other information.

THE ADDITIONAL DOCUMENTS PROVIDED BY THE APPELLANT ARE ALSO UNRELIABLE

[69] The appellant has produced various documents which purport to corroborate the account he put forward during his second appeal. These include, for example, letters from family members and the purchaser of his parents' home, medical documents and documents purporting to relate to the complaint lodged with the police station (the police documents) following the alleged attack on the appellant's parents in January this year. It also includes a letter from the second attorney confirming the veracity of the police documents.

[70] However, any consideration of the veracity of those documents must take into account the unequivocal findings of the first Authority panel in connection with the appellant's propensity for submitting fraudulent documentary evidence.

[71] It will be recalled that the first Authority panel relied upon the report of the DOL agent (repeated at para [51] of its decision and set out at [20] above) to the effect that after attending the police station in question and after inspecting the complaint books, it was apparent that no officers at that station bore the names identified by the appellant's family members, the complaints identified by the first attorney did not exist and the complaint form produced in evidence did not bear the signature of the actual officer in charge of that police station.

[72] The first Authority panel found that the documents tendered on behalf of the appellant were fabricated and could not be relied upon.

[73] The appellant has belatedly (after the completion of the second appeal interview) pursued a similar course of action by producing further documents purporting to be from another Sri Lankan lawyer. He has done so in an attempt to add weight to his claim that a complaint was laid with, and that a warrant has been issued by, the Sri Lankan police after the attack on his parents in January 2008.

[74] The Authority affords these documents no weight. A number of the Authority's decisions note that, because of the ease with which certain types of documentary evidence can be obtained in order to support refugee claims, findings as to the reliability of documents will usually follow findings with regard to the credibility of witnesses: *Refugee Appeal No 72570* (11 November 2002) and *Refugee Appeal No 75794* (23 May 2006) at [56].

[75] The appellant is not a credible witness. He has demonstrated that he is

prepared to give false evidence in pursuit of his claims for refugee status, including fabricated documents. In that context, and bearing in mind the implausible nature of the appellant's second claim and the contradictory manner in which it was conveyed, the documents are given no weight. This also applies to the photographs and the correspondence from the appellant's relatives, most of which tends to repeat the facts which the Authority has rejected.

SUMMARY OF FINDINGS

[76] The Authority finds that the appellant's second claim is not credible.

[77] The Authority rejects the appellant's claims that the LTTE (or an unidentified Tamil group) attacked his parents in early 2008 and that it is looking for him now. The appellant's claim that the police have now become interested in him is inextricably intertwined with his discredited claim to have been targeted by the LTTE or another group. It is also rejected.

[78] However that is not the end of the matter. The Authority's task is to assess the appeal on the basis of the facts as found, not upon the basis of the facts which have been rejected; *K v Refugee Status Appeal Authority* (High Court Auckland M No. 1586-SW99, 22 February 2000 per Anderson J).

[79] With that in mind, the Authority finds that the appellant is a Tamil Muslim from the west of Sri Lanka. He possesses a genuine Sri Lankan passport which, although it is now expired, the appellant is entitled to have renewed.

[80] The appellant's second claim will be assessed, and the Authority turns to consider the principal issues identified, on that basis.

OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO SRI LANKA?

[81] The term "being persecuted" has been interpreted by the Authority as the sustained or systemic violation of basic or core human rights, such as to be demonstrative of a failure of state protection. In short, international human rights law is relied upon in order to define the forms of serious harm which comprise "being persecuted"; see *Refugee Appeal No 74665* [2005] NZAR 60. The Authority also recognised in that decision that the concept of state protection is central to the definition of a refugee under the Convention. "Being persecuted" is therefore conveniently expressed as comprising serious harm together with the

failure of state protection; see *R v Immigration Appeal Tribunal; Ex Parte Shah* [1999] 2 AC 629, (653F) (HL) and *Refugee Appeal No 71427* (16 August 2000) paras [43] – [67].

