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Heard at Field House on:

SV (Passport Renewal) Sri Lanka
CG [2003] UKIAT 00125

13 October 2003

Prepared on:

13 October 2003

IMMIGRATION APPEAL TRIBUNAL

notified:

Date Determination

31.10.03

Before:

MR RICHARD CHALKLEY (CHAIRMAN)
MRS A J F CROSS DE CHAVANNES

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Miss C Bayati, of Counsel, instructed by M K Sri& Co, Solicitors, appeared on behalf of the Appellant.

Mr L Parker, a Senior Home Office Presenting Officer, appeared on behalf of the Respondent.

DETERMINATION AND REASONS

1. The Appellant, a citizen of Sri Lanka, appeals with leave of the Tribunal against the Determination of an Adjudicator, Miss E A Mozolowski, who in a Determination promulgated on 2 April 2003, following a hearing at the Hatton Cross Hearing Centre on 17 February 2003, dismissed her appeal against the decision of the Respondent, taken on 16 May 2001, to refuse to vary her leave.
2. The Grounds of Application for leave to appeal were lengthy. They assert that the Adjudicator's decision in respect of the Appellant's asylum claim was wrong, first because the Adjudicator believes that having renewed her passport at the Sri Lanka High Commission in London the Appellant will no longer be of any interest to the Sri

Lankan authorities; second because the Adjudicator's assessment of what would happen to the Appellant on return was flawed and not in accordance with the objective evidence; and third because she failed to consider the risk to this Appellant as a result of the authorities' knowledge that she had allowed the LTTE to use her garage, attached to a house which she inherited, as a printing shop for the production of propaganda material. The Grounds suggest that there was no evidence to believe that the High Commission in London at the relevant time had access to information as to whether individuals are wanted by the Sri Lankan authorities, and neither was there any evidence before the Adjudicator as to what checks and investigations are carried out prior to the renewal of a passport. The mere renewing of a Sri Lankan passport by the Sri Lankan High Commission in London was not, it was submitted, evidence that the Appellant is no longer of any interest. The Adjudicator failed to have regard to Dr Good's report as to what is likely to happen on return and to evidence from UNHCR that as a family member of someone having links with the LTTE, this Appellant would be of interest on return. The second basis on which the appeal was brought related to the Appellant's rights under Article 8 and asserted that the Adjudicator erred in failing to consider whether the Appellant and her daughter had a private or family life in the United Kingdom and if so, whether removal would amount to interference and if it did, whether such interference was proportionate, assuming it was in accordance with the law and in pursuance of a legitimate aim.

3. Miss Bayati helpfully addressed us at some length. She reminded us that it was in fact the Appellant's brother-in-law who renewed the Appellant's passport while she was living in Botswana. In the objective bundle now before the Tribunal was a copy of a 1998 Danish Immigration Service Fact-Finding Mission to Sri Lanka which dealt with the submission of applications in issuing a passport by the authorities in Sri Lanka. The Danish report suggested that the possibility for a wanted person to have a passport issued was quite high since, whilst Immigration do receive reports from the police and from the courts regarding wanted persons, it was not possible to go through all these lists every time a passport was issued. The Netherlands embassy stated that it was impossible to prevent a passport from being issued to a wanted person if it is to be issued in just one day. It was wrong, Miss Bayati suggested, for the Adjudicator to assume that merely because the Appellant's passport was renewed by the Sri Lankan High Commission in London, that she was of no interest to the Sri Lankan Authorities.
4. The Appellant's late husband had a high profile in an LTTE cell in Botswana and it is very likely that he will be known to the Sri Lankan authorities as having had LTTE involvement abroad. The Adjudicator had evidence before her that additionally, the Appellant's garage was used by the LTTE, initially as a crèche, but later as a printing shop for the production of LTTE propaganda. The Adjudicator erred additionally by discounting the evidence of Dr Good on the basis that the Appellant had her passport renewed. It was a serious possibility

that on return to Sri Lanka that the Appellant would be referred to the CID. The authorities would have an interest in her late husband and activities on behalf of the LTTE whilst he was abroad. Family members of those having links with the LTTE are said by UNHCR still to be at risk. However, this Appellant herself actively supported the LTTE and there is evidence that the Authorities were aware that she had allowed her garage to be used by them. Given her background and that of her family members, Miss Bayati submitted that the Appellant would be at risk on return.

