

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76185

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	I Uca
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	28, 29 & 30 April 2008
<u>Date of Decision:</u>	6 June 2008

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of Sri Lanka.

[2] This is an abridged version of the decision. In this appeal, certain particulars appear in truncated form or have been removed in total pursuant to s129T of the Immigration Act 1987. Those parts which have been truncated appear in square brackets. Those parts removed altogether are identified by an ellipsis and also appear in square brackets.

INTRODUCTION

[3] The appellant claims to have a well-founded fear of being persecuted following his unwittingly becoming involved in the transportation of material and men for the Liberation Tigers of Tamil Eelam (LTTE) and the subsequent arrest and death of some LTTE personnel, for which he is being held responsible.

THE APPELLANT'S CASE

[4] What follows is a summary of the appellant's evidence in support of his claim. An assessment follows thereafter.

Events in Sri Lanka

[5] The appellant was born in X in 1981. He is an ethnic Tamil and a Muslim. He has five brothers, four of whom (referred to as "B1", "B2", "B3" and "B4" respectively) feature in his refugee claim. Following completion of his secondary schooling the appellant attended a course in Colombo on a part-time basis. He graduated from this course in 2002.

[6] In August 2003, the appellant began employment at a shop called ABC situated in Y, another town near X. ABC sold mainly [...] items associated with the residential building trade. Approximately eight months after he commenced this employment, his employer asked the appellant to travel to Z, in eastern Sri Lanka, to deliver orders that he had taken from various shops in Z for specified [...] products. His employer explained that the goods would be transported from Y to Z in a lorry owned by one of his employer's relatives called BB. His employer further explained he was requiring the appellant to travel because BB did not know how to conduct business whereas the appellant did, and he was therefore tasked with trying to improve the employer's business in that area.

[7] Upon being asked, the appellant decided to call a friend of his called AA. AA was a Tamil Hindu whom he had met whilst studying in Colombo and with whom he had become a close friend. He knew that AA was originally from Z and thought AA might be able to assist him in growing the business. The appellant had never been to Z previously and, apart from the shops to which his employer's deliveries were to be made, the appellant had no knowledge of who else may be amenable to receiving supplies of [...] goods from ABC. AA agreed to accompany the appellant and to introduce him to shops-owners who might be potential customers.

[8] Approximately one month later the appellant, AA, BB and a young boy who occasionally assisted at the shop, travelled to Z. The arrangement was that the appellant and others would stay overnight in Z and travel back to Y the following morning. The appellant made the deliveries of the ordered goods as requested.

While in Z, AA did not introduce him to any new shop-owners. Instead he introduced the appellant to two other Tamil Hindu men called CC and DD, whom the appellant understood from conversations with them, were businessmen located in areas outlying Z. Both asked the appellant whether ABC could supply them with what was a large amount of [...].

[9] While still in Z, AA asked the appellant whether they could transport various garments back to Colombo from Z. Garments were cheaper in Z and AA would be able to sell them at an enhanced price back in Colombo. The appellant telephoned his employer, who agreed. The garments were loaded onto the truck in the evening and in the morning they all travelled from Z to Colombo where AA and the garments remained. The appellant returned to Y.

[10] Approximately one month later, the appellant, AA and BB returned to Z and delivered [...] to the particular shops as well as to CC and DD, to whom the employer had also agreed to supply with goods. Over the next few months, the appellant returned to Z on approximately five or six occasions. Each trip followed a similar pattern. The appellant usually travelled to Z in the company of BB and AA although from time to time the young boy who assisted in the shop would attend. Once in Z the deliveries would be made to the shops his employer had specified as well as to CC and DD. The following morning the lorry would travel from Z back to Colombo loaded with the garments for AA.

[11] This arrangement worked without particular incident until July 2004. At around this time AA met the appellant and informed him of a way he could make some extra money. AA indicated there were a few people connected to a party who the appellant had to help. When he asked who AA was referring to, AA informed him that these people were known to both AA and the appellant. The appellant understood this to mean they were members of the LTTE. AA informed him that these people wanted the appellant to make arrangements to bring people from Z and to make arrangements for their accommodation in W and, if necessary, Colombo. He was also to deliver any goods requested to places specified. The plan was that the people and material would be transported back towards Colombo after the delivery of goods by the appellant in the course of his business. AA mentioned that they did not have to necessarily use BB's lorry. During this conversation AA mentioned several times that it was easy for Muslims to get through the checkpoints along the way.

