

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76018

REFUGEE APPEAL NO 76019

REFUGEE APPEAL NO 76020

REFUGEE APPEAL NO 76021

AT CHRISTCHURCH

Before:

R P G Haines QC (Chair)
C M Treadwell (Member)

Counsel for the Appellant:

E H Parsons

Appearing for the Department of Labour:

No Appearance

Date of Hearing:

17 and 18 April 2007

Date of Decision:

29 August 2007

DECISION BY C M TREADWELL

[1] The appellants are a couple in their early thirties and their two dependent children, from Sri Lanka.

[2] The husband is a Tamil and a Muslim, from Colombo. The wife is now also a Muslim, but was raised as a Roman Catholic, converting to Islam on marriage to her husband. She is half Tamil through her father, a Catholic, and half Sinhalese through her mother, a Buddhist. She chiefly identifies as a Tamil.

[3] It is predominantly the wife's evidence which forms the background to the refugee claims.

[4] The essence of the wife's claim is threefold:

- (a) she says that she fears reprisals from one AA, an LTTE member she knew in her youth in X town (a small town near Trincomalee), for rejecting his invitation to her to join the LTTE;
- (b) she says that she fears harm at the hands of two maternal uncles who are outraged that she has married a Muslim and has herself converted to Islam; and
- (c) she says that she fears harm at the hands of the Sri Lankan Army, who have suspected her in the past of support for the LTTE.

[5] As to the husband, he says that he fears harm at the hands of the Sri Lankan authorities for the following reasons:

- (a) as his wife's husband, he is likely to be harmed collaterally in the course of any harm she suffers, particularly because he would see it as his duty to protect her;
- (b) anti-conversion legislation is imminent, putting him at risk of being prosecuted for causing his wife to convert to Islam;
- (c) if forcibly returned to Sri Lanka, he would be readily identifiable as a deportee and would arouse suspicion; and
- (d) as a Tamil, he is at risk of random violence merely on account of his race.

[6] Given their mutual experiences, the appeals of all four appellants have been heard by the Authority together. The husband and wife gave evidence on behalf of all four appellants at the appeal hearing.

BACKGROUND

[7] The account which follows is a summary of the evidence given by the appellants at the appeal hearing. Because most of the background is said to have involved the wife, rather than the husband, the narrative necessarily reflects that. The claim of the husband – aptly described by Mr Parsons as “a mopping up exercise” – and the claims of the children are not, however, overlooked and all are addressed hereafter.

The wife's claim

[8] At the time of the engagement of the wife's parents, their marriage was opposed by her mother's family, because her fiancé was a Tamil Christian. Her maternal grandfather assaulted her father and two of her five maternal uncles, BB and CC, harassed and physically attacked him in their (unsuccessful) efforts to prevent the marriage. The couple married and lived in Colombo.

[9] At the time of her birth, the wife's parents went by the father's Tamil surname, DD. Following the communal riots in 1983, however, the family adopted a Sinhalese surname, EE, to try to avoid recognition of the wife's father as a Tamil.

[10] During the 1983 riots, the wife's family avoided any harm because her father was protected by a Sinhalese friend in the army. They did, however, give shelter to terrified Tamil neighbours and, on one occasion, the wife – then aged about six years – saw a man burned alive in a tyre.

[11] Following the riots, the family moved to the predominantly Muslim settlement of X town, a small town of some 50,000 people in the north east of the country. There, the wife's father established a fishing business.

[12] From the mid-1980s, the wife's father began to give monthly donations of 10,000-15,000 rupees to the LTTE, under duress. In 1990, when he attempted to stop making payments because of lack of money, he was assaulted by LTTE members who cut him on the arm with a knife so severely that he was hospitalised. As a result, the wife's mother sold some jewellery and they resumed making payments.

[13] In 1993, the wife, then aged about 16 years, met a Tamil youth named AA and began a relationship with him. In 1995, however, AA began espousing LTTE ideology and urged the wife to join the group. He wanted her to revert to her Tamil surname and to work for the LTTE as a cook and nurse aide.

[14] The wife, realising that AA was involved with the LTTE, severed all contact with him. When, at the urging of his friends, she twice met with him again, he threatened to kill her if she did not co-operate. In spite of the threats, she refused to assist the LTTE.

[15] The wife saw AA again by chance on a number of occasions in 1995 but they either simply exchanged brief pleasantries or did not speak.