5. Dr Good's report suggested, submitted Miss Bayati, that the Appellant would not be allowed to return to Jaffna since Dr Good's report showed that things were far from normal in the North and that almost 30 per cent of the Jaffna peninsula still lies within the high security zone to which its former Tamil population are denied access. Dr Good reported that the situation in Jaffna is now "worse and tenser" than it was six months ago, prior to the break down of the peace talks. There has been an increase in the number of check points which in turn has led to tension and harassment of women if no female soldiers are on duty at these checkpoints. In paragraphs 75 and 76 there is evidence that with the increase in check points has increased soldiers' harassment of females. This will increase the risk to the Appellant.
6. So far as her claim under Article 8 is concerned, Miss Bayati confirmed that paragraph 8 of her Grounds dealt with the factual situation. The Appellant's two older children are students, both at university. They both have applications outstanding. One application is for asylum and the other is under Article 8. There are, in addition, extended family members of the Appellant living in the United Kingdom. In Sri Lanka, the Appellant has a brother living in Vavunya and one in Jaffna. She herself has been in the United Kingdom since 1998. Her two sons arrived in the United Kingdom before her. The Appellant came with her daughter who is now aged 19 years. The Appellant's daughter is still at school but there are no reports. Miss Bayati confirmed that apart from the matters referred to by the Adjudicator at paragraph 31 of the Determination, the Appellant enjoys good health and is not in receipt of any medication. The Appellant enjoys a private and family life in the United Kingdom and any interference with it would be disproportionate. She invited the Tribunal to allow the appeal.
7. Commenting on the Danish Fact-Finding Report, Mr Parker for the Respondent asked us to note that it related to the issue of passports in Colombo, not those issued by the Sri Lankan High Commission in London. The High Commission in London would have had more than sufficient time to properly consider the application for the renewal of the passport and it was open, Mr Parker submitted, for the Adjudicator to make the findings which she did. The Danish Report could have been placed before the Adjudicator at the hearing but was not. The UNHCR letter of 30 January 2003 says:-

'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 residents and travel, the fact that the individual is a young Tamil from an "uncleared" area or the fact that the person has close family members who are or who have been involved with the LTTE.'

He asked us to note that the letter referred to:

*'the fact that the person and the type **has** close family members who are who have been involved with the LTTE'* .[the emphasis is ours]

8. The Appellant has not had close family members involved with the LTTE, since her late husband's tragic death. The garage had been used as a crèche and then later as a print shop for producing material on behalf of the LTTE but, this Appellant had been out of the country for most of the time since 1978. He submitted that the authorities would hardly have expected the Appellant to have controlled the use of a garage when she was actually living abroad and had been for many years.
9. Paragraph 4.67 of the Country Information and Policy Unit Report refers to the fact that the leader of the LTTE Cultural and Social wing has been permitted to address a public gathering in Jaffna. The authorities would have regarded the use of the garage as a printing shop as a part of the LTTE's cultural activities and, were the garage still in existence today, the authorities would not stop its use by the LTTE.
10. In relation to the Appellant's Article 8 claim, she arrived in the United Kingdom independently of her adult sons, who arrived before her. The nature of her family life is changing. Her sons are now at university and have been for some time. In contrast, the Appellant has two of her siblings in Sri Lanka with whom she is in touch and on whom she can rely for emotional support. Having previously lived for some years in both Uganda and Botswana, the Appellant is clearly capable of adapting to new surroundings and would have no difficulty, he suggested, on her return to Sri Lanka. In all the circumstances, the interference with her rights under Article 8 would be proportionate. He invited us to dismiss the appeal.
11. In her closing remarks to us, Miss Bayati acknowledged that the Danish report related to applications for passports from the authorities in Sri Lanka, but pointed out that the report was dated at about the same time as the Appellant's passport was renewed in the United Kingdom. The garage in question is owned by the Appellant and it is the fact that the authorities became aware of the use of the garage by the LTTE as well as her late husband's involvement with the LTTE which would cause her to be at risk now. The Appellant's garage was burnt by the authorities, but her house remains. Counsel also suggested that whilst the Appellant had shown that she was able to adapt to living in Botswana and Uganda, that was at a time when she had her husband's support and before she had any children. She

is now comparatively young but, it is suggested, at an age where it will be more difficult for her to adapt to a new lifestyle.