[12] Concerned at what was being proposed, the appellant told AA that he could not give an answer immediately. At this point, AA became very angry and said that if the appellant did not help this party, they would kill the appellant. The appellant again told AA that he would think about it and to give him some more time. AA agreed but told the appellant to give him an answer as soon as possible.

[13] Worried about what course of action he should take, after two weeks the appellant approached a distant relative (“the uncle”) who had studied in a Sinhalese school and had contacts within the Sri Lankan Army (SLA). The appellant told the uncle about what AA had asked him to do. The uncle informed him to be careful and that the party to which AA referred was undoubtedly the LTTE. He warned the appellant not to discuss this with anybody.

[14] The appellant indicated that he would like some enquiries to be made as to AA’s true background. The uncle asked the appellant for the details of the route the delivery of goods usually took. He said he would see what he could do. Approximately two weeks later the appellant telephoned the uncle and informed him that in five or six days’ time, they would be making the next delivery to Z and that AA would be with him. The uncle advised him to go on the journey.

[15] The appellant, along with AA and BB, undertook the trip to Z as planned. Again, goods were distributed to both the shops in Z and to CC and DD, and again, parcels of garments which AA had purchased in Z were loaded onto the truck and they left the following day at around 8.30am. As usual, the appellant did not see what was in the parcels as they were wrapped in paper but there was nothing outwardly suspicious about their appearance.

[16] When they reached Z the appellant telephoned his uncle as requested and told him that he and AA had arrived in Z and would be leaving the next day at a particular time. The uncle told him that he would make arrangements for his friends in the SLA to check on the lorry while he was making the return journey. The appellant then spoke to AA and told him that on the return journey they would be stopping at his parents’ home before travelling on to Colombo the following day.

[17] Shortly before the lorry, containing AA, BB and the appellant, reached W it was pulled over by a SLA vehicle. They were all made to get out of the lorry and their identities were checked. Two of the soldiers walked to the back of the

vehicle. Approximately five or ten minutes later the appellant overheard one of the soldiers saying that there were “dangerous goods” in the back. At that point the appellant, BB and AA were assaulted by the soldiers. They were blindfolded, hand-bound, placed into the army truck and taken to an army base in W.

[18] Upon arriving at the camp, the appellant was taken into a separate cell where he was held for the next five days. He never saw AA again. For the first three days of his detention, he was interrogated twice a day. He was asked about what he was doing in Z and to whom he was delivering the goods. He was questioned about how long he had known AA and how long he had been doing business in Z. The appellant told his interrogators the truth about his relationship with AA and the nature of his business dealings in Z. The appellant was released following the intervention of the uncle. BB was released at the same time. Upon his release the appellant was met by his employer and his uncle. His uncle told him that it had been extremely difficult to secure his release. His uncle explained that the authorities still suspected him of having some involvement in the transporting of the dangerous goods and that he should try to get out of Sri Lanka as soon as possible.

[19] After his release the appellant went to his parents’ home. He told them that he had problems and would have to leave the country but asked them not to press him for any details. The appellant went to Colombo in September 2004 where he remained in hiding for the next 10 or 11 months.

[20] The appellant remained in contact with his family and the uncle. He learnt from his family that SLA soldiers were coming to the family home looking for him. His uncle informed him that that CC had been killed by the SLA in September 2004 and that DD had been killed in October 2004. In November 2004 the uncle was killed in an accident but the appellant suspects that this was not an accident.

[21] After the death of the uncle the appellant telephoned his parents and told them the full extent of his problems. They informed him of more visits to the family home by unidentified men linked to both the LTTE and the SLA looking for him. His parents said it was better if he left the country. Worried about his safety, the appellant made contact with an agent called Irfan who told him that he was sending people to New Zealand and for payment of a fee he could bring the appellant to New Zealand on a student visa.

[22] In November 2004, the appellant contacted his older brother B1, who was working in the Middle East, who agreed to provide the agent's fee. By December 2004, the appellant paid Irfan the agreed fees for securing his entry into a course in New Zealand and his safe passage from Sri Lanka. The course was due to start in March 2005 but in early 2005 Irfan told the appellant that he could not leave as Irfan had lodged the application too late to be processed in time for him to start in the March semester. Irfan told the appellant that, if he was patient, he could simply wait and start in the next semester which was due to start in June 2005. Having paid the agent the full sum the appellant agreed to this plan. He therefore remained in hiding in Colombo only going out when it was strictly necessary. The appellant told the Authority that while hiding in Colombo, there were approximately four visits to his family by persons suspected of being from the LTTE, as well as visits by the SLA.