[16] In 1996, the wife met the husband for the first time, when he visited X town on holiday, from Colombo. They struck up a friendship over several trips to the town by the husband and, in mid-1997, he and the wife decided to marry.

[17] The wife was aware that her marriage to a Muslim would not be received well by her maternal uncles, two of whom – BB and CC – were very conservative and she kept her engagement quiet.

[18] In early 1998, the husband travelled to Australia, where he began a course in computer studies. He returned to Sri Lanka briefly, in August 1998, in order to marry the wife.

[19] The couple were married in Colombo, with the wife converting to Islam immediately beforehand. As a Muslim, she formally took an Islamic name, but she has continued to be known by her original Christian first name.

[20] The wife's parents attended the wedding ceremony. Of the extended family, only one aunt was present, with the marriage being kept secret from everyone else, to prevent the wife's uncles learning of it. In September 1998, shortly after the wedding, the husband returned to Australia and the wife to X town.

[21] In June 1999, six soldiers in a truck came to the wife's family home and detained the wife on the grounds that (so they had been informed) she had had a relationship with an LTTE member and her father was known to have made donations to the LTTE.

[22] The wife was taken to an army camp, where she was interrogated for three hours. She was then told that she would be held for a further 24 hours and would be released only on payment by her family of a bribe of 20,000 rupees. A man was sent to inform her father of this. He paid the money promptly and she was released.

[23] Following this incident, the wife's father decided that the family could not stay in X town and so they sold the house and moved to Colombo. Even there, however, the LTTE regularly contacted the wife's father by telephone and told him that he was required to keep making donations.

[24] The wife resolved to join her husband in Australia and, so, applied for a passport. She destroyed all identity documentation which referred to X town and

obtained replacements referring to Colombo, because she feared that she would not get an Australian visa if she appeared to come from the north of the country.

[25] In July 1999, the wife departed Sri Lanka for Australia, on a false passport in the name of FF. She was accompanied by her 'agents', a couple also travelling under the name FF, who pretended to be her parents.

[26] About a month and a half after the wife arrived in Australia, she and the husband lodged applications for refugee status. The wife used her birth name of DD, but disclosed the various other names she had been known by, including the false name on which she had travelled.

[27] The refugee applications were declined at first instance and the couple appealed to the Refugee Review Tribunal. In the interim, they had two children (the third and fourth appellants in these proceedings), who were joined to their refugee claims because Australian law does not accord citizenship to the children of non-residents.

[28] The Refugee Review Tribunal declined the appeals in late 2002.

[29] Shortly thereafter, the wife was informed by telephone that her uncles, BB and CC, had learned from the aunt of her marriage and had vowed that they would kill the wife.

[30] While in Australia, the wife also learned of the death of her maternal grandfather in late 2002. She was told that he had gone to Y town to look for a new fishing business but did not return. His body was later identified at the Y town mortuary and it transpired that he had been shot and killed. The wife's father attributed the killing to the LTTE.

[31] At the same time, the wife's parents told her that they were continuing to receive telephoned threats from the LTTE, demanding that the wife's father resume making payments to them.

[32] In early 2003, the wife's parents travelled to Australia and sought refugee status.

[33] In 2004, the husband was caught working illegally. The wife was also detained when she attended an office of the Department of Immigration and Multicultural Affairs. After 40 days, the couple and their children were deported to

Sri Lanka, where they were interrogated rudely at the airport for five or six hours. They were not, however, detained and were permitted to enter the country.

[34] Back in Colombo, the family initially lived with one of the husband's sisters. They stayed indoors as much as possible, though the wife went out discreetly to undertake a hairdressing course, in order to set herself up in business. The husband did not work.

[35] After a month, the family rented the ground floor of a house in the affluent suburb of Mt Lavinia. There, they had high walls, barred windows and locked gates, as well as private security guard patrols. The house was owned by a high-ranking civil servant, who lived upstairs with his family.

[36] One night, at 2.00am, the husband and wife were woken by screaming and were told the next morning that the landlord had disturbed burglars who, he believed, were connected to LTTE supporters who had recently moved into the area from Canada.

[37] On another occasion, the electricity was cut at night and the couple heard further screams from upstairs, followed by the sounds of someone outside their own door. The intruders, however, made off without further incident.

[38] On another occasion, the husband was accosted by unidentified men when he took a taxi to a local shop. As he re-entered the taxi, the men approached and asked him for identification. When he threatened to call the police, the men decamped.