12. We reserved our Determination.
13. We have concluded that we must dismiss this appeal and set out our reasons below.
14. We have paid particular attention to all the evidence in the Appellant's bundle and not just to that part of it to which we were referred by Counsel. We have noted that in her statement of 1 October to which we were not referred, the Appellant points out that her daughter was aged 13 when she arrived in the United Kingdom and has only ever twice visited Sri Lanka before. On the first occasion she was only aged one and on the second occasion she was ten. She can not read or write Tamil and has lived more years in the United Kingdom than in Sri Lanka and will have difficulty in settling into a different culture. We have noted from the Reuters Foundation Report of 4 October 2003 that thousands of protestors have marched on Colombo to denounce a Government bid to strike a deal with the Tamil Tigers. These protesters were from opposition and Buddhist parties who accuse the Government of making too many concessions which could eventually lead to a separate Tamil state in the North and East of the island. Although no date has been fixed the peace talks which broke down in April are due to start again. The prologue report at page 2 in the bundle reported that the protestors who marched in the capital argue that the Norwegian-led peace initiative, aimed at ending three decades of ethnic blood shed is damaging the country and opening the flood gates for foreigners to exploit the island's natural resources. The TamilNet report, in describing the demonstration, suggested that there were widespread clashes between the army and the crowds and that civilians were injured.
15. We found the extract from the Danish Fact-Finding Mission to Sri Lanka of little assistance to us. It specifically related to the issuing of passports by the authorities in Colombo itself. It referred to some one thousand passports being issued daily in Colombo. We have also carefully read and taken account of Dr Good's report. He referred to the police and army carrying out numerous round-ups in Colombo, especially after the killing of a senior CID intelligence officer by the LTTE. He referred to one round-up alone in which some six hundred Tamils were detained. He does point out in his footnote that his informants, a Sri Lankan lawyer, a Sri Lankan attorney and founder of 'Forum for Human Dignity', an EPDP parliamentary candidate and another attorney who is also MP for Jaffna district, all rejected police claims that criminals, rather than Tamils, were targeted in these round-ups. He does, however, acknowledge that the general crime rate in Colombo has been rising, attributed largely to army deserters of whom there are said to be some fifty thousand. He reported there had been some twenty-seven criminal gangs operating in Colombo. In referring to the Jaffna Peninsula, he described some thirty per cent of it lying within High Security Zones to which its former Tamil

population are denied access. It was not made clear to us whether the Appellant's home was in one of those High Security Zones or not.

16. Also submitted on behalf of the Appellant was what was described as a 'personal bundle'. Counsel indicated to us that pages 93 to 100 dealt with evidence relevant to the Appellant's Article 8 claim. Included was a copy of a letter from Abbey National Plc of 11 November 2002 referring to a mortgage on her home; a copy of a Land Registry official search, the significance of which was not explained; a letter from Northolt High School of 29 January 2003 relating to the Appellant's daughter, confirming that she is a full-time member of the sixth form studying at GNVQ Advanced level; a letter from City University in relation to the Appellant's son, Jeyasuthan, who is a full-time student studying for a BEng Degree which he is due to complete on 24 June 2005; and a copy of a letter from Kings College London relating to the Appellant's son, Vijayanesan, who is enrolled on a BSc degree which he is expected to complete on 1 June 2004. We are also supplied with a copy of a gynaecological discharge summary which was undated, but which related to the Appellant's discharge on 9 December 1998 and an extract from a letter from the Department of Obstetrics and Gynaecology at Northwick Park Hospital dated 25 November 1998. Counsel had already indicated to us that the Appellant's medical condition is as set out in paragraph 31, namely that she is in receipt of medication for migraines, raised blood pressure and has gynaecological problems. The Adjudicator did not consider that whatever the Appellant's medical treatment was, that it could not be obtained in Sri Lanka. Counsel did not seek to persuade us that the Adjudicator's finding was wrong.
17. In a thorough and detailed Determination, the Adjudicator noted in paragraph 24 that the Appellant was able to renew her passport through her brother-in-law in the United Kingdom by application to the Sri Lankan High Commission in London. She found the passport (which has since expired) was validly renewed and found that this was an indication that the Appellant was not of any interest to the Authorities. It was on this basis that she did not accept the contention that the Appellant would be of any interest or at any degree of risk of arrest, detention, torture or killing if she were to be returned. We agree with her. The evidence before us gives us no reason to believe that the Adjudicator's conclusions were wrong. Whilst we accept that the authorities in Colombo may issue a thousand passports a day, we have assumed that the resources in Colombo will be far greater than they are at the Sri Lankan High Commission in London. However, we have no reason to believe that any checks which are ordinarily done on applicants who seek to have their passports renewed at the Sri Lankan High Commission in London are any less thorough than checks made in Colombo. Indeed, we believe that if the Appellant was of any outstanding interest to the authorities she will have been known to have been outside the country and, were the authorities interested in her, we believe that they would have alerted their High Commissions abroad to the possibility that she might seek to renew her passport or apply for a