[23] The second application for a student visa was also declined. At this point Irfan suggested that the appellant try Malaysia and that for the payment of an extra 200,000 *rupees* Irfan would secure his entry into Malaysia. Approximately a month later the appellant received his Malaysian visa and, in August 2005, he travelled to Malaysia. The appellant entered Malaysia on a single entry visa stamped in his genuine passport. He encountered no difficulties leaving the airport in Colombo using his genuine Sri Lankan passport due to Irfan making all necessary arrangements to ensure his safe departure.

Events in Malaysia

[24] While in Malaysia the appellant extended his visitor's visa. He then obtained a student visa in November 2005 valid until November 2006. At this time he was living with his older brother, B2, who was studying in Malaysia. His younger brother, B3, was also studying in Malaysia. While in Malaysia, the appellant remained in contact with his family who told him of continued visits to the family home by both the LTTE on five or six occasions by LTTE members as well as visits by the SLA.

[25] In January 2006, the appellant was at a shop when a friend of AA's called EE, who the appellant had met on a number of occasions with AA in Colombo, approached him and asked him if he was the appellant. The appellant denied this but EE said that he knew the appellant's correct identity and that the appellant was

the person who had identified the LTTE men in Sri Lanka. EE said that the LTTE was present in Malaysia and that the appellant would die there.

[26] The appellant went home and informed his brother, B2, that he had to move out. He told his brother broadly of the problems he had encountered in Sri Lanka. The appellant went to stay with a friend in another part of Kuala Lumpur. Not knowing any agents in Malaysia, he contacted Irfan. Irfan said that he knew a man in Malaysia called Ravi who would help him. The appellant then rang Ravi and told him his story. Ravi, a Canadian, said he would help the appellant go to Canada. The appellant paid Ravi 15,000 *ringits*. The funds again were supplied by B1.

[27] The appellant remained in hiding at the friend's home in Kuala Lumpur only venturing out very occasionally. In late February 2006, Ravi telephoned the appellant and told him to go to a particular place in Singapore in two or three days' time. Ravi would meet him there and then take him to Canada. The appellant travelled to Singapore along with his brothers, B3 and B2, who went as tourists. Upon reaching Singapore, the appellant separated from his two brothers and went to meet Ravi at the appointed place. Ravi informed him that he could not take him to Canada as planned and that he should return to Malaysia and he would seek an alternative way to get him to Canada.

[28] After the return to Malaysia, the appellant learnt that B2 and B3 were planning to come to New Zealand and had obtained visas to do so. He mentioned this to Ravi who told him that he should convince his brother B3 to let him use his passport to travel to New Zealand. The appellant did so. B2 knew nothing about this until the last minute. Thinking the appellant was coming to the airport to see him and B3 off, B2 was surprised to learn that the appellant was to travel on B3's passport. He was angry at the appellant and told him that he wished to have nothing further to do with him once they arrived in New Zealand.

[29] Ravi retained possession of the appellant's genuine Sri Lankan passport and told him that he would travel to New Zealand and he would arrange for the necessary stamps to be put in the appellant's own genuine Sri Lankan passport so that he (Ravi) could take the appellant to Canada as promised.

Events in New Zealand

[30] The appellant arrived in New Zealand in late May 2006. Shortly after the appellant arrived in New Zealand he telephoned Ravi to let him know that he had arrived safely. Ravi told the appellant that he could not come to New Zealand and that the appellant should arrange to have his visitor's visa extended. The appellant approached his brother B2 for help. The visitor's visa was duly extended. Shortly prior to its expiry, in October 2006, Ravi came to New Zealand and met with the appellant. He informed the appellant that there were still difficulties with his obtaining an entry visa for the appellant to enter Canada. The appellant urged Ravi to do something in New Zealand. Ravi informed the appellant that he should not think about claiming refugee status because the government did not grant it and he would fail. Instead he advised the appellant to apply for a work permit and wait until the situation improved and he could obtain entry for the appellant into Canada. The appellant followed this advice and Ravi assisted the appellant in obtaining a work permit endorsed into B3's passport which the appellant still had. Ravi also, at this time, introduced the appellant to a New Zealand man called Mohan who said that he would help him.