[39] As a result of these incidents, the husband and wife decided to leave Sri Lanka again and approached an 'agent' who was able to secure passports for them from the passport office for a bribe of 100,000 rupees. The passports were issued, in the couple's names, in July 2004. They also obtained false Sri Lankan birth certificates for the two children, so as to avoid having to reveal to the authorities in another country that they had been in Australia.

[40] In August 2004, the husband began a computer course in Colombo, which he finished in November.

[41] In early 2005, the husband was issued a New Zealand student visa and the wife and children were, separately, able to secure visitor's visas. They arrived in New Zealand in February 2005.

[42] On 16 June 2006, the wife lodged an application for refugee status. The husband and children lodged claims a month later, on 17 July 2006. The couple were interviewed by a refugee status officer on 8, 9 and 10 August 2006, on behalf of all four applicants. The applications were all declined in early February 2007.

[43] Since the appellants arrived in New Zealand, the wife's parents have left Australia and moved to India. Her father will not tell the wife their exact whereabouts, out of fear for their own safety. Her only sister moved to Australia in 2003 where, after lodging an application for refugee status, she has married an Australian national and is now applying for residence on marriage grounds.

The husband's claim

[44] According to the husband, he is at risk of serious harm for the following reasons:

- (a) As the husband of his wife, he is collaterally at risk of any harm directed at her by AA, the wife's uncles and/or the Sri Lankan Army.
- (b) A bill presently before the Sri Lankan parliament seeks to make the conversion of any person to another religion a criminal offence. The husband fears that he will be prosecuted for the conversion of his wife.
- (c) As a deportee, he will be suspected by the Army of having supported the LTTE from overseas and will be interrogated and harmed accordingly.
- (d) As a Tamil male, he is at risk of harm from Sinhalese members of the community, merely on account of his race.

Documents and submissions

[45] The Authority has been provided with a copy of the Refugee Status Branch files in respect of the appellants' applications.

[46] On appeal, the appellants have provided copies of the following documents:

Relating to the wife

- (a) The wife's birth certificate, recording her name as DD.
- (b) A letter in Tamil, sent by fax from Sri Lanka on 6 August 2006, from a friend of the wife, informing her:

"Received your letter.

Thanks.

Until now I haven't told anyone that you are in New Zealand. I and my family are keeping well. Likewise I pray God to keep you well.

Now situation in [X town] is getting worse. Because of the sound of the shells and mortar bombs from the nearest airport and the Army base in [Z area] and also the grenades from the Tiger base which are passing us, we are dying every day.

Severe fighting is going on in [W town]. People do not know where to go as refugees. They cannot go from [X town] and cannot come to [X town]. We do not know what will happen. Still we like to see you but it is not advisable to come to this country now.

Therefore drop this idea and pray for our health. I will write to you continuously about other things."

Relating to a medical examination of the wife's father in Australia

- (c) A letter dated 25 June 2004 from Dr Lightfoot to Dr Pullen.
- (d) A letter dated 23 September 2004, from the Royal Melbourne Hospital to the wife's father.
- (e) A letter dated 29 April 2004 from Central Melbourne Medical Imaging to Dr Lightfoot.
- (f) A letter dated 29 June 2004 from Dr Pullen to Dr Lightfoot.
- (g) A second letter dated 29 April 2004 from Central Melbourne Medical Imaging to Dr Lightfoot.

Generally

- (h) A bundle of articles of country information.

[47] Mr Parsons also made oral opening and closing submissions, which are taken into account.

THE ISSUES

[48] 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."

[49] 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

[50] Before considering the issues raised by the Convention, it is necessary to address the question of the credibility of the appellants' accounts.

[51] We are satisfied that much of the evidence given by the wife is not able to be relied upon. We have particular regard to the following:

The evidence of the wife

AA

[52] According to the wife, she first met AA in 1993, when she was aged about 16 years. Throughout her refugee claim, she has been quick to describe herself as having had "a relationship" with him. See, for example her statement (at p88 of the file) in which she wrote:

"In 1995, I broke up with my former boyfriend.... I told him to stop seeing me and that I wanted to end the relationship...."

[53] See also her refugee application form, at questions E2, E4, E7 and E8,

where she repeatedly described him as her “former boyfriend”. Further, at the subsequent interview with the Refugee Status Branch, she referred to their “relationship” and, on one occasion, even described it as “an affair” (see p331 of the file).

