Heard at Field House
On 25 June 2002

Appeal No HX/55774/2001
PT (Risk-Bribery-Release) Sri Lanka CG [2002] UKIAT 03444

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified
5TH AUGUST 2002

Before

Mr S L Batiste (Chairman)
Mrs J Chatwani

POOPALASINGAM THARMAKULASEELAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant, a citizen of Sri Lanka, appeals, with leave, against the determination of an Adjudicator, Mr J H Bryan, dismissing his appeal against the decision of the Respondent on 7 April 2001 to refuse leave to enter and refuse asylum

2. Ms S Taylor represented the Appellant. Mr J P Jones, a Home Office Presenting Officer, represented the Respondent.

The Proceedings To Date

3. The Appellant claimed to fear both the Sri Lankan army and associated bodies such as PLOTE, and also the LTTE, if he should be returned to a part of the country controlled by it. He never joined the LTTE but he and all his family were supporters and helpers, who attended rallies between 1993 and 1996, helped the wounded, dug trenches and occasionally sheltered LTTE members in their home. All the family members had been arrested at one time or another. The Appellant lost his identity card in 1995 and gave no evidence of having sought to obtain another. The Appellant was arrested on various occasions. On 23 October 1996 he was arrested with his mother in a round up. He was taken to an army camp in Vavuniya and was detained for 11 months before he was released on the payment of a bribe. During this detention he was severely tortured by being suspended upside down and being forced to inhale petrol fumes, and by being

burned with cigarette butts. In 1997 he was arrested on two occasions. On the first he was detained at the police station for one day. On the second occasion he was detained by PLOTE and held for one to two weeks and ill treated, before being released on payment of a bribe. He claims he was arrested for a fourth time in March 2000, and after his release made arrangements with the help of his mother and his family to leave the country.

4. The Adjudicator found that some core elements of this claim lacked credibility because there were numerous serious inconsistencies between the various accounts given by the Appellant of the problems he encountered in Sri Lanka and when they occurred. The Adjudicator gave details of the inconsistencies both in his recital of the Appellant's claim and in his findings and reasons. As a result, the Adjudicator accepted as credible only a part of the claim. He found that the Appellant lost his identity card in 1995 and he and his family were displaced as a result of the fighting in the early 1990s. He found the Appellant was not a member of the LTTE but an active supporter, who attended rallies and demonstrations and assisted the LTTE, even to the extent of harbouring its members. He concluded therefore that the Appellant had nothing to fear from the LTTE in the event of his return.

5. With regard to his claimed fear of the government, the Adjudicator found that the claimed arrest in March 2000 was a fabrication and that the Appellant left Sri Lanka in the late autumn of 1999. He accepted that the Appellant was last arrested in 1997 and that he and his family then moved to an LTTE controlled area to avoid further problems with the army, especially as the Appellant did not have an ID card. He found that there was serious doubt about the reason why the Appellant left Sri Lanka in late 1999, as his last arrest was some two years earlier. He found his account of his journey to Colombo and his exit through Colombo airport to be improbable. He did not make any specific finding about whether the Appellant paid a bribe for his first release from the army.

6. He then found, in the light of the facts as established, that the Appellant would not now be at any material risk of ill treatment on return from the authorities. In reaching his conclusion he found that it was not reasonably likely that the Appellant's name would appear on any wanted list. If he was a serious suspect he would not have been released twice even on payment of a bribe. He did not consider that the Appellant's visible scars would lead to him to be perceived as an LTTE member or supporter. His position was no different to that of other young Tamils living in Government controlled areas. He made an assessment of the ceasefire, though of course in February 2002 it was still in its infancy.

7. Leave to appeal was granted on three bases. The passage of time would allow a firmer assessment of the ceasefire. The Tribunal may wish to revisit the decision in Vasu on the significance of release from detention on payment of a bribe. The Adjudicator's assessment of the Appellant's scars should be reviewed.

8. We heard submissions from Ms Taylor and Mr Jones on these three issues, which are set out in the record of proceedings and we have taken them into account, along with the documents submitted by them. We then reserved our decision, which we now give.

The Ceasefire

9. We first considered the current position regarding the ceasefire and the peace process. Some 4 months have now passed since the date of the hearing. In May, after leave to appeal had been granted in this appeal, the Tribunal made a detailed assessment of the up to date material on the ceasefire in **Brinston [2002] UKIAT 01547**. We have similar material before us, with the addition of some more recent evidence generated over the last month.