[31] Approximately five or six months later when this work permit was due to expire, the appellant contacted Mohan who assisted him in obtaining a further extension of the work permits endorsed into B3's passport. Approximately one month after this was granted, Mohan came and took the passport and left the appellant with a photocopy. By now it was mid-2007 and the appellant was anxious that he had still not heard anything from Ravi and that he was in New Zealand illegally under B3's name. One day at round this time he attended his mosque as usual and a person saw him crying. He explained to this person what his problems were and this person explained that he should see a lawyer. The appellant did so and, on the lawyer's advice, lodged a claim for refugee status in September 2007.

[32] In his contact with his family since being in New Zealand, he understands there have been a further six or seven visits to the family home. There have also been visits by the SLA. The appellant told the Authority that the Friday before the hearing (25 April 2008) he learnt, during a telephone conversation with his youngest brother, B4, that B3, who had recently returned to Sri Lanka because their father was unwell, had been assaulted at the family home by unidentified men thought to be associated with the LTTE. The appellant explained there had been visits to the family home by both these men and the SLA on the assumption

that the person who had returned was the appellant. The appellant was unsure as to how long B3 had been back in Sri Lanka and when the assault took place. He variously suggested that it had occurred two weeks prior to the telephone conversation or as long as three weeks or even a month.

[33] The appellant told the Authority that, as a result of these experiences, his health had been adversely affected including stress, lapses in concentration and memory, loss of appetite and sleep problems.

Other documents and submissions

[34] In addition to the documents comprising the RSB file, on 22 April 2008 the Authority received, from counsel, a memorandum of submissions together with a supplementary statement from the appellant; a certified copy of stamped pages of the appellant's Sri Lankan passport and country information relating to Sri Lanka.

[35] On 28 April 2008, the Authority received from counsel further documents relating to the appellant's state of health; his course of study in Malaysia; educational institute in New Zealand to which the agent in Sri Lanka had applied on the appellant's behalf. On the morning of the hearing, counsel provided the Authority with a DVD relating to the situation in the north and east of Sri Lanka; the originals of the educational documents and the original copy of the appellant's Sri Lankan passport.

[36] On 9 May 2008, the Authority received from counsel copies of questions emailed to B2 together with an email of his reply; a copy of a pro forma "On Approval" form; a map showing the route the appellant travelled between ABC and Z; a letter from the person the appellant stayed with in Colombo when in hiding; a letter from a Community Day Centre where the appellant volunteers and further letters and notes regarding his state of health were also produced. Counsel made submissions thereon. Finally, on 14 May 2008, the Authority received counsel's closing submissions regarding the appellant's credibility.

THE ISSUES

[37] 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."

[38] 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

Credibility

[39] Having seen and closely questioned the appellant over three days, the Authority has no doubt that the claim which the appellant has presented is essentially untrue. While the story he recounted was in the main consistent with what he had said previously, once the surface of the narrative was probed in questioning, implausibilities emerged at almost every stage in his account as the following points, arranged chronologically, show.

Regarding the claimed approach by AA to assist the LTTE

[40] At the very core of the appellant's claim for refugee status is his assertion that AA requested he assist with transporting LTTE personnel and material under threat of death. The appellant acknowledged that the LTTE was an organisation that displayed a sophisticated level of planning in their operations. Yet the proposal as put to the appellant appears so problematic as to raise real doubts as to whether such an organisation could ever come up with this plan.

[41] The appellant claimed that the proposal was for LTTE goods and personnel to be transported back from Z following the delivery of the [...] goods supplied by ABC to the various shops in Z, or that another truck could be hired to do this. Even accepting that there was some benefit to the LTTE in having a Muslim transport their goods and materials to assist with passage through checkpoints, it is difficult to see why the appellant needed to be involved. Given AA (and by implication the LTTE) contemplated the possibility of using of another Muslim driver altogether, it has not been credibly explained why the LTTE would not simply co-opt this other Muslim who could drive a truck himself. The appellant did not suggest he and BB were the only Muslim traders operating between Z and Colombo. The need for his involvement cannot be explained on the basis of an established relationship of trust or friendship with AA as the appellant claims because, on his own evidence, he was coerced into agreeing by being threatened with death if he refused.

[42] Moreover, if BB's truck was to be used, BB would have become aware of the transportation of the LTTE men. It is also likely that his employer would have found out as well. The resulting increased potential for exposure seems inconsistent with the sophisticated nature of LTTE planning when far less risky options would have existed.