[54] The claimed intimacy of the relationship, however, does not withstand scrutiny. Asked by the Authority how often she had met AA between 1993 and 1995, the wife surprisingly asserted that she had met him at most six times, each time at a nearby grocery store and, on each occasion, they had chatted for approximately half an hour. That had been the sum total of their contact in the whole two years. The wife could not even say whether he had employment or not. A casual half hour meeting every four months cannot sensibly have qualified AA as a ‘boyfriend’, or the relationship as an “affair”.

[55] The point is an important one. From the outset of her refugee claim, the wife has painted herself as having been under significant pressure (and danger) from AA as a result of the closeness of their relationship – so much so that she asserted to the Authority that she was still afraid of him finding her, even when she was living in Australia. She would not attend Tamil functions in Melbourne out of fear that he might be there. The feigned closeness of the relationship, of course, also served to enhance the wife’s own moral principles in preferring to end her relationship with her boyfriend rather than join the LTTE.

[56] As to the wife’s claimed fear of AA, it is exaggerated to the point of absurdity. She told the Authority that she has not seen him since 1995. Given that she carried on living in X town until June 1999, without even seeing AA again, let alone suffering any harassment or harm from him, the notion that she should still be in fear of him today is beyond belief.

[57] Finally on this point, it is difficult to comprehend that the wife would have continued to live in the area for four years if she had really been at risk of harm from AA. Her father, to whom she “told everything”, was, she says, equally afraid for her safety – yet, astonishingly, he did nothing to remove his daughter from the seat of danger. The irrationality of that must be measured against the fact that, throughout this whole period, the appellant’s sister was at a boarding school in Y town, just north of Colombo, a fact which only emerged when the wife was compelled to admit that she would regularly travel alone, by train, to Y town to visit her sister.

The uncles

[58] Equally implausible is the wife's claim to be at risk of harm from her uncles BB and CC.

[59] It will be recalled that the arch-conservative Buddhist nature of the two uncles is said to have been evident as early as the engagement of the wife's mother to her father. At that time, the Authority was told, both her grandfather and her two uncles, BB and CC, physically assaulted her father in their efforts to avert the marriage.

[60] Initially, the wife told the Authority that, in the course of one assault during this period, her uncles had struck her father so savagely that he had had his jaw broken. When the Authority pointed out that her parents' marriage in 1978 meant that the uncles were, at best, 15 years and one year old respectively, the wife immediately changed her evidence, claiming that it had been her grandfather who had broken her father's jaw. Her uncles, she said, had beaten her father up when she was herself 15 years old. The speciousness of *that* claim, of course, is that the wife and her family had been living in X town for many years by the time she was 15, with her uncles living in Colombo. Further, she had been clear in her evidence that the assaults had all been directed towards preventing the marriage of her parents – an event which was well and truly a *fait accompli* by the time the wife was 15.

[61] Pressed to clarify the involvement of her uncles, the wife's evidence continued to evolve. BB had been a large 15 year old, she said and she claimed for the first time that he had been able to get four or five people together to attack her father. She had also witnessed, she said, her uncles beating her father when she was eight and again when she was fifteen. CC had been a large eight year old and had had a stick.

[62] Reminded that she had, in fact, told the Refugee Status Branch that her uncles had been on good terms with her parents, the wife could not explain this complete contradiction in her evidence except to blame her husband for writing her statement, notwithstanding that she speaks good English, that it was signed by her and that she had failed to avail herself of numerous opportunities to correct it.

[63] Other aspects of the wife's claimed fear of the uncles simply do not ring true either. It is implausible that, if she was so terrified of them that her own wedding

had to be kept from them at all costs, she nevertheless held the wedding ceremony in Colombo, where they live. Her equally implausible explanation was that her father had wanted the ceremony held there so that the subsequent application to the Australian Embassy for a visa would appear to show her as a Colombo resident. The marriage did not, of course, need to take place in Colombo in order for her address to be given as Colombo on the marriage certificate. Weighed against the claim that the two uncles would kill her if they learned of the marriage, the unnecessary holding of the ceremony in Colombo is implausible.

[64] It is nonsensical that the uncles would have been so outraged at the wife's marriage. It must be remembered that she was not a Buddhist herself, having been raised as a Catholic by her parents. The wife attempted to explain this away by asserting that her uncles had always tried to get her and her sister to convert to Buddhism but that does not explain the fact that they were content to allow her to remain a Christian for the first 21 years of her life, without resorting to violence or threats. That being the modest degree of their antipathy, the fact that she chose to convert to Islam would be unlikely to engender the outrage she claims.