10. Whilst we accept that previous ceasefires in Sri Lanka have broken down, we agree with the Tribunal in Brinston that the present peace process is operating at a more substantial level than before and has created a material change in the circumstances in that country. Of course we have no crystal ball to enable us to foretell the future and there may be difficulties to come. There have been some minor incidents to which Ms Taylor has referred us. There are mutual suspicions. Full negotiations in Thailand are due to start shortly but have slipped somewhat as the parties strike negotiating positions. However the first direct talks between the Sri Lankan government and the LTTE in 7 years took place on 21 May 2002, during which they discussed ways to return conflict areas to normality and speed up the implementation of the ceasefire agreement. The LTTE chief negotiator, Anton Balasingam, in an interview on 4 June 2002 referred to the positive element of the current peace process as being that the ceasefire has held for the last four months without any major incidents of truce violations.

11. Ms Taylor has urged us to regard the delay in getting the full negotiations under way as potentially destabilising. We do not agree. We consider that the continuing observation of the ceasefire without major mishap, and the progress made thus far, suggests that the stability of the process remains reasonably robust, even if negotiations may inevitably take time as the parties jockey for position. There is a real change in realities in Sri Lanka.

12. As to the extent of that change on the ground, we can see no good reason, with the benefit of a further month of experience, to disagree with the broad acceptance by the Tribunal in Brinston of the evidence, referred to in the March 2002 CIPU visit report, from the Sri Lankan CID and from UNHCR, through its Sri Lanka Protection Officer and its London office.

13. The Senior Superintendent of the Criminal Investigation Department in Sri Lanka is recorded as stating as follows

> "6.1 The Director explained that if a returnee were not wanted they would not be stopped at the airport. However, when the CID are certain that the individual has committed or been convicted of an offence then they would be stopped. A computer holds the name, address and age of a wanted person. The police purely go on records – scars would not make a difference and the authorities would not make a decision on this basis.
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> 6.2 We were told that there had been no round-ups of Tamils in Colombo in the last six months.
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> 6.3 The Director thought that the Human Rights Commission (HRC) was very effective. The HRC are able to visit and make enquiries. Therefore the procedures are open and investigated and the police are not able to do anything untoward.

6.4 The Prevention of Terrorism Act (PTA) is still in force. The government are seriously considering repealing the Act, and there has been an order not to make any arrests under the PTA, only under common law. [This is part of the text of the cease-fire agreement]. The CID is now allied with the Ministry of the Interior and the Director felt that this was a positive move as the police were now more closely linked to the public.

6.5 Failure to comply with reporting restrictions would not warrant reporting or recording."

14. We take into account the possibility that some of the comments on behalf of the CID may to some extent have been self-serving, and the PTA is still in force and being used for subordinate legislation. However, if what the Superintendent said in March about relaxations at Colombo and the Airport were materially untrue, we would have expected the emergence, in the three months, which have passed, of some significant contradictory evidence. There is none before us. Ms Taylor suggested that the position was complex and UNHCR did not have adequate monitoring resources. However the background material shows opinions from various sources and there is a Human Rights Commission. If there were material untruths these would by now be apparent.

15. This view is partially corroborated by the UNHCR evidence, also cited in Brinston. Their Sri Lankan Protection Officer, Mr Lindenbauer, is quoted as saying

> "Checks on returnees at the Colombo Airport have been eased with many returned rejected asylum seekers simply being waived [sic] through since December 2001. This is in sharp contrast to what happened previously where basically every returnee was referred to CID and thereafter referred to the magistrate in Negombo in order to carry out relevant checks, where they were necessary. Most returnee cases that underwent this process were released on the same day. Scarring is not seen to be a significant issue, although obvious scarring could draw attention and result in further enquiries and detention by the authorities."

16. The letter from the Deputy Representative of the UNHCR in London of 15th April 2002 specifically indicates that it does not seek to be inconsistent with the position taken by Mr Lindenbauer and offers an overview in these terms.