[43] No doubt conscious of the inherent flaws in the claimed proposal, during his re-examination by his counsel, the appellant sought to downplay the extent to which he and AA had a discussion about the plan and sought to imply that the discussion was of a brief nature and not too much detail was discussed. Similarly, counsel in her closing submissions also sought to downplay the nature of the conversation AA had with the appellant at this time, describing it as a 'proposal' more than a definite plan. The semantics are irrelevant. Whatever it is called, the evidence surrounding it appears contrived and invented for the reasons given.

Regarding AA's assistance with the appellant in Z

[44] The appellant's claimed exposure to harm rests upon his decision to approach AA and ask for his help in establishing his employer's business in Z. According to the appellant, AA told him he would be able to introduce him to some shop-owners who might be interested in the products supplied by ABC. However, the appellant told the Authority that it was only on arriving in Z on the first delivery

trip that he and AA discussed the shops that AA had in mind and that he discovered that they were the very shops to which the appellant's employer had asked him to deliver goods. Quite how this situation could arise defies any reasonable belief. It is implausible that, at no time during his conversations with AA about his coming to Z prior to starting the first trip, or at any time on the journey to Z (a journey he told the Authority took between six and a half to seven hours to complete), this topic would not have been discussed. His evidence that he only found this out after arriving in Z is far-fetched and devoid of any credibility.

Regarding his arrest and detention

[45] At the heart of the appellant's account is the surprising claim that, notwithstanding the fact he was the one who had, via his uncle, alerted the Sri Lankan authorities to the possibility of AA being involved with the transportation of LTTE personnel and involvement, he was also suspected of complicity in it. This surprising assertion has never been credibly explained by the appellant.

[46] Both the appellant in his evidence and counsel in her closing submissions have sought to place weight on the discovery of the 'dangerous goods' as the catalyst for his arrest and the ongoing suspicion. This explanation does not provide a compelling answer. The appellant told the Authority that he had explained to his uncle what AA had proposed. In other words, his uncle knew that AA had proposed that LTTE goods be transported in BB's truck. In his evidence the appellant further claimed that his uncle had told him when he phoned from Z that there was a plan in place for the uncle's "SLA friends" to stop and check the truck. On his own evidence, the SLA would have been expecting that the lorry might contain dangerous goods. The unsurprising nature of the discovery of the very thing he alerted his uncle to as being possibly carried therefore provides no compelling explanation as to why he would be suspected of involvement.

[47] The appellant also sought to explain this on the basis AA may have made statements asserting his complicity. Quite why any statement provided by AA should be believed given that he was the one who informed the authorities has not been credibly explained. While the appellant was anxious to explain to the Authority how a sense of national duty made him approach his uncle, he also told the Authority that, at no stage during his detention and interrogation by the SLA, did he ever disclose to his interrogators that he was the person responsible for

alerting the authorities to AA's possible involvement with the LTTE and the transportation of LTTE personnel and goods.

[48] Had he done so, checks would no doubt have been made with his uncle's friends in the SLA who would have corroborated his claim. It is nonsensical that a person willingly and knowingly involved in the covert transportation of LTTE goods and material would have taken steps to make this known to the SLA as the appellant claims he did. The simple act of disclosure by him of his claimed approach to his uncle would therefore have effectively exonerated him of any complicity in the transportation of whatever dangerous goods were found in the back of the truck.

[49] The appellant could not convincingly explain his surprising failure to take this obvious step. He told the Authority that the reason he did not do so was that he did not want to involve his uncle. Yet the fact is, on his own evidence, he had already substantially involved his uncle in what was happening. He told the Authority that he asked his uncle for assistance because the uncle had connections in the SLA and that he wanted the uncle to use these connections to find out whether AA was a member of the LTTE. Moreover, he further told the Authority that, at the time he raised this matter with his uncle, he had understood that AA may well be detained and subjected to physical ill-treatment by his captors to extract information from him.

[50] Quite why a person in the situation the appellant claims to have been in would not make known his facilitating the arrest and capture of an LTTE operative has never been credibly explained. His failure to do so strikes at the core of his claim and strongly points to the untrue nature of this whole episode.

Regarding the continuing interest in him

[51] Another core feature of the appellant's claim is the substantial amount of interest shown in him by the LTTE and the SLA since he went into hiding. This has continued until shortly before the hearing before the Authority, some three and a half years after the underlying event was said to have taken place.