[65] The conduct of the wife on their return to Sri Lanka from Australia is also not consistent with her claimed fear of her uncles. Far from remaining in her house, in hiding, and going outside only with her face covered, as she professed to the Authority, the evidence she produced at the time of her New Zealand visa application included a certificate for her attendance at a six month hairdressing course. Faced with this, the wife sought to distance herself from the certificate by claiming that she had only attended the course twice a week for "three months or less". She had, she claimed for the first time, paid the teacher to give her the certificate even though she had not finished the course. The other evidence of her hairdressing business which she had accompanied her visa application was, she said, false, save for its formal registration as a business. She claimed that she had not, in fact, cut anyone's hair, other than her own family and the woman upstairs. Reminded that her refugee application form asserted that she had run her own hairdressing business in Colombo for seven months, before coming to New Zealand, the wife had no sensible explanation, except to say that it would not have been for more than five months and was not done as a "business".

The Army

[66] There are numerous implausibilities about the wife's claimed detention by the Army in mid-1999, most notably the assertion that the Army knew of her "relationship" with AA between 1993 and 1995 and suspected her of LTTE sympathies as a result. The notion that, four years later, the Army would have any means of learning about a few sporadic conversations between the wife and another youth is simply absurd.

[67] The timing of the alleged interest by the Army is also highly convenient. At the point her detention is said to have occurred, the wife (in whom no other interest had ever been shown by the Army) was already planning to leave Sri Lanka for Australia. Further, within a few weeks, the entire family had been able to sell the house and move to Colombo and the wife had received her visa for Australia, leaving shortly thereafter. The alacrity with which that was accomplished suggests that the move to Colombo and the travel overseas was planned well before the wife's supposed detention by the Army.

Knowledge of other family members

[68] The wife's evidence as to the whereabouts and activities of her other family members is evasive and unreliable.

[69] According to the wife, her parents are now living in India, in hiding, and refuse to divulge their precise whereabouts to her, out of fear for their own safety. Although they speak by telephone on a monthly basis, it is always (so she says) the parents who ring the wife, so that they do not need to divulge their telephone number.

[70] The exaggerated fear inherent in this melodramatic evidence typifies the wife's claim. There is no sensible reason (and she could advance none when asked) why her parents should be so sensitive about their whereabouts as to refuse to tell their own daughter, in New Zealand, even the name of their city or town. It is a nonsense to suppose that giving such information to her could put them at any risk.

[71] The far more likely reason for the advancing of this unreal evidence is that the parents are not, in fact, in India at all. It is possible (but ultimately unnecessary) to speculate that they are still in Australia, illegally, and that the

wife's reticence over their whereabouts is to protect them from being located and deported. Wherever they are, it reflects poorly on the wife's credibility generally that she is willing to invent evidence to suit the occasion, notwithstanding the confidential nature of the appeal hearing and the requirement that she tell the truth.

[72] As to her parents' refugee claims in Australia, the wife professed to know little, notwithstanding that they had followed her to Australia and that her own claim was still pending there at the time. Asked by the Authority whether her parents had told her of any problems they had had from the uncles after her own departure in 1999, the wife stated, surprisingly, that she did not know. Pressed further, she realised the implausibility of this and, within minutes, had modified her evidence to say that her parents had, in fact, told her that they had had no problem from the uncles because she (the wife) was not in Sri Lanka.

[73] As to her sister, the wife told the Authority that she is presently seeking refugee status in Australia and has converted to Islam. As to why, however, the wife was inexplicably vague, initially professing not to know. When reminded that her sister was said to have lived with the husband and wife for some years in Melbourne, the wife realised the implausibility of not knowing of the cause of her sister's conversion in such circumstances and simply changed her evidence, giving a detailed account of her sister learning about Islam from her and deciding to convert as a result.

The death of the wife's grandfather

[74] It will be recalled that the wife says that she learned in Australia of her grandfather's murder in Y town in late 2002. Her father, she says, attributes the killing to the LTTE.

