

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76006

AT WELLINGTON

<u>Before:</u>	C M Treadwell (Member)
<u>Counsel for the Appellant:</u>	J Petris
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	22 May 2007
<u>Date of Decision:</u>	16 July 2007

DECISION

[1] The appellant is a Tamil man in his early 30s, from a small village near Jaffna, in the north of Sri Lanka.

[2] The essence of the appellant's claim is that he says that he is at risk of serious harm at the hands of the Sri Lankan Army, at whose hands he had had a history of detentions and serious mistreatment. He further says that he is at risk of harm by the Liberation Tigers of Tamil Eelam ("the LTTE"), whose members have forcibly recruited him on numerous occasions between 1995 and 2005, to undertake manual work for them and who will make him resume such involuntary labour if he returns.

[3] The crux of the appellant's claim is whether he can access the north of Sri Lanka and resume living there without a real chance of being persecuted by one or the other group. If not, the question arises whether, as a Tamil male from the north, there is a real chance of him being persecuted if he returns to Sri Lanka and resettles in Colombo.

BACKGROUND

[4] The account which follows is a summary of the evidence given by the appellant at the appeal hearing. It is assessed later.

[5] The appellant is one of four sons of a Tamil store manager and his wife. The family home, where the appellant grew up, is a small farm in X village, a few kilometres from Jaffna town.

[6] At intervals during the 1990s, all three of the appellant's brothers escaped from difficulties arising from the civil war in Sri Lanka and were granted refugee status in Canada, where they have all since lived. All three are now either Canadian citizens or permanent residents. The appellant's parents also left Sri Lanka for Canada in 2001, where they were granted permanent residence on family reunion grounds. Since their departure, the family property in X village has been rented to a third party.

[7] As to the appellant's upbringing, he was educated to secondary level at schools in Jaffna, obtaining both 'O' and 'A' levels. He then enrolled to study for a Bachelor's degree at Jaffna University but was forced to leave in 1992, because of the intensity of the conflict between the army and the LTTE.

[8] For several years, the appellant helped his father on the family farm, until 1995, when he obtained employment in Jaffna, working at the ABC shop, owned by one AA.

[9] The routine of commuting from the village to Jaffna each day, on foot or by bicycle, made the appellant vulnerable to the LTTE. On many occasions, he was waylaid by LTTE members driving round the country roads, press-ganging youths into manual labour. Victims were threatened with being shot if they did not co-operate. Usually, the work would involve loading or unloading supplies from trucks, or digging bunkers or filling sandbags. The appellant and other detainees would be engaged in these tasks for the day, causing the appellant to lose the equivalent wages.

[10] On several occasions during the latter half of the 1990s, the appellant's family were forced to leave their farm and to live in other villages for periods, while heavy fighting took place in their area. The appellant continued to commute to Jaffna, though it was sometimes difficult.

[11] In early 1999, the appellant's parents moved to Colombo to meet one of the appellant's brothers who had returned to Sri Lanka to see them. They rented a house there and did not return to the north.

[12] In late 1999, the appellant was wounded by shrapnel when an artillery round exploded near an LTTE truck which he and others were unloading in the jungle, as press-ganged labourers. The appellant was injured in the right arm, the chest, and the right flank and was taken by bicycle to a clinic in a nearby village, where his wounds were cleaned and sutured. He still bears the scars of the injuries and has several small pieces of shrapnel still lodged in his body.

[13] Following this incident, the appellant found a place in a hostel in Vavuniya and lived there for more than a year. He returned to Jaffna on one occasion only, to work for AA for a few days, getting there on the ferry from Kilinochchi, because Elephant Pass was closed as a result of the hostilities.

[14] In June 2000, the appellant and other Tamil youths at the hostel were detained in a round-up by the army, following an LTTE grenade attack. The detainees were taken to a house on the outskirts of Vavuniya, where they were held for several months.

[15] During his detention, the appellant was questioned repeatedly about his biographical details and his knowledge of LTTE activities and members. He denied any knowledge and was beaten regularly, to try to make him talk.

[16] The appellant had with him a letter from his employer AA, which he showed the soldiers. He also showed them his identity card. Eventually, he was released because he had been able to show that he had employment. Others, who were unemployed, were not released.

[17] Six months later, in late 2000, the appellant was detained again. Again, he was held for several months by the army, with other Tamils, and was interrogated. During his questioning, he was forced to inhale chilli powder, had a needle pushed into a toenail and was struck with a piece of wood.