[52] The appellant told the Authority that his father had informed the LTTE while he was studying in Malaysia that this is where he (the appellant) was. He also told the Authority that EE told him as long ago as January 2006 that the LTTE was

present in Malaysia and would kill him because he had identified their men. Given that he had been positively identified by EE in Malaysia, the appellant could not credibly explain why there would be continuing visits on a regular basis to his family home in Sri Lanka thereafter. The appellant agreed that EE would have told the LTTE of his presence in Malaysia. He asserted the LTTE would think he may have returned to Sri Lanka thereafter. This seems fanciful. Sri Lanka is the last place the LTTE would expect to find him if his story were truthful. Even assuming that the LTTE might want to check periodically, the level of ongoing interest the appellant claims seems inconsistent with the LTTE's claimed awareness that he was still out of the country as at January 2006, nearly 18 months after his claimed involvement in the arrest of AA.

As to the assaults on his father and B3

[53] Closely intertwined with the ongoing interest claimed by the appellant have been isolated episodes of assaults on two family members.

[54] As regards his father's assault by the LTTE while he was in Malaysia, while minor in nature, it is still a relevant factor in his claim. Yet this evidence only emerged for the first time during the hearing. He explained he had not mentioned it earlier because it was shameful for this to be made known because his father was a respected ex-school teacher in his village. This explanation is glib and fanciful.

[55] Regarding the more recent assault on B3, the timing of the appellant's discovery of this event is contrived, such that the veracity of his evidence as to the assault is cast in doubt. The appellant could not say with certainty when his brother B3 had been assaulted. He stated that he learnt of it in a telephone conversation with his younger brother B4 on 25 April 2008. He stated that he thought the assault had occurred at least two weeks before this conversation or at most a month before this conversation. During April 2008 the appellant was also in contact with his brother B1 who was helping him prepare for his appeal. B1 provided the appellant with the Certificate of Registration for ABC which was submitted to the Authority. The appellant stated that about a week before he received this document, B1 had telephoned him to advise that he had obtained it. The document submitted by counsel shows that it was faxed from Sri Lanka on 22

April 2008. This would mean that the telephone call, during which B1 mentioned the certificate, was on approximately 15 April 2008 (one week earlier).

[56] According to the appellant's evidence, the assault on B3 took place, at the latest, on 11 April 2008 (two weeks' prior to the telephone conversation with Yasser, on 25 April 2008). This is before the appellant spoke to B1 regarding the certificate. The appellant could offer no explanation why, if this is the case, B1 would not have mentioned the assault in the telephone conversation of approximately 15 April 2008.

[57] Moreover, if the assault on B3 occurred after this telephone conversation, the appellant could not credibly explain why B1, who was helping the appellant prepare for his hearing, would not have simply telephoned the appellant with this significant news. B1 has been intimately involved with the appellant's attempt to seek protection abroad. It was B1 who paid for his departure from Sri Lanka and Malaysia. In an undated letter submitted to the RSB in support of the appellant's claim, B1 states his awareness of the appellant's underlying problems with the LTTE and the SLA and confirms he was the one who assumed "full responsibility for [the appellant's] journey to Canada". In a supplementary statement, dated 8 April 2008, filed for the purposes of the appeal, the appellant states he speaks to B1 regularly in Sri Lanka because B1 frequently returns there from the Middle East. The appellant further states that B1 contacted Irfan in order to have the appellant's own passport returned to him.

[58] Given his claimed level of association with the appellant's flight from Sri Lanka and Malaysia, his awareness of the appellant's refugee claim in New Zealand and assistance in establishing it, it is implausible that B1 would not have quickly known of the claimed assault on B3 (even assuming B1 was in the Middle East at the time) or its significance for the appellant and contacted the without delay to inform him of this development.

Regarding his travel to New Zealand

[59] The appellant's evidence surrounding the agent's plan to have the appellant come to New Zealand using his brother's passport is particularly implausible. The appellant told the Authority that the reason he entered New Zealand on his brother's passport was because Ravi was experiencing difficulty in securing entry

into Canada directly from Malaysia. The appellant claims that Ravi told him that after he had secured entry into New Zealand using his brother's passport, Ravi would then fly to New Zealand with the appellant's genuine passport which would then be used by the appellant to travel to Canada. For this plan to work, it would require the placing in the appellant's passport of a genuine Canadian entry visa. However, in order to embark from a New Zealand airport to Canada, the appellant would have to pass through New Zealand immigration using a passport that would not show any lawful presence in New Zealand. This raises substantial risk of him being detained and questioned about his presence in New Zealand at his point of embarkation for Canada. It is such a shambolic and ill-conceived plan as to belie its essentially