JP (Maintenance - Detention Records) Sri Lanka CG [2003] UKIAT 00142

IMMIGRATION APPEAL TRIBUNAL

Heard at Field House
On 23 September 2003
Prepared 23 September 2003

Determination Promulgated

13/11/03

Before

Mr Andrew Jordan
Mrs S.M. Ward

Between:

The Secretary of State for the Home Department Appellant

and

Respondent

For the Claimant: Ms P Gandhi, counsel
For the Secretary of State: Mr S Walker, HOPO

DETERMINATION AND REASONS

1. The claimant is a national of Sri Lanka. The Secretary of State appeals against the decision of an adjudicator, Mr RL Walker, following a hearing on 11 March 2003 allowing the claimant's appeal against the decision of the Secretary of State to refuse both the claimant's asylum and human rights claims. The adjudicator allowed the human rights claims both under Article 3 and Article 8. The grounds of appeal, however, are limited to a challenge of the adjudicator's decision in the asylum and Article 3 appeal.

2. The claimant was born on 23 January 1964 and is 39 years old. She is an ethnic Tamil. Between 1992 and 1995 she was working in a rehabilitation centre that was

run by the LTTE. In 1996 the family moved to Vavuniya where the claimant was subjected to routine checks by the army and police but, on each of the five occasions when she was arrested, she was released on the same day.

3. On 19 May 1998, the claimant was arrested by the authorities following information provided to the army that she has previously worked in the LTTE rehabilitation centre. She was detained for three days in the army camp during which time she was ill treated. She was released on payment of the bribe. On the next day she was taken to Colombo and left Sri Lanka on 26 May 1998.

4. At paragraph 35 of the determination, the adjudicator made this finding:

> *"In this particular case I accept that the appellant was wanted by the authorities and so is most probably still wanted. She was arrested by the authorities in May 1998. Whilst her release was secured by a tribe I have no doubt she will be wanted. Her evidence is that all of her details together with fingerprints and photos. This information will therefore be logged with the authorities"*

5. In Jeyachandran [2002] UKIAT 01869, the Immigration Appeal Tribunal, chaired by its President, Collins J., considered the risk faced by Tamils in Sri Lanka in the context of the peace negotiations between the Sri Lankan authorities and the LTTE. In paragraph 8 of the determination, the Tribunal considered the position in May 2002:

> *"The reality is in our judgement that it is yet premature to accept that everyone who has claimed asylum in this country would be able to return safely. We certainly are of the view that in the present situation and having regard to the present trends it is only the exceptional cases that will not be able to return in safety. The question is whether this appellant is such an exceptional case. In our judgement he is for the reasons that we have indicated, namely that he is someone who is wanted and is someone in our view who must be wanted in a relatively serious fashion, if we may put it in that way, because of the attitude in relation to his mother."*

6. Inevitably, cases involving Tamils from the north of Sri Lanka have centred upon what the Tribunal meant by an "exceptional" case. This was considered by the Court of Appeal in Selvaratnam [2003] EWCA Civ 121. In paragraph 10 of the judgment, Buxton LJ said:

> *That, however, does not conclude the question in the present case because the situation of this applicant, as the special adjudicator found, is not simply that he will be a returned asylum seeker on his return to Sri Lanka, but that he is a person who very recently has been in detention in that country for a specific reason, a reason that is identified by the authorities in that country and is still identified as a ground for*

taking an interest in its citizens; and had unlawfully escaped from that custody."

7. In that case, the adjudicator had found that the authorities had compelling evidence that the appellant had worked for the LTTE. The evidence included a signed confession. The Court of Appeal then went on to find that the Tribunal had not sufficiently addressed the risk faced by persons who are treated as wanted persons. In particular, the court relied upon he contents of the fact-finding mission to Sri Lanka in March 2002 that a senior superintendent from the Criminal Investigation Department in Colombo had told the mission that a computer holds the name, address and age of any wanted person.

8. Release on payment of a bribe in the absence of some special and credible reason does not amount to an exceptional circumstance – see paragraph 8 of ***Thiagarah*** [2002] UKIAT 04917.

> *"Bribery related releases, especially from army custody, would not, in the absence of some special and credible reason, be likely to be treated as escapees and would not result in the inclusion of the individuals involved on a wanted list."*

9. The issue in this case is whether the adjudicator was correct in his assessment that the claimant will be treated on return in 2003 as a wanted person as a result of her 3-day detention in 1998, now some 5 years ago, when her release was effected by paying a bribe. On its face, the adjudicator's decision was contrary to the reasoning of the Tribunal in ***Thiagarah*** [2002] UKIAT 04917 that, in the absence of some special and credible reason, she is not likely to be treated as an escapee or wanted person.

10. Ms. Gandhi, who appeared on behalf of the claimant, submitted that the claimant's case was exceptional because she will be treated as a wanted person. The adjudicator, although finding that the claimant was a wanted person, did not give any reasons save that she accepted that the claimant was wanted by the authorities in 1998 and so is most probably still wanted and that, although her release was secured by bribe, she would still be wanted. The adjudicator's finding in paragraph 35 of the determination does not, therefore, reveal how she reached her conclusion.

11. Ms. Gandhi referred to a statement that was submitted to the adjudicator on 12 February 2003, although it does not feature in the material provided to the Tribunal. The adjudicator did not refer to this material in his determination. The claimant stated:

> "*5. I was only released from detention as a bribe was paid. The officer who took the bribe money did not tell his superiors. He told me that he was going to say that I had escaped."*
>
> *6. After I came to the United Kingdom the army went to my house and they were looking for me. They beat my father and took my brother with them. As a result of what*

happened my brother was seriously mentally affected. He was arrested in May 1998 and kept for three months."