[75] Again, this aspect of the wife's evidence illustrates her propensity to embellish her account. By late 2002, the Cease Fire Agreement between the Sri Lankan government and the LTTE had been in full effect for a year. Hostilities had been suspended – so much so that the main highway north to Jaffna had reopened and public transport services had resumed. The suggestion that the LTTE would have been responsible for the murder of an unimportant, elderly man in the south of the country at that time flies in the face of the country information which reports a significant reduction in killings by the LTTE, and only in areas under its

control. The United States Department of State *Country Reports on Human Rights Practices: Sri Lanka* (February 2003), reporting on the previous year, stated, for example:

“Attacks by the LTTE killed civilians outside of LTTE-controlled areas in the past; however, there were no such confirmed reports during the year.”

[76] When the incongruity of such a murder by the LTTE occurring in a government-controlled area at that time was put to the wife, she could offer no evidence to support her assertion that the LTTE had been responsible, retreating behind the statement that she was simply repeating what her father had told her. Having seen and heard her at length, we are satisfied that the wife is intelligent and fully appreciates the potential advantage in attributing human rights violations to the LTTE, even where there is no objective evidence to support it.

The letter from the wife’s friend

[77] On being questioned by the Authority, the wife conceded that the letter from her friend had been written at the wife’s own instigation, to provide evidence that the wife had lived in X town. The friend had been the wife’s neighbour and had helped the wife organise her marriage. The wife described the friend as her “husband’s brother-in-law’s sister”.

[78] The letter is significant for what it does not say, rather than what it says. The self-serving tone of the letter and the wife’s admission that she solicited it make it clear that the writer well knew the purpose for which the letter was sought. Yet it is silent on many things of which the writer must know, including the wife’s detention by the Army in 1999 and the family’s immediate flight from X town thereafter.

[79] In fact, the letter is of little weight. It does not confirm that the wife ever lived in X town, let alone corroborate any of the events which the wife says happened to her.

Conclusion as to wife’s credibility

[80] We are satisfied, on the cumulative weight of the foregoing concerns, that the wife’s evidence cannot be relied upon. It is untruthful.

The evidence of the husband

[81] The starting point for an assessment of the credibility of the husband is that he distances himself from any personal knowledge of most of the claims made by the wife. According to the husband, he knew nothing of AA's threats to the wife in 1995, or of the extremes of her uncles' hatred until after his wife arrived in Australia in 1999 and told him. Until then, the husband says, he had never considered claiming refugee status himself. Even when they did claim it in Australia, his evidence was so inconsequential that he was simply 'attached' to his wife's claim and he was not even interviewed. His refugee application form and statement in New Zealand focus almost exclusively on his wife's claim.

[82] As to their time in Sri Lanka after being deported from Australia, the husband's evidence adds little to that of the wife. Like her, he seeks to make capital out of events which, when examined closely, have no relevance to any claimed fear. The 'taxi' incident, in which two unidentified men approached him but who then disappeared at the mention of the police, is a case in point.

[83] The husband also gave evidence of a riot in the town of Mawanella, a settlement on the road to Kandy, in which he says that Muslims were attacked and his uncle's shop destroyed. In fact, the riot in Mawanella, which occurred in 2001 while the couple were still in Australia, was not in any way connected with the present appeals and has no bearing on any future risk to the appellants. That fact, however, did not stop the husband cynically advancing the riot as if it somehow adds to his claim.

[84] Similarly exaggerated was the relevance of the 'break-ins' at the house in Mt Lavinia. Again, such commonplace, if regrettable, events are imbued with vague suggestions that the LTTE were responsible, notwithstanding the complete absence of objective evidence to support such assertions.

[85] As to this last point, the wife claimed that it could be inferred that the intruders were LTTE because nothing was taken. The husband, in contrast, told the Authority that a video camera was taken.

Conclusion on husband's credibility

[86] It is also concluded that the husband's evidence cannot be relied upon. The cumulative effect of his support for the wife's untruthful evidence and the

unreliability of his evidence in respect of the matters within his own knowledge lead us to conclude that his evidence, too, is not credible.

[87] Before turning to the children, it is necessary to address a number of other aspects of the claims by the husband and wife, to which issues of credibility are less germane because they arise from the couple's status – whether as Tamils, as Muslims or as returned deportees.

Freedom of Religion Bill

[88] The husband has advanced as one ground of his appeal the claim that he is at risk of being persecuted because of the imminent enactment of legislation prohibiting conversion.

