

Heard at Field House
On 30 April 2003
Written 30 April 2003

VS (Risk-LTTE-Escape) Sri Lanka CG [2003] UKIAT 00003

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

. 28.05.2003..

Before

Mr S L Batiste (Chairman)
Ms S S Ramsumair JP
Mr M L James

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, Miss J Beale, dismissing her appeal against the decision of the Respondent on 13 July 2001 to refuse leave to enter and refuse asylum
2. Before us, Mr D Adams, instructed by Sri Kanth & Co, represented the Appellant and Mr J Gulvin, a Home Office Presenting Officer, represented the Respondent.
3. The Appellant's claim is that in November 1988 he was forcibly taken from his home by armed members of the EPLRF, an armed Tamil militia, supporting the government and operating with the Indian army. He received military training was transferred to a camp. However in August 1989 the camp was attacked by the LTTE and many were killed. When the fighting stopped the Appellant surrendered along with many others. He was forcibly recruited into the LTTE but refused to fight. He therefore undertook low-level functions such as cooking, guard duty, buying food and working in a food store. He was released from the LTTE in 1995, during the ceasefire at that time. In 1996 he got married and they have two children. When the ceasefire collapsed the LTTE wanted him back, but he went into hiding from them. On 2 July 1999 he was caught up in a military action. He tried to escape but the army fired at him wounding him in the right thigh. He fell and they arrested him. He was detained but not taken to court. On 12 February 2000 a bribe was paid and he was released. The army told him that they would announce he had escaped and if he were to be caught again they would

shoot and kill him. They told him to go away and live somewhere in hiding. He went to a relative's house but about six days later he was arrested by members of PLOTE, another Tamil pro-government militia. They also threatened to shoot and kill him, but his relatives paid money and he was released after nine days. After that he decided to flee to the UK. His wife and children remained in Sri Lanka.

4. The Adjudicator concluded that the Appellant was a substantially credible witness. He accepted that, when the army released him, he was told that they were recording this as an escape and if they found again they would kill him. He thought this seemed improbable but he accepted it nevertheless, and having regard to the low standard of proof he accepted also that there was a reasonable likelihood that the release was recorded as an escape. He further noted that PLOTE practised extortion and it was possible that they knew the Appellant's family had bribed the army to release him, and it was possible that PLOTE believed the explanation that the army said it would publicise that the Appellant had escaped from lawful custody. They wanted to get some money out of his family as well, and having got that they released him.
5. However the Adjudicator went on to note that the Appellant had never been charged with any offence, nor had he ever admitted to the army that he had worked for the LTTE. In the light of the objective evidence concerning the circumstances now prevailing in Sri Lanka he concluded that there was no reasonable likelihood that he Appellant would now on return be at any real risk of persecution or a breach of Article 3. If there was unrest in the East where his mother and siblings lived, he might not wish to return there, but he would be in no danger of persecution or a breach of Article 3 in Vavuniya or Vanni where his wife and children live, or in Colombo.
6. Leave to appeal was granted to consider whether the claimant would fall within the exceptional category of asylum seekers described by Collins J. in *Jeyachandran* [2002] UKIAT 01869, by virtue of his having been listed as an escapee from custody. In this respect the Appellant was relying upon the decision of the Tribunal in *Arulselvam* [2002] UKIAT 05465.
7. Mr Adams also at the hearing sought to argue that the peace process itself was in doubt because according to a recent news report the LTTE had withdrawn from formal negotiations. However the Tribunal is familiar with this evidence and also the statement from the LTTE that the current withdrawal would not last long. The Tribunal considers that there are bound to be some ups and downs in the negotiating process, but nothing in these recent events indicates that the substantial progress made so far in the peace process is in any material way at risk.
8. With regard to the substantive point upon which leave was granted, Mr Adams argued that the Tribunal in *Arulselvam* had held that a person who had escaped from military custody would for that offence alone be of serious interest to the military authorities and this would make him an exceptional case within the terms of *Jeyachandran*. Thus Mr Adams invited this Tribunal to overturn the Adjudicator's determination and conclude that the Appellant would be entitled to refugee status.
9. Mr Gulvin acknowledged that there had been no cross-appeal against the Adjudicator's findings of fact but invited the Tribunal to note that the Adjudicator who had heard the appeal had come to the conclusion in the light of the evidence as a whole that the