[18] Eventually, the appellant was released because a distant relative learned of his detention and informed the appellant's father, who travelled from Colombo to pay a bribe to secure the appellant's freedom. On his release, the appellant's father took him to Colombo, fearing to leave him in the north any longer.

[19] In Colombo, the appellant could not find work and simply lived quietly in his parents' rented house in Y District.

[20] In December 2001, a ceasefire was brokered between the Government forces and the LTTE, returning the north to a state of some normalcy. The A9 motorway from Colombo to Jaffna was reopened and bus and transport services resumed.

[21] In spite of this, the appellant had no confidence that the ceasefire would hold and was aware that both sides were taking the opportunity to re-arm. Accordingly, he sought a visitor's visa from the Canadian embassy but it was declined.

[22] In June 2003, with the ceasefire some eighteen months old, the appellant returned to X village, near Jaffna, and resumed living in the family home. He tried to establish a small poultry business and also returned to his original employment with AA at the ABC shop in Jaffna. At about this time, the appellant's parents left the country and were granted permanent residence in Canada.

[23] With no immediate family left in Sri Lanka, the appellant began to seek other means by which he too could leave the country. An aunt knew of a family in New Zealand with an eligible daughter and their astrological charts were drawn up to determine their suitability. The charts were sufficiently aligned that both families agreed to the wedding and, in November 2005, the appellant's bride, BB, returned to Colombo from New Zealand for the wedding. The appellant's parents returned to Sri Lanka, for the only time since their departure, to attend the ceremony.

[24] After the wedding, the couple lived together in Colombo for some six weeks, before BB returned to New Zealand on account of her work. The appellant followed in late March 2006, departing Sri Lanka on his own passport, having been granted a visitor's visa for New Zealand.

[25] In Auckland, the couple's relationship failed quickly. Although the appellant had waived a dowry, BB was upset to find that he did not own the farm property in Sri Lanka and felt deceived. In turn, she would stay away from the family home, visiting her sister and taking advice and comfort from her own family, rather than the appellant.

[26] The appellant sought the help of a distant relative – a respected member of the Tamil community in Auckland – but to no avail. In the end, the appellant

moved to Wellington in the hope that his wife would follow him there, away from the influence of her family. She did not and the marriage effectively ended. BB withdrew her support for the appellant's residence application, which resulted in his temporary permit being revoked.

[27] On 6 July 2006, the appellant lodged an application for refugee status. He was interviewed by the Refugee Status Branch on 18 and 19 September 2006 and was later advised by letter dated 20 December 2006 that his application had been declined.

Documents and submissions

[28] The Authority has been provided with a copy of the Refugee Status Branch file in respect of the appellant's application.

[29] On appeal, the appellant has also provided:

- (a) his Sri Lankan identity card, issued in 2003; and
- (b) X-rays, taken by a radiologist in New Zealand, disclosing the pieces of shrapnel still lodged in him.

[30] Mr Petris has provided submissions dated 14 May 2007, together with a number of items of country information, principally documenting the resumption of hostilities in Sri Lanka since the collapse of the cease-fire in 2006.

[31] The submissions and documents have been read and are taken into account herein.

THE ISSUES

[32] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[33] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the

principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

[34] The credibility of the appellant's account is accepted.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Sri Lanka?

[35] The Authority is satisfied that this question must be answered in the affirmative.

[36] Recognising that the threshold of a real chance is a low one, the Authority has regard to the deteriorating human rights situation in Sri Lanka since the collapse of the peace process last year. As noted by Human Rights Watch, in its *2007 World Report: Sri Lanka*:

"Extrajudicial Killings, Abductions, and Communal Violence

Politically motivated killings and abductions drastically increased in 2006. Sri Lankan security forces are believed responsible for a number of serious incidents in 2006.... Dozens of other abductions implicating the security forces, the Karuna group and other armed groups associated with the government were reported in the second half of the year."

[37] The United Kingdom Home Office's *Country Of Origin Information Report: Sri Lanka* (11 May 2007) confirms that the situation has continued to worsen in the first half of 2007, noting at 7.01:

"The government's respect for the human rights of its citizens declined due in part to the breakdown of the CFA [ceasefire agreement]. Credible sources reported human rights problems, including unlawful killings by government agents, high profile killings by unknown perpetrators, politically motivated killings by paramilitary forces associated with the government and the LTTE, and disappearances. Human rights monitors also reported arbitrary arrests and detention, poor prison conditions, denial of fair public trial, government corruption and lack of transparency, infringement of religious freedom, infringement of freedom of movement, and discrimination against minorities. There were numerous reports that armed paramilitary groups linked to government security forces participated in armed attacks, some against civilians. Following the December 1 [2006] LTTE attempt to assassinate Defense Secretary Gothabaya Rajapaka, the government

strengthened emergency regulations that broadened security forces' powers in the arrest without warrant and non-accountable detention of civilians for up to 12 months....”