[89] In fact, the proposed Freedom of Religion Bill (see the Sri Lankan Government Gazette of 27 June 2005 for the text of the bill) has not yet been enacted. According to the Annual Report of the United States Commission On International Religious Freedom (May 2007), at p253:

“The JHU bill was sent to a parliamentary standing committee for discussion. After elections in November 2005, newly-elected President Mohinda Rajapaksa prorogued parliament, thereby annulling all bills going through any stage of the process of being enacted by parliament, including the JHU's bill on religious conversion. It later came up once more before parliament and was referred again to a parliamentary standing committee, where it has reportedly been since April 2006.”

[90] Even if the bill does become law, Article 13(6) of the Constitution of Sri Lanka prohibits penal legislation of retrospective effect:

“(6) No person shall be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence, and no penalty shall be imposed for any offence more severe than the penalty in force at the time such offence was committed.

Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”

[91] The wife's conversion having occurred in 1998 and there being nothing in the “general principles of law recognized by the community of nations” which criminalises conversion, there is no prospect of the husband being prosecuted under the Act, even if it comes into force.

[92] We leave unanswered the question whether such prosecution would, in any event, be persecutory.

Return as a deportee

[93] It will be recalled that the husband also claims that he is at risk of serious harm as a returned deportee. He says that he will be readily identifiable as such. Presumably, he implies that his wife and children are equally at such risk.

[94] It is accepted that the Sri Lankan airport authorities will be aware that the family have been involuntarily removed from New Zealand as overstayers, if they do not elect to return voluntarily. Even so, past experience indicates that there is no real chance of any of them suffering serious harm at the airport. When they were deported from Australia in 2002, the most that the husband and wife suffered was to be questioned rudely for some hours, before being unconditionally released.

[95] We accept that such questioning is likely to be unpleasant and possibly even humiliating, but it does not approach the level of harm inherent in the “sustained or systemic denial of basic or core human rights, such as to be demonstrative of a failure of state protection” – the yardstick by which “being persecuted” is to be judged. See J C Hathaway, *The Law of Refugee Status* (1991) at pp.104-108, considered and adopted in *Refugee Appeal No 2039/92* (12 February 1996) and *Refugee Appeal No 71404* (29 October 1999). Nor is there anything in the evidence to suggest that their reception would be any different now.

[96] We reject the suggestion that any of the family would be identifiable in the street as a returned deportee, or even as people who have been living overseas. Even if, for some as-yet-unexplained reason, they could be so identified, there is nothing in the country information, or on the appellants’ evidence, to suggest that such people are at risk of anything more than a remote chance of being mugged. Such a speculative risk falls well short of the “real chance” level.

Generalised risk of harm as a Tamil

[97] The husband also claims that the appellants are at risk of serious harm simply because they are Tamil. That proposition is rejected.

[98] We are aware that some Tamils from the north, found in Colombo without cause, have recently been rounded up and bussed back to the north (“Police evict Tamils from Colombo” at http://news.bbc.co.uk/2/hi/south_asia/6729555.stm). However, the Tamil population in Colombo is substantial, with areas such as Wellawatte being predominantly Tamil. The husband and wife carry identity cards which record them as coming from Colombo, not from the north and the husband is well-qualified in the IT industry and will have no difficulty finding work. Further, they are Muslims – a group not habitually predisposed towards the LTTE. In short, beyond being Tamil, they do not have the hallmarks of persons likely to be suspected of being LTTE members or even sympathisers.

[99] We also accept that, since the resumption of hostilities in 2006, security measures such as roadblocks and house-to-house searches have resumed in Colombo. Like all Tamils in Colombo, the husband and the wife will both suffer inconvenience and discrimination as a result. That intrusion into their lives, however, falls short of “being persecuted” by a demonstrable margin.

The Manel Mal Movement

[100] Brief mention must be made of the Manel Mal Movement. In the course of their applications to the Refugee Status Branch, the husband and wife referred to the existence of the Manel Mal Movement as increasing the degree of risk to them from the LTTE. Describing the Movement as a “pure anti LTTE movement”, they stated that it was supported by members of the Muslim community, thus raising the level of antipathy by the LTTE towards Muslims.

[101] At the appeal hearing, however, the husband professed little knowledge of the Manel Mal Movement and indicated that it was not relevant to their refugee claims in any way.

[102] For the sake of completeness, we note that country information suggests that the Manel Mal Movement is a Sinhalese initiative, providing support to persons who have lost civilian family members during the conflict. The husband confirms that he and his wife are not members and we agree with the husband’s assessment that the group has no relevance to the present refugee claims.