[82] The risk of being persecuted is well-founded when there is a real (as opposed to a remote or speculative) chance, that it will occur; *Refugee Appeal No 76044* [2008] NZAR 719 (para [57]).

[83] The Authority now turns to consider the country information against which the risk to this appellant is to be assessed.

GENERAL OUTLINE OF COUNTRY CONDITIONS

[84] With respect to the current state of the conflict in Sri Lanka, it is uncontroversial to note that the ceasefire agreement (CFA) entered into between the government of Sri Lanka and the LTTE in February 2002 has come to an end.

[85] The process by which the conflict in Sri Lanka has resumed is analysed in various reports, including the *UNHCR Position on the International Protection Needs of Asylum-Seekers from Sri Lanka* (December 2006) (the 2006 UNHCR report). That report has been referred to in previous decisions of this Authority, including two specific decisions relied upon by the RSB in declining the appellant's second claim: *Refugee Appeal No 75313* (12 November 2007) and *Refugee Appeal No 76179* (10 March 2008).

[86] The UNHCR report identifies some circumstances in which individual Tamil Muslims might be recognised as refugees under the Refugee Convention. For example, where the asylum seeker is "subjected to targeted violations of human rights by the LTTE, the authorities or paramilitary groups"; if he is an informer, or if he is perceived to be opposed to the LTTE.

[87] However, the UNHCR report did not state that Muslims in Sri Lanka are generally at risk of being persecuted for a Convention reason, and in *Refugee Appeal No 75313* (12 November 2007) the Authority specifically found that:

"[97] There is no evidence on which we could reach the conclusion Muslim people as a whole, or generally have a well-founded fear of being persecuted in Sri Lanka or in a region of Sri Lanka."

[88] It continued:

[101] While a minority group, there are significant numbers of Muslim people in Sri Lanka. Neither the material provided, nor the Authority's own research, establishes that a Tamil Muslim male from the north-western region, for that reason

alone, is currently at risk to the extent that he has a well-founded fear of being persecuted. Muslims are a vulnerable group, but that does not meet the threshold for recognition as a refugee under the Convention.”

WHETHER THE APPELLANT IS AT RISK IF HE RETURNS TO HIS HOME VILLAGE

[89] The Authority has been provided with no country information, and it has found none through its own research, which indicates that a young Muslim Tamil male would, without more, be at risk of being persecuted for a Convention reason in the west of Sri Lanka, or elsewhere in Sri Lanka.

[90] Further, there is no credible evidence that the appellant has ever been at risk in the past, or that he would be at risk in the future, for reasons specific to him. The Authority has already rejected the appellant’s claims to be the target of the LTTE or any other group. It has also rejected his claim to be of interest to the Sri Lankan police or government authorities and there is no suggestion that he is an informer or perceived to be an opponent of the LTTE.

WHETHER AT RISK AS A RETURNEE WITHOUT A CURRENT PASSPORT OR NATIONAL IDENTITY CARD

[91] The appellant also claims that he is at risk because his passport has expired. Counsel submits that even the fact of applying for a new passport will draw attention to the appellant. She relies upon a reference in the Consular Services section of the website of the Sri Lankan High Commission, which indicates that Sri Lankan residents who do not have a valid visa to stay in New Zealand will have their passports restricted and endorsed “Only to return to Sri Lanka”. Counsel submits that the appellant will be questioned about why he left Sri Lanka and why he has been in New Zealand illegally. The appellant also claims that the Sri Lankan authorities will infer that he has been living unlawfully in New Zealand, and that he is therefore a failed asylum seeker.

[92] There is no country information which supports these submissions.

[93] Even if the appellant were to be questioned at the airport upon his return, the Authority finds that there is no evidence that Sri Lankan officials would infer that he is a failed asylum-seeker. Even if it were to come to light that the appellant has sought refugee status in New Zealand, there is no information available to the Authority which indicates that he would therefore be at risk of being persecuted in Sri Lanka.

