

Neutral Citation Number: [2008] EWHC 3360 (Admin)  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT

Case No CO/5832/2008

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Monday 3 November 2008

B e f o r e:

MR JUSTICE PITCHFORD

**THE QUEEN**  
**on the application of**

**VATHANA YOGESWARAN**

**Claimant**

- v -

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Defendant**

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**Mr J Gillespie** (instructed by Kidd Rapinet Solicitors,  
London WC2N 5AD) appeared on behalf of the Claimant  
**Mr R Wastell** (instructed by the Treasury Solicitor)  
appeared on behalf of the Defendant

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**J U D G M E N T**  
**(As Approved by the Court)**

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Monday 3 November 2008

**MR JUSTICE PITCHFORD:**

1. The claimant is a Tamil and a native of Sri Lanka whose parents have already been granted asylum. She entered the United Kingdom on 24 January 2007 and claimed asylum on the following day. Her father was associated with the LTTE organisation in Sri Lanka. That formed the successful basis of his claim.
2. On 1 February 2007 the claimant's asylum and human rights claims were rejected. On 19 April 2007 her appeal was dismissed. Her application for reconsideration was refused by the Senior Immigration Judge and subsequently by Davis J under section 103A of the Nationality (Immigration and Asylum) Act 2002.
3. On 4 December 2007, following the country guidance decision in LP [2007] UK AIT 00076, the claimant's solicitors made representations that the claimant should be treated as making a fresh claim for asylum. However, it is apparent from the letter that the representations lacked detail, which was surprising given the approach approved by the court in LP.
4. On 6 May 2008 the Secretary of State responded with a detailed consideration of the LP factors, declined to treat the claim as fresh, and maintained her refusal.
5. The claim form was issued on 19 June 2008 and supported by detailed grounds. The application was refused by the single judge on 11 August 2008.
6. Summary grounds for renewal of the application contended that the senior immigration judge failed to give due consideration to LP.
7. The subject of the claim and the present application is the failure of the Secretary of State to treat the representations of 4 December 2007 as a fresh claim.
8. The findings of the immigration judge at the appeal appear in paragraphs 73-84 of the determination. The question posed at paragraph 74 was this:

"My task is to assess what risk, if any, she would be subject to should she return to Sri Lanka. I am aware that the respondent will not remove her even if her appeal is dismissed for a good few months yet because she will be given time to give birth and to adapt to motherhood before being removed. Accordingly, she will return to Sri Lanka with a young baby."

The immigration judge accepted that in her home area of Trincomalee, the claimant had been the subject of attention both of the LTTE and of the Sri Lankan army. He accepted that she had been detained for a time and had managed to escape. Her evidence was that her husband had received demands for money from the LTTE. Her husband had been attempting to satisfy those demands when he went missing. She has not seen him since.

9. In the original grounds the claimant relied upon the following features of her case in particular, which, it was argued, would make her susceptible to attention by the authorities upon return to Sri Lanka. The first was the acceptance by the immigration judge of the previous involvement of the claimant's father in the LTTE and, to the extent that I have indicated, the involvement of her husband. It was argued that, as a failed asylum seeker, it was likely that on return the claimant would be questioned. If she answered truthfully, the involvement of her relatives would be revealed, as also would her detention by the army. As a result, the claimant would be suspected of involvement in the LTTE herself and liable to be detained.

10. The immigration judge's conclusions in these respects were that the claimant would indeed be at risk in her home area of Trincomalee. The possibility of relocation in Colombo was considered. In this regard, the question posed was whether the claimant would be perceived as being an LTTE supporter or sympathiser. The conclusion reached was that the claimant herself had not in the past had any problems arising from her father's involvement. It was not accepted that she would have such problems on passing through Colombo airport on return. It was improbable that the authorities at Colombo airport would be in receipt of any information about the apparently informal detention of the claimant before she left Sri Lanka for the United Kingdom. Accordingly, there was nothing which would obviously draw attention to her. At paragraph 80 the immigration judge continued:

"This leads to the possibility of her being picked up in random searches or sweeps by the authorities of youths suspected of association with the LTTE. On this point I take account of the fact that the appellant is a woman and would be accompanied by a baby, and consequently I do not consider that she would be seen as fitting the profile of an LTTE activist or sympathiser (indeed she has had nothing to do with them before). I therefore consider it unlikely that if she remains in Colombo she would be targeted for detention in this way. Moreover, the objective evidence indicates that those who have problems with establishing their identity are particularly at risk. The appellant can guard against this by recovering her passport from her home and carrying it with her. (If she was so targeted, then she would succeed in this appeal since the objective evidence indicates that she would be likely to be tortured in detention.)"

The immigration judge went on to decide that it would be possible for the claimant reasonably to resettle in Colombo. That is a finding which has not been the subject of submissions before me.

11. Mr Gillespie, who represents the claimant in the present application, drew my attention both to certain paragraphs in the judgment in LP and to the Country of Origin Information Report published by the UK Home Office Border Agency on 11 June 2008. In particular Mr Gillespie drew my attention to paragraphs 80 and 86, in which the Asylum and Immigration

Tribunal described the evidence of the expert, Dr Smith. At paragraph 80 they noted Dr Smith's view that:

"The appellant's previously stated status as a recorded LTTE suspect means that he is almost certainly to be of interest to the authorities ...."

At paragraph 86 they noted:

".... Dr Smith also expresses the view, based on a recent interview with a senior intelligence officer off the record, that once details of the detainee have been entered into the database they remain there for life and that even if a detainee was released from a camp without charge, the system will identify them on return."

Mr Gillespie submitted that the information provided in the latest COIR suggested that conditions in Sri Lanka, and of particular relevance to the current application Colombo, were deteriorating. He pointed to reports at paragraph 8.26 of the arrest of several young women; at paragraph 8.30 arrests apparently carried out simply on the grounds that those arrested were Tamil, notwithstanding they were in possession of valid identity cards. He submitted that it was irrational for the Secretary of State to seek to rely on and to support the conclusion of the immigration judge that this young woman would not fit the profile of a supporter or sympathiser of the LTTE merely because she happened to have with her a young child.

12. On behalf of the Secretary of State it is observed that she is not criticised for posing the wrong question, but that complaint is made that she reached the wrong conclusion. This court must consider whether, in approaching the right question, the Secretary of State reached an irrational or unreasonable conclusion. First, it is submitted that the claimant herself has, in fact, no record of involvement with the LTTE. Secondly, it is submitted that the finding of the immigration judge that while temporarily and informally detained by the army no record would have been made was a conclusion to which the immigration judge was entitled to come and which the Secretary of State was entitled to take into account when considering the question whether there was a real prospect of success upon appeal. Thirdly, the claimant should be able to obtain evidence of identity on return by recovering the passport which she left behind. There is no clear reason, therefore, why her return with her child to Colombo should result in any adverse focus.

13. As I have said, the question I need to ask is whether it is reasonably arguable that the Secretary of State could not on the information available to her have reached the conclusion that, taking the latest country information together with the facts found by the adjudicator, there

was no real prospect on appeal. I cannot help but have sympathy with the claimant's personal predicament, but I find myself in agreement with the single judge. It is not demonstrated that the decision reached by the Secretary of State was arguably unreasonable or irrational. For that reason the renewed application must be refused.

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