The children

[103] For the children, both born in Australia, the husband and wife advance the concern that the children are neither citizens of Australia nor Sri Lanka. It is suggested that they are thus stateless and at risk of serious harm.

[104] The Authority has been asked to infer that because the children were born in Australia therefore they will not be regarded as citizens of Sri Lanka. But no evidence has been produced as to the domestic law of Sri Lanka relating to the citizenship status of children born outside Sri Lanka to parents, both of whom are citizens of Sri Lanka. It would be surprising indeed to find that such children were not eligible for Sri Lankan citizenship, particularly where, under the relevant overseas law (here, Australia) the children are not regarded as citizens of the place of their birth. At no time since the birth of the children have either the husband or the wife tested the issue by seeking to register their children as Sri Lankan nationals, a step not taken even during the period they lived in Colombo following their removal from Australia. The false Sri Lankan birth certificates were obtained for the purpose of concealing from the New Zealand authorities the fact that the family had lived in Australia for a number of years, not because the children were unable to be registered as Sri Lankan citizens.

[105] Whether or not the children are *de jure* stateless, the reality is that the Sri Lankan authorities presently recognise them as Sri Lankan nationals – they are included in the wife's passport. The wife says that this is only because she and the husband paid a bribe in Sri Lanka to have their births falsely registered there and produces copies of both their Australian birth certificates and the false Sri Lankan ones.

[106] Even if, on later examination by the Sri Lankan authorities, it proves that the children's Sri Lankan birth certificates incorrectly record them as having been born there, the fact is that they presently have the right of entry to Sri Lanka accorded to them by their inclusion on their mother's passport. Further, given that Sri Lanka was their last place of habitual residence, it is appropriate for the Authority to assess any prospective risk against that country, whether because they are recognised as nationals or as stateless individuals.

[107] The only other suggestion put forward as to why the children might be at risk of serious harm in Sri Lanka is the assertion that the LTTE recruits child soldiers and the children (still both under five) are at risk for that reason.

[108] It is accepted that the LTTE forcibly recruits children as soldiers. That criticism of their activities has been a central plank of international condemnation of the LTTE for many years. It does not, however, carry any implication that either of the children on this appeal are at any risk.

[109] The reality is that the LTTE recruit Tamil children from within their own area of influence – the north and east of the country – where they are able to intimidate families into surrendering one or more children as a ‘quota’. The LTTE do not operate openly in the south, except for sporadic attacks and none of the voluminous country information reviewed by the Authority over the years suggests any pattern of forcible recruitment of children from Colombo. The appellants themselves produce no information to that effect. Of the country information they produce which does refer to child recruitment, the following are the only references to the recruitment of children, and all refer to the north and east:

“The LTTE has called for a three-month compulsory military training for all children in un-liberated areas in Wannī....”

– Govt of Sri Lanka *Press Release*, 8 September 2006

“Three young girls who have survived an air force strike on a LTTE run center [called] Sencholai have contradicted UNICEF, Sri Lanka monitoring Mission and Tamil [Nadu] assembly and said it was indeed a training center that gave military training to [schoolchildren].”

– *Lanka Web News* “Three Girls Who Survived Sencholai Say It was a Military Training Institution”, by Walter Jayawardhana (date unknown, accessed 18 October 2006)

“The LTTE continued to recruit children, extort ‘taxes’ and harass civilians in the north and east....”

– *BBC Sinhala.com*, “Both Parties Violate Rights – UK Government”, 13 October 2006

“The [Coalition to Stop Use of Child Soldiers] today deplored continuing forced recruitment by the Karuna group, which broke away from the [LTTE] in March 2004....”

The Coalition also condemned ongoing child recruitment by the LTTE. Recruitment appears to have decreased from mid-2005 and this was a positive development. However, at least 50 cases a month have been reported during the first six months of 2006 and recent information suggests child recruitment may be occurring in LTTE-controlled areas in the north.”

– Govt of Sri Lanka *Press Release* (date unknown, accessed 18 October 2006)

[110] The consistent pattern clearly remains the recruitment of children from LTTE-controlled areas in the north and in the east (where the Karuna faction operates).

[111] We are satisfied that there is no real chance of either of the children being forcibly recruited by the LTTE, given that they will be able to live with their parents in Colombo.

CONCLUSION

[112] For the foregoing reasons, we find that none of the appellants is a refugee within the meaning of Article 1A(2) of the Convention. In each case, refugee status is declined. The appeals are dismissed.

"C M Treadwell"

C M Treadwell
Member