[38] As recently as 7 July 2007, the BBC has reported that hundreds of Tamils from the northern regions have been subjected to arbitrary detention in Colombo and have been forcibly put on buses and sent to undisclosed locations in the north and east. See http://news.bbc.co.uk/2/hi/south_asia/6729555.stm.

[39] The Authority is satisfied that the appellant cannot safely return to the north of the country. At the least, he faces a real chance of being coerced by threats of violence by the LTTE into resuming his role as slave labour for the group. Quite apart from the absolute prohibition on being held in slavery or servitude (see Article 4 of the 1948 Universal Declaration of Human Rights and Article 8 of the 1966 International Convention On Civil and Political Rights), such labour will put him once again at risk of being harmed by the Sri Lankan Army in the course of its conflict with the LTTE.

[40] As to whether he would be able to live safely in the south of Sri Lanka – in Colombo in particular – there are a number of factors which militate against such an option:

- (a) The appellant’s identity card records him as having been born in Jaffna and as a resident of X village in the north.
- (b) His identity card also bears a large purple “4” handstamped at the top before lamination, which the appellant says signifies that he is from the north. Identity cards for Tamils from Colombo, he says, have a “1”. Some sources corroborate this. For example, the UNHCR/ ACCORD 2001 publication *7th European Country of Origin Information Seminar Berlin, 11-12 June 2001 - Final Report Sri Lanka*, notes:

“[R]ecently a number on the top of the ID card has been introduced, indicating the province the holder comes from.”

See also the Immigration and Refugee Board of Canada’s 1 March 2006 *Information Request Response LKA28882.E – Sri Lanka: Current Information on the Significance of the Number “5” that Appears at the Top Right Hand Corner of the Photo-Bearing Side of the National Identity Card (NIC). One Information Request*

Response (LKA102252.E) suggests that the number merely indicates the number of replacement copies of the card which have been issued but that seems inherently unlikely, with numbers clearly getting as high as “4” and “5”. The issue is one of concern. The stamping of a high-visibility number on Tamil identity cards is presumably so that Tamils from the north can be more easily identified. No other reason presents itself. Given that the cards already state the holder’s place of residence, the desire to emblazon the cards in such fashion is disquieting, suggesting as it does an intent to facilitate the singling out of Tamils from the north.

- (c) The appellant has no immediate family in Colombo now. While two uncles live there, they are both elderly and retired and have indicated to him that they would not welcome the attendant risk in giving accommodation to a Tamil from the north.
- (d) While he is now in his early thirties, the appellant looks much younger and would be likely to be viewed as a young Tamil male, particularly at first sight.
- (e) The appellant has no employment in Colombo.
- (f) While the appellant spent some time in Colombo, staying indoors at his parents’ house, he did not obtain any registration, nor establish himself as a Colombo resident. He has no support network there to vouch for him.
- (g) The appellant’s body bears a number of scars which, although not visible when he is clothed, would be noticed in the course of any close search of him. The scars are obviously the result of injuries and their appearance suggests a combat origin. They heighten the risk of him being suspected of militant activity.
- (h) The sophistication of the intelligence-gathering of the Sri Lankan Army is difficult to gauge. The appellant has, however, been detained twice by the military, each time for several months. The possibility of the detentions being documented in records available to security forces in Colombo is possibly low, but cannot be discounted.

[41] With a lack of familial support, an identity card from the north, no

employment and no other reason to be in Colombo, his youthful appearance and his bodily scars, the Authority is satisfied that the appellant is at risk of being detained at roadblocks and seriously mistreated. He is also at risk of being expelled from the city and forcibly taken to the north where, as noted above, he is also at risk of serious harm.

[42] There is a real chance of the appellant being persecuted if he returns to Sri Lanka.

Convention reason

[43] The reasons for the appellant being persecuted would be his race and imputed political opinion. Either suffices to bring him within the ambit of the Convention.

CONCLUSION

[44] For the foregoing reasons, the appellant is a refugee within the meaning of Article 1A(2) of the Convention. Refugee status is granted. The appeal is allowed.

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C M Treadwell
Member