new one. If, as Counsel had suggested, the Appellant's husband was known by the authorities in Sri Lanka to be high profile and active in raising funds for the LTTE abroad, we believe the authorities would have specifically notified its overseas High Commissions. We accept, as it pointed out in the Grounds, that there is no evidence to suggest that the High Commission in London at the relevant time had access to information as to whether individuals are wanted by the authorities and we accept that there was no evidence before the Adjudicator as to what checks and investigations are carried out. However, we do not believe it unreasonable to assume that if the wife of a high-profile, known LTTE activist were of serious interest to the authorities in Sri Lanka that they would have notified their High Commissions abroad.

18. The Appellant is no longer in possession of a valid passport, although of course, she could if she wished, seek to renew it at the British High Commission in London, but on her return to Sri Lanka she will be in possession of valid travel documents. We do not believe there to be any reason for thinking that on her return she will be of the remotest interest to the authorities.
19. The Appellant's mother sadly died whilst the Appellant was abroad. She had been abroad since 1978, apart from one period of several months in 1981 and three visits she made in 1985, 1988 and 1994. If the Appellant's husband was known as a high profile LTTE supporter living abroad, raising funds on behalf of the LTTE, the authorities would have realised that the Appellant had been abroad at the time that her garage had been used by the LTTE and would not have been in any position to prevent their use of the property. According to a statement made by the Appellant, the army, when they captured the Appellant's town, Erlalai in the Jaffna Peninsula, burnt the garage on discovery of the LTTE material. We believe that in any event, after seven years, the authorities would have no continuing interest in the Appellant, even if they had any interest in her in 1996, which we doubt. We believe that the authorities would have been much more interested in the Appellant's brother, who ran a shop from the adjoining garage. He, we believe, would have been seen by the authorities as being more likely to have been in a position to exercise the control of the garage but, according to the Appellant, after his arrest and detention for two days, he was released.
20. We do not believe now that the Appellant will be of any interest to the authorities, simply on account of her late husband's activities. If indeed he had come to the attention of the authorities prior to his death then we believe that his activities would have been monitored. It is reasonably likely that the authorities would have learnt of his tragic death. We do not believe now that the authorities will have any interest in the Appellant who has no close family members who are or have been involved with the LTTE. We do not believe there to be any serious possibility that the authorities would now wish to obtain any information about the Appellant's late husband's activities up to the time of his death in 1997.

21. We have concluded that the Adjudicator did not err in her approach to the issue of risk on the Appellant's return to Sri Lanka.
22. The second challenge to the Adjudicator's Determination was in relation to the Appellant's rights under Article 8. Here we find that the Adjudicator did err in paragraph 39, she said:-

'I find therefore that if the Appellant is returned to Sri Lanka, there is not a real risk that he (sic) will suffer a breach of his (sic) protected rights under Article 3. For the self same reason I find that there is not a real risk that she will suffer a breach of her protected rights under Article 8.'