> "Although steps towards peace have been taken in Sri Lanka recently, it is still premature to advocate that the situation has reached a satisfactory level of safety to warrant the return of all unsuccessful asylum applicants to Sri Lanka. In this regard, UNHCR has been aware that returning Tamils are potentially open to risk of serious harm similar to those generally encountered by young male Tamils in certain circumstances. This risk may be triggered by suspicions (on the part of the security forces) founded on various factual elements relating to the individual concerned, including the lack of identity documents, the lack of proper authorisation for residence and travel, the fact that the individual concerned is a young Tamil male from an 'uncleared' area or the fact that the person has close family members who are or have been involved with the LTTE. . . . In UNHCR's view, the presence of torture related scars on the body of a returnee should be a relevant consideration in assessing likelihood of danger upon the return of Sri Lankan Tamil asylum seekers. Where such scars are related to human rights abuses, they would likely be seen

> as evidence of the security forces previous interest in the particular individual. This could in turn serve to trigger further adverse attention to that individual. While every case should be assessed on its own merits, UNHCR would reiterate its view that special care should be taken in relation to the return of failed asylum seekers to Sri Lanka."

17. This advice has been amplified by UNHCR in London in a letter dated 13 May 2002. This states that

> "UNHCR's advice revolves around the fundamental principle that in matters of status determination as well as removals each case deserves individual consideration on its own merits. Our approach has been to highlight the need for this principle to be observed in the Sri Lankan context and to stress that despite recent prospects for peace the principle remains valid and should continue to be applied to unsuccessful Sri Lankan asylum seekers. This approach is based on the view that where a decision to remove is principled and carefully taken on an individual basis it is defensible and less open to challenge and the asylum seeker's return is more likely to be durable. . . In the light of the current situation in Sri Lanka we reiterate UNHCR's view that removal decisions should be based on careful consideration of individual circumstances."

18. In sum, the UNHCR advice suggests that there have been improvements for returnees but it is premature for all unsuccessful asylum applicants to be returned to Sri Lanka as yet. It properly restates the long established need to examine each case on its own merits. This was supported by the Tribunal in **Jeyachandran [UKIAT] 01869**. We agree. There is cause for optimism but it is premature to accept that every Tamil who has claimed asylum in the UK can as yet safely return. The examination of each case on its merits necessarily includes the need to consider a person's police/security record as well as the significance of torture related scars, to which we now turn.

Release from Custody on Payment of a Bribe

19. The grant of leave suggested that the Tribunal decision in **Vasu 01/TH/10431,** might need to be revisited. Ms Taylor in her skeleton argument and oral submissions suggested that it did not. She cited **Paramalingham 01/TH/ 03535** and **Sivakumar 00/TH/02306**. Mr Jones disagreed and cited **Amalathaasen [2000] UKIAT 01308** and **Karanakuran 01/TH/00339.**

20. Of course as the Tribunal held in Paramalingam, each case has to be decided on its own facts. However that is not inconsistent with the ability to extract some general propositions rooted in the background material and in common sense as was done in Amalathaasen.

21. When someone has been in custody for a significant period of time it is reasonable to presume that some record was made of the detention and this record may still exist and be available for inspection by the authorities. If the record does still exist one may also reasonably presume that it includes a reference to the individual's current status. By this we mean whether he is currently wanted by the authorities, or whether his release concluded the authorities' adverse interest in him. These presumptions are supported by

the statement from the CID superintendent, set out above, that their computer only holds the name and address and age of wanted people. We also note in passing that this record kept by the CID does not include people who failed to comply with reporting restrictions after a release.

22. It is then frequently argued on behalf of Appellants that the payment of a bribe means even in relatively routine cases there was an assisted escape rather than a release and this will mean that the escapee is on the wanted list. This argument found some support in the decision of the Tribunal in Vasu. It held that

> "Whilst we accept that release on bail indicates that the person concerned is no longer any serious suspect, the Secretary of State accepts that this Appellant was irregularly released from detention on payment of a substantial bribe. How the Officer concerned would have recorded the release is necessarily a matter of speculation. We do not accept that after a prolonged period of detention it is likely there will be no record of his detention. That would involve destroying or falsifying official records built up over a period of some six weeks. We consider that it is more likely there will be some recorded explanation as to why the Appellant is no longer in custody and this might be either that he has escaped or has been released on the basis of insufficient evidence against him. The underlying point is that the real reason will not be recorded."

23. We accept Ms Taylor's point that this subject must to some extent be based on speculation, as said in Vasu, as people are not going to admit freely that they were bribed. However some clarification was offered by the report by CIPU on its visit to Sri Lanka on 14-23 March 2002, part of which was quoted in Brinston. The report also quotes UNHCR as stating that

> "Cases of escapes from army custody are not known to UNHCR although there have been reports of people held in police custody who have allegedly escaped. Obtaining release from army custody on the payment of a bribe appears to be a possibility; it is possible that such releases would be recorded as an official release without charge."