12. Those persons who are released on a bribe will normally have no reliable information as to what the policeman or prison officer, to whom the bribe was paid, told his superiors to account for the departure of the detainee. The evidence of the policeman or prison officer may well not be a reliable. Prison officers, for example, might well accept bribes in the knowledge that a decision had already been made to release the prisoner. The extraction of a bribe would not then pose any significant risk of exposure but the prison officer is unlikely to reveal the truth to the person detained. It is doubtful what weight the adjudicator could have attached to the claimant's evidence of what the officer said he would tell his superiors.

13. The claimant asserts that, after she arrived at the United Kingdom, she was told the army went looking for her. There is, however, no evidence that the claimant is facing any outstanding charges. It would only be speculation whether there are such charges and, if so, whether those charges relate to the claimant's activities between 1992 and 1995 working in the rehabilitation centre, or whether they refer to bribing an army officer or to absconding from an unlawful/informal army detention. It is to be recalled that the claimant was not in police custody, had not been charged and had not appeared before a magistrate. It is only if the claimant's departure from custody has resulted in formal criminal procedures that she will appear on the police computer. It is inconceivable, bearing in mind the large numbers of persons who have been arrested, detained and released in army or police roundups since 1998 that each one of those persons is featured on the police computer.

14. The Country Assessment prepared by CIPU in April 2003 deals with the information held by the CID:

*"**6.63** On 21 March 2002, a Home Office delegation was told in a meeting in Sri Lanka with the Director of the Criminal Investigation Department that there are computerised records in the south of the country only. Details of arrests etc. are sent form the north of the country, and are then transferred to computer; paper-based records are held in the north. There are no photographs of wanted persons at the airport, only computerised records. **[35b]***

***6.68** The Sri Lankan Government made an announcement on 8 November that they had directed the police to maintain a registry of all persons arrested under the PTS (and the former Emergency Regulations) that may be proclaimed under the Public Security Ordinance (PSO).The computerised Central Police Registry was established with effect from 1 November 2001. Information relating to persons arrested under the PTA has to be submitted to the Central Police Registry*

> *by arresting officers as soon as possible and definitely not later than 6 hours from the time of arrest. Next of kin and close family members would be entitled to receive information regarding such arrests, the identity of the arresting authority, and the place of detention. In order to receive such information, interested persons can contact the Central police Registry by telephone 24 hours a day, and enquires may be made in Sinhala, Tamil or English.* ***[21]***

15. There is no evidence that the Sri Lankan army maintain computerised or manual records of those detained by them, especially if the circumstances suggest that the detention was not carried out in accordance with lawful practice. Furthermore, there is no evidence that the Sri Lankan army provide that information to the CID. Indeed, in many cases, it would be difficult to understand what use the information would be. The mere record of arrest and detention would mean nothing if there was no evidence of misconduct or criminal activity on the part of the person detained. The names of the many thousands of those arrested and detained since 1998 might well constitute a hindrance rather than a help.

16. On arrival in Sri Lanka it is the computerised police records that are consulted.

17. The adjudicator had "*no doubt*" that the claimant was till a wanted person, that her fingerprints and photographs were on record and this information was logged with the authorities. He went on to find that the objective material established that if "*an individual is wanted in any way then they will be detained when they arrive at Colombo airport*." The material that we have set out above does not support that conclusion. More importantly, the claimant's own evidence does not support a finding that her detention for three days in 1998 at an army camp is reasonably likely to have found its way onto the CID computers and that the claimant is recorded there as a wanted person. The adjudicator's decision on this aspect of the case was plainly wrong.

18. The adjudicator considered that the case was "*very much on a par with Selvaratnam.*" See paragraph 38 at the determination. Yet, as we have set out above, in that case the authorities had compelling evidence that the appellant had worked for the LTTE and the evidence included a signed confession. The evidence of escape was not in issue. He was a wanted person. In our view, the adjudicator was not entitled to treat this claimant as a wanted person on the evidence before him. In reaching this conclusion we have paid regard to the decision in the Court of Appeal in *Oleed [2002] EWCA Civ 1906* and, in particular, the comments of Schiemann LJ in paragraph 29 and paragraph 41 of the judgement of Lady Justice Arden. We accept that the threshold is a high one: plainly wrong, unsustainable, perverse or so inherently illogical as to render the decision flawed. In our judgement, and for the reasons that we have given, we consider the decision of the adjudicator was so seriously flawed.

19. For these reasons, we allow the appeal of the Secretary of State in relation to the adjudicator's findings on the asylum appeal and the associated Article 3 claim that stood or fell with it.

20. In addition, however, the adjudicator made a decision under Article 8 of the ECHR. Mr Walker, who appeared on behalf of the Secretary of State, sought to argue that the adjudicator's determination on proportionality was also seriously flawed. It is plain, however, from the grounds of appeal that this is not an issue that is raised there. Mr Walker did not seek to amend the grounds and, had he done so, it is unlikely we would have permitted him to do so because Ms Gandhi would not have been able to deal with those issues. Accordingly, the adjudicator's decision in relation to article 8 of the ECHR remains undisturbed by our findings under the Refugee Convention and Article 3.

Signed

Andrew Jordan
Vice President
23 September 2003