23. As the Tribunal have said on numerous occasions previously, the correct approach to adopt when considering an Appellant's claim under Article 8, is that used by the European Court, namely to analyse the claim, using a logical step by step approach. First, it must be asked whether there is an existent private or family life. Second, it needs to be considered whether there will be an interference with that family or private life. Third, it must be decided whether that interference pursues a legitimate aim, and if it does, fourth, whether it is in accordance with the law. Finally, it must be decided whether that interference is proportionate. The notion of 'private life' in Article 8 is a broad one and not susceptible to exhaustive definition. In conducting the step by step analysis, we must have regard to the decision of the Administrative Court in **AC[2003] EWHC 389**:

(i) it is only the human rights of the Appellant that calls for consideration under section 65. This is because the Grounds of Appeal under Section 65 are restricted to the breaches of the human rights of the Appellant.

(ii) However, the impact of the removal of the Appellant's daughter is to be a factor to be taken into account in the balancing exercise. The human rights of the Appellant's daughter will only be relevant, if a breach of them impinges on the human rights of the Applicant.

(iii) We have noted AC relates to the right of family life under Article 8 and that Jack J made references to taking into account the impact of deportation on others with whom the deportee has a family relationship. In this appeal the Appellant and her daughter would (if removed) be removed together as a family unit.

24. We find that the Appellant does enjoy a family life with her daughter and her two adult sons. We also find that having been in the United Kingdom since 11 February 1998, she enjoys a private life. It follows, therefore, that removal of the Appellant will amount to an interference with the Appellant's Article 8 rights. Such interference does pursue a legitimate aim and it has not been argued before us

that it would not be in accordance with the law. The question for us to decide is whether such interference is proportionate.

25. Counsel helpfully confirmed that paragraph 8 of her Grounds set out the factual basis for the Appellant's Article 8 claim. In paragraph 8 of the Grounds, Counsel said this:-

'It was submitted that the applicant has established both a private and family life in the United Kingdom. She is 51 years of age and she has various medical problems for which she is receiving treatment. She has three children (two of whom have been in the United Kingdom since 1997) of 22, 20 and 18. The youngest, her daughter, is a dependant in this appeal. None of the children have ever lived in Sri Lanka and the Applicant herself has not lived there since 1978. The Applicant and her daughter have been in the United Kingdom since February 1998. She claimed asylum in May of that year. The Secretary of State for the Home Department took 3 years to decide her application for asylum and then a further 18 months for the appeal papers to be lodged at the IAA. All three children are in full-time education. The applicant owns her own house. They have many family members who are long settled in the UK although it is acknowledged that many of the family members are the Applicant's husband's family'.

26. We note that the Appellant's daughter is now aged 19 years and that she hopes to attend university. We also note that the Appellant's two sons are not due to graduate until 2005 and 2004 respectively. The Appellant's daughter is described by her Head of Sixth Form as being reliable, responsible and hard-working. She is found to be cooperative, courteous and is described as being a determined student. The letter of November 1998 from the Department of Obstetrics and Gynaecology refers to difficulties which the Appellant was experiencing at that time. The situation is, we are told, as described by the Adjudicator at paragraph 31 of the Determination which we have referred to above. It does not appear to be in dispute that any medical treatment the Appellant is currently receiving can equally well be supplied to her in Sri Lanka. We have considerable sympathy with the Appellant given the long delays on the part of the Secretary of State in deciding the Appellant's claim and then in delaying before submitting the papers to the Immigration Appellate Authority in order that the appeal could be listed for hearing. However, we note that the Appellant does have two siblings living in Sri Lanka and that not only was she able to adapt to life in Uganda and Botswana but, it appears that to her credit, she has also well adjusted to life in the United Kingdom. We do not believe that she would have difficulty in readjusting to life in Sri Lanka. We accept that she has been out of that country for effectively 25 years, apart from comparatively brief periods when she returned. We note that the Appellant's daughter has adapted well to life in the United Kingdom and is expected to go to University. We note also that she has only spent very brief periods in Sri Lanka and none for many years. Her removal will also breach her Article 8 rights. There is no evidence before us, however, to suspect that she will not be able to quickly adjust to life in Sri Lanka. Looking at the evidence in the round, we do not believe that the Secretary of State erred in his assessment that removal would not be disproportionate. We do not believe that breach of the Appellant's daughter's Article 8 will impinge on the human

rights of the Appellant. We note that the Appellant's sons are both now adults. For all these reasons we have concluded that we must dismiss this appeal.

Richard Chalkley
Vice President