Appellant, given his history and record, would not now be at risk on return. This conclusion was in line with another determination by a different Tribunal in Kamaleswaran [2002] UKIAT 07370. In this, a Tribunal comprising two legal members assessed an appeal on equivalent facts to our appeal, where a person who had only been involved in assisting the LTTE in low-level ways, actually escaped after a year of detention during fighting nearby. It concluded that whilst human rights abuses were not at an end in Sri Lanka it was impossible on the evidence not to conclude that the peace process is so far advanced that even if there are isolated outbreaks of violence it is unlikely to disrupt the peace process to any permanent degree and nothing could be gained by the Sri Lankan authorities seeking to harm someone such as the appellant on his return. If confirmation were needed, the return of 45 deportees from the Netherlands seems to afford it.

10. The reference to the deportees from the Netherlands is to the report in the objective material that 45 failed asylum seekers had been forcibly returned by the Netherlands to Sri Lanka and had been monitored. They had experienced no difficulties on or following their return.
11. We have considered the submissions made to us in the context of the evidence. We have also noted the observations of the Court of Appeal in Selvaratnam [2003] EWCA 121, concerning the correct approach for the Tribunal to follow. In Selvaratnam, the applicant had signed a confession as to LTTE activity, as well as having escaped after a lengthy detention. Buxton LJ stated in paragraph 11, having approved of the approach adopted by Collins J. in Jeyachandran,

“Had the Tribunal asked themselves a question that specifically directed itself to this Applicant rather than to the situation in general, I find it difficult or impossible to accept that they could have come to a conclusion other than this Applicant was at a sufficient level of danger on return to Sri Lanka and that there was about his case a sufficient likelihood that he might be detained to bring him within the provisions of the Refugee Convention.”
12. We consider it is dangerous to try to decide individual cases on the basis of the facts in others, as has been urged upon us both by Mr Adams and Mr Gulvin. The general proposition by Collins J. in Jeyachandran that people who are wanted in a serious way by the authorities would still be at risk is plainly right. If a person is actively wanted it almost inevitably must follow that he will be at real risk of being taken into detention on return, where he will be at risk of ill-treatment. However we do not consider we can also take as a general proposition that any escape in the past, in any circumstances (or in the case before us a possible deemed escape), must necessarily qualify the escapee for refugee status on a similar basis. The reality is that prior to the ceasefire, activities on behalf of the LTTE, even low-level activities under duress, attracted serious adverse attention from the authorities. Following the ceasefire, the authorities have withdrawn the proscription of the LTTE and suspended the Prevention of Terrorism Act. They are no longer materially concerned about past low-level support for the LTTE. There is therefore no valid reason why as a general proposition, all escapees should now be at risk, especially if they were in detention only as a consequence of low-level activities for the LTTE in the past, and their records will reflect this. However each case must turn upon its own facts.

13. We have looked at the specific facts of the appeal before us and asked the question whether, in the light of the current state of the ceasefire and peace process, this Appellant, with his history as described above, would be at any real risk of persecution or breach of Article 3 on return, or thereafter. This is the approach adopted by the Adjudicator and we reach the same conclusion on the evidence as he did. The fact that the army was prepared to release the Appellant on payment of the customary bribe shows that they even then had no real interest in holding him, or he would not have been released even for a payment. Bribery assisted releases have been held in many recent Tribunal decisions, such as Thiarajah and Balichandran, to demonstrate this. This is reinforced by the fact that he had not been charged with any offence despite having been in detention for some months, and had not confessed to anything. This is what his record will show, even if it also shows falsely that he escaped. We can see no good reason why the authorities would have today in these circumstances any continuing adverse interest in the Appellant. There is no error in the determination.
14. For the reasons given above, this appeal is dismissed.

Spencer Batiste
Vice-President