24. This evidence is not wholly unequivocal in its terms but it reinforces the view taken by the Tribunal on common sense grounds in Amalathaasen that

> "It seems to us that it is highly improbable to say the least that a police officer, releasing a man on payment of a bribe, would record it as an escape. There is certainly no need to do so. If the police wanted to keep an interest in him all that was necessary was to note that he might be of interest in the future. Normally if someone is released on payment of a bribe or otherwise it is indeed because the authorities take the view that there is no good reason to detain him even if there is some involvement with the LTTE at a very level."

25. We agree and conclude, in the light of the UNHCR observations, that bribery related releases, especially from army custody, would not, in the absence of some special and credible reason, be likely to be treated as escapes, and would not result in the inclusion of the individuals involved on a wanted list.

26. Indeed one can realistically go further than that. The background material shows that bribery is widespread in Sri Lanka, even though the government is trying to control it.

The extent of this bribery culture is inevitably speculative but what it can mean is that, even in relatively routine matters, some officials may expect to receive a payment from interested parties - even if they are only being asked to do what they might otherwise ordinarily be expected to do in the course of their work. Thus the mere fact of the payment of a bribe does not in itself imply that the bribe is procuring action, which would not otherwise in time be taken. Nor does it necessarily imply that the person bribed would be willing to take a serious personal risk by for example releasing a suspected terrorist. Payment of a bribe on a release may mean nothing more than that a person in detention who is no longer of adverse interest to the authorities may be expected to offer a bribe to his custodians to initiate the release procedure.

27. Having said that, each case has to be decided on its own facts. There may be examples where bribery has procured an assisted escape. However in routine cases that would require some clear and plausible explanation, when common sense suggests that the easier and less risky method is by official release with appropriate paperwork.

Scars

28. The commonsense approach to scars and the risk generated by them on return by failed asylum seekers, has been well assessed in many Tribunal decisions. It has been stressed in decisions like **Iyangaran [2002] UKIAT 0191**, that scars should not be considered in isolation. The issue is whether and to what extent the relaxing of the security arrangements in Colombo following the ceasefire should be part of that consideration. The material new factors are as quoted above in the March CIPU visit report arising from the comments of the CID Superintendent and UNHCR.

    1. Checks on returnees at Colombo airport have been eased with many returned rejected asylum seekers simply being waved through.
    2. If a returnee was not wanted he would not be stopped at the airport.
    3. Scarring is not seen to be a significant issue although obvious scarring could draw attention and result in further inquiries and detention by the authorities.
    4. Most returnee cases undergoing checks were released on the same day.
    5. There is complete freedom of movement in the Colombo area.

29. As Ms Taylor argued, each case must turns on its own facts and the normal risk factors have to be assessed in each case, but we consider these new developments are material in reducing the general level of risk and should be taken into account in any assessment. They also serve to focus on the importance of whether a returnee is on the wanted list.

Assessment of Appeal

30. We now apply these principles to the facts of this appeal. The Adjudicator found that the Appellant and his family were active supporters of the LTTE in the North. He was arrested and detained on three occasions in 1996 and 1997 by the army, the police, and PLOTE. He was tortured in detention. His last release followed the payment of a bribe and we consider it probable, though the Adjudicator made no finding on this matter,

that the first release was also accompanied by the payment of a bribe as claimed. However on none of these occasions was the Appellant ever charged. His releases were not even subject to reporting conditions, and there is no credible evidence that he remained on anybody's wanted list after his last release in early 1997. The Adjudicator found, and we accept, that the Appellant fabricated his account of an arrest in 2000 and of his flight through and from Sri Lanka, in order to embellish his claim for asylum here. He would now be returned to Sri Lanka on emergency travel papers in the changed circumstances, and would be able to obtain proper documents for himself.

31. As there was some question over the significance of the Appellant's scars, the Tribunal examined them, though it appears that the Adjudicator did so as well. Irrespective of whether the Appellant's scars would be visible by reason of his clothing, we consider that if the scars as a whole were seen by a security officer on return, they would not now arouse suspicion or create material risk for him. Many scars are small and faded and barely noticeable, and in aggregate they are relatively insignificant, especially to a non-medical observer.

32. Taking the evidence as a whole and in context, we reach the same conclusion as the Adjudicator that the Appellant would not face persecution or a breach of his human rights on return to Sri Lanka, or whilst arranging his travel to his family home in the North, or in the North itself, if that is where he wants to live. Having said that, if he so chose, he could also remain in Colombo without difficulty.

33. For the reasons given above this appeal is dismissed.

Spencer Batiste
Vice-President