[94] The following extract from the Home Office Report indicates that individuals are returned from the United Kingdom to Sri Lanka as failed asylum seekers as a matter of course. While some travel on a valid passport, others travel on emergency travel documents or temporary passports. The extract, which is taken from a letter dated 11 April 2008 from the British High Commission in Colombo, indicates that the lack of a passport (or a valid NIC) is not in itself problematic and nor is it insurmountable:

“[32.23] I am aware that a so called ‘catch 22’ situation has been referred to by returned failed asylum seekers. It is claimed that persons arriving in Colombo without a national identity card require such a document to enable them to travel to their areas of origin, in order to obtain documents to support an application for a replacement. It is further claimed that without an ID card a person faces a serious risk of problems or arrest at a checkpoint or as part of a cordon and search operation by police...Were a Sri Lankan national to arrive at Colombo Airport having been removed or deported from the United Kingdom, they would be in possession of either a valid national Sri Lankan passport, or an emergency travel document/temporary passport, issued by the Sri Lankan High Commission in London. The holder of a valid passport would have the document endorsed by the immigration officer on arrival and handed back to him/her. **A national passport contains the national ID card number on the laminated details page.** I have made enquiries with the Department of Immigration & Emigration at Colombo Airport, and with the International Organisation for Migration who meet certain returnees at the airport, and both have confirmed that a person travelling on an emergency travel document is dealt with similarly. They too have the document endorsed by the immigration officer on arrival and returned to them. Before issuing an emergency travel document, the Sri Lankan High Commission in London will have details of an applicant confirmed against records held in Colombo. **I have been informed that Sri Lankan passports and emergency travel document are acceptable as means of identification for presentation to police officers, whether at checkpoints or at police stations. If a returnee subsequently wishes to obtain a national identity card, they would have to follow the procedures ... [see Section 31] ... and produce the documents listed.”** (emphasis added).

[95] In the absence of any evidence or country information to the contrary, there is no reason to believe that the appellant would be treated in a manner any different than that suggested by the extract cited above.

[96] Counsel also submits that the appellant is at risk because he no longer has an NIC. Without this, she submits, the appellant will be unable to pass safely through checkpoints between the airport and Colombo. The Authority has rejected the appellant’s claim to have lost his NIC. It is clear however that even if he were to lose his card in the future, this would not create an insurmountable problem such that it would give rise to a well-founded fear of being persecuted. Indeed, the extract cited above makes it clear that a temporary passport is an acceptable substitute.

[97] According to the Home Office Report there is a process by which replacing

the card can be relatively straight-forward. The same letter from the British High Commission dated 11 April 2008 lists the documents which need to be submitted. They include a police report regarding the loss of the previous identity card, a Birth certificate or certified copies of relevant pages in the passport, documents showing the number of the lost identity card to demonstrate that this number has been used and five colour photographs.

[98] The writer of that letter expressly anticipates that the type of people applying for such documents would include returned failed asylum seekers and stated that:

“...Having visited personally the RPD Front Office in Colombo, I can confirm that it provides a fairly quick service to individuals in need of identity documents, because it recognises that many persons travel into Colombo from all over the country for this purpose.” [31.07]

SUMMARY

[99] The Authority has carefully considered the circumstances of the appellant. It has taken into account all of his characteristics, including the fact that he is young, Tamil and Muslim. It has taken into account the fact that his passport has expired, and has made provision for the possibility that he might lose his NIC notwithstanding that it has rejected his claim that this has already occurred. It has taken into account the fact that his home village is in the west of Sri Lanka, and that he would need to pass through Colombo if he were to return there.

[100] For all of the reasons outlined, the Authority finds that objectively, on the facts as found, the appellant does not have a well-founded fear of being persecuted in Sri Lanka.

CONCLUSION

[101] The first principal issue is answered in the negative in respect of the appellant. That being the case, the second principal issue does not fall for consideration.

[102] For these reasons, the Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. His appeal is dismissed.

"A N Molloy"
A N Molloy
Member