ar Appeal No. HX32698-2001
PR (Medical Facilities) Sri Lanka CG [2002] UKIAT 04269

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 3 September 2002

Date Determination notified:

....18-9-2002..................

Before:

Mr G Warr (Chairman)
Mrs R Faux
Mrs J Harris, JP

PERANANTHASIVAM RATNAM RHANCHITHA
APPELLANT

and

Secretary of State for the Home Department
RESPONDENT

DETERMINATION AND REASONS

1. The appellant, a citizen of Sri Lanka, appeals the determination of an adjudicator (Mr S. Qureshi) who dismissed his appeal against the refusal of the Secretary of State to grant his application for asylum. The appeal is pursued solely on human rights grounds.

2. The appellant was represented before us by Miss Rhiannon Crimmins, of counsel, instructed by Nag & Co. Miss C. Paddick appeared for the Secretary of State.

3. The appellant applied for asylum on his arrival in this country on 26 December 1997. He was interviewed in connection with his claim on 2 January 1998. The reasons for refusing the appellant's claim are set out in a refusal letter dated 12 February 2001.

4. After the appellant's interview the appellant apparently suffered a deterioration in his health. He had been all right for a period of about six months after his

arrival. Because of the state of his health, he was not called to give evidence before the Adjudicator who had to determine the matter on the documents before him. The hearing was on 12 April 2002.

5. There are two medical reports in respect of the appellant. The first is dated 4 October 2001 and was compiled by Dr P. Partovi, a consultant psychiatrist. The report opens with a summary of the appellant's history in Sri Lanka. He had left Jaffna after the army captured the Jaffna Peninsula and arrested his older sister who was still missing. He had joined the LTTE as a volunteer and had witnessed many deaths during the period he served with the LTTE. When asked to start combat training, he had escaped and gone into hiding. He had then fled to Colombo with a forged identity card and had managed to flee the country. Immediately after his arrival he had been feeling upset but had then settled down for a period of about six months. After this period his health had started deteriorating and he had become exceedingly confused. He had developed a sleep disorder, overt anxiety, depression and headaches together with pericardial pains. He was being looked after on a continuous basis by a friend and he was not able to survive without continuous and high level support. The report notes that the appellant was one of nine siblings. He had never worked in Sri Lanka or the UK. He had twenty-four hour support and supervision from a friend. He could not go out alone, shop or cook for himself. His friend helped him with personal hygiene. He had some distant relatives in the UK but was not in contact with them nor was he in contact with his family in Sri Lanka. The doctor diagnosed acute and very severe depressive illness giving rise to overt psychomotor retardation and a state of mental confusion. The consultant added:

> ‘This illness is severe and enduring and has caused total incapacity. He has a very poor level of functioning and fatal disability. He is not able to live in independently in the community without continuous and ongoing support.
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> He is in need of urgent medical treatment. He also shows symptoms of a moderate post-traumatic stress disorder and is in need of psychological intervention. Due to his gross impairment of cogitative function and the state of mental confusion, he is not able to provide accurate and reliable testimony.’

6. The other piece of medical evidence available to the Adjudicator was a letter dated 3 April 2002 from the appellant's GP, Dr K. Sugumar. The GP confirmed that the appellant had been registered with the practice since February 2000. The doctor states as follows:

> ‘I understand he came to this country a few years ago as a refugee and doesn’t have any close family or friends. He was seen by a Sri Lankan family who are known to his parents back in Sri Lanka in the refugee camps and found

to be depressed. He was brought to me in November with all the features of depression.

He has been living alone for the past few years without any contact with anybody in this country. He is found to have no mood, insomnia and poor personal hygiene.

I have started him on antidepressant medication and he has now started to show a slow improvement.

In my opinion he needs close follow-up and regular review at present. If you need any further information, please do not hesitate to contact us at the above address.'

7. The Adjudicator gave his reasons for dismissing the appellant's appeal in the following extract from his determination :

> '13. I remind myself of the decision of the Immigration Appeal Tribunal in Berisha (01/TH/2623) where the court stated, "the level of forensic psychiatric expertise expended on the subject bears very little relation to the therapeutic effort put in since". In that case the appellant had been given some pills and been referred for some unspecified counselling. In this appeal, despite the observation of the consultant psychiatrist the appellant needs urgent medical treatment and psychological intervention, all that has been done is to prescribe anti-depressants. No one has involved the social services or any other counselling agency to assist 26 year old man who cannot even go to the toilet by himself. The words of the Tribunal are most apt here. I am not sure why the appellant had not seen a doctor over the last three years. I do not have any evidence at all from the friend, who looks after him, to explain the problems suffered by the appellant at home.
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> 14. The country report shows that there is an extensive range of specialist available in Sri Lanka, which includes its national Health Service, which is sailable to everyone. On the whole, medical care is affordable for the average person. I have considered the decision in Bensaid which dealt with a similar situation, but the fact of the current appeal, as placed before me, do not even begin to reach the low level of proof that lies upon the appellant to show that there is a real risk of the breach of his rights under Articles 3 and 8.1.
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> 15. I am not satisfied that the appellant has any cause to fear the government or the LTTE if he is returned

> today. I have considered the comments in the report of the United Kingdom delegation to Sri Lanka in March 2002 and the news reports. I am not satisfied that the police would have any reason to suspect that he is a terrorist, as he is not wanted for any offences, nor is he in breach of any reporting conditions. I also note that a ceasefire has been signed between the government and the LTTE in February 2002, which is holding up. The LTTE has recently opened an official office in Vavuniya at which government officials attended at the opening ceremony. If there is any fear of the appellant being questioned, no doubt he can be provided with an edited medical report from his doctor so that the police can be aware of why he does not respond to questioning.
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> Given these findings, I find that the appellant has not discharged the burden of proof of having a well-founded fear of persecution for a Convention reason. I come to the conclusion that the appellant's removal would not cause the United Kingdom to be in breach of its obligations under the 1950 Convention or under Articles 2 and 3 of the 1950 Convention.'

8. Miss Crimmins acknowledged that Dr Partovi's report was rather old and that it appeared that the appellant had exhibited some improvement following treatment administered by his GP. However she submitted that the appellant was totally incapacitated and needed twenty-four hour care and support. He was always accompanied by a friend. Miss Crimmins confirmed that the appeal was brought solely on human rights grounds. She relied on Bensaid v United Kingdom [2001] 33 EHRR 10 and D v United Kingdom 24 EHRR 423.

9. She submitted that the Home Office Country Assessment did not contain any reference to psychiatric care being available in Sri Lanka. The appellant had a very severe depressive illness. The appellant not only required there to be medical assistance but he needed to be able to avail himself of that assistance.

10. In Bensaid the appellant had family in Algeria whereas there was no evidence that the appellant had any support in Sri Lanka at all. He had lost contact with his parents in 1996. The case of D was not solely concerned with terminally ill persons. The court had not relied on assumptions about there being carers available in St Kitts. The court noted that the appellant in D had formed bonds with his carers in the United Kingdom.

11. Miss Paddick submitted that the appellant was only being treated in the United Kingdom for a depressive illness and there was no evidence of social service support. In D the appellant had been at an AIDS hospice and had a special carer appointed for him. There was no evidence that the appellant in this case had applied for social services assistance.

12. The evidence about medical treatment in Sri Lanka was contained in the assessment at paragraphs 4.23 to 4.26. There were adequate facilities and it was a completely different situation than the one in St Kitts. As the court had made clear in Bensaid, the case of D was a wholly exceptional one. The Adjudicator had dealt with the matter properly in his determination. He had noted that the appellant had claimed that he had had problems since 1998 but had not registered with his GP until 2000. In April 2002 the appellant appeared to be responding to medication. Miss Paddick also referred to a letter from the British High Commission in Colombo dated 9 July 2002 where it was stated that there were two hospitals which had had counselling level treatment at least for posttraumatic stress disorder. These hospitals might lack the most modern methods but it was not correct to say that there was a complete lack of treatment for mental health in Sri Lanka.

13. The peace process was well under way in Sri Lanka and it might very well be that the appellant would be able to make contact with his family in current circumstances, particularly given that he was one of nine children. He had spent time in Colombo previously and would be returned there. The appeal should be dismissed.

14. Miss Crimmins submitted that it was not clear from the country assessment that the appellant would get medical treatment as he would not be able to pay for it. He was still severely incapacitated. There was a negative attitude to people with disabilities. The situation was very similar to D. The appellant's condition might well deteriorate.

15. At the conclusion of the submissions we reserved our determination. We have very carefully considered the points made by both sides and the authorities relied upon.

16. The evidence as to the availability of medical treatment in Sri Lanka is contained in the Home Office Country Assessment and the recent letter from the High Commission. It is said that the traditional medical structure of GPs, specialists and hospitals co-exists with traditional medicine. Sri Lanka had its own national health service, available to everyone. In the Colombo area and in one or two of the larger centres such as Kandy, there were many well reputed hospitals staffed by physicians, most of whom were very experienced and internationally trained. There was an extensive range of specialist care found in Colombo, both in the private and government sectors. The report notes that specialist care included treating such conditions as cardiac, gastro-intestinal, dermatological, urological, orthopaedic and general surgery - see paragraph 4.24 of the report. Most medications were available in Colombo and while the price for medications ranged widely most drugs would be cheaper than in the United Kingdom for prescription and dispensing charges. On the whole medical care was affordable for the average person and government hospitals generally charged a lesser fee than private hospitals. 7% of the population of Sri Lanka had disabilities and most people with disabilities who were unable to work were cared for by their families. The Department of Social Services operated eight vocation training schools for

people with physical and mental disabilities and sponsored a programme of job training and placement for graduates. The government also provides some financial support to NGOs who assisted persons with disabilities. As counsel reminded us, in spite of governmental efforts, there were still negative attitudes and discrimination for people with disabilities. In 1996 Parliament had passed legislation forbidding discrimination against any person on the grounds of disability.

17. Dr Partovi thought the appellant was in need of urgent medical treatment. He came to this view in October 2001. The appellant saw the GP in November 'with all the features of depression'. The GP started the appellant on antidepressants and he records that the appellant had started to show a slow improvement.

18. There has been no updated medical evidence placed before the Tribunal since the GP's letter of April 2002. We do not know whether the appellant is currently on medication and we do not know what the medication is. There is no evidence that this medication is not available in Sri Lanka if, indeed, the appellant is still on medication. We have no evidence as to the appellant's current condition. We only know that in April 2002 the appellant had started to show a slow improvement.

19. We find that the situation in this case is very different from the case of D. In that case there was an absence of medical facilities in St Kitts and the appellant's condition was very grave indeed. His condition was terminal. There was a wealth of evidence before the court. The limited quality of the life enjoyed by D resulted from the availability of sophisticated treatment and medication in the United Kingdom and the abrupt withdrawal of these facilities would entail the most dramatic consequents for the appellant. It was not disputed that his removal would hasten his death – see paragraph 52. The court in Bensaid made it clear that D was an exceptional case – see paragraph 40.

20. In our view, it has not been demonstrated, and it has not been demonstrated by a large margin, that the appellant's removal to Sri Lanka will breach his human rights. There is no evidence of social services' involvement in the United Kingdom – there is a dearth of evidence of every kind. There is a dearth in particular of current evidence. We do not find that there is sufficiently real risk that the appellant's removal to Sri Lanka will be contrary to the standard of Article 3. We find that there are adequate medical facilities available in Sri Lanka, particularly in Colombo and in other centres. There is no evidence that such medication as the appellant is currently taking is not available to him in Sri Lanka. So far as Article 8 is concerned, we note the analysis of the court in Bensaid. Even assuming that the dislocation caused to the appellant by removal from the United Kingdom constituted an interference, we would not consider such interference to be disproportionate – see in particular paragraph 48 of Bensaid.

21. For the reasons we have given, the Adjudicator's decision is affirmed and this appeal is dismissed.

G. WARR
VICE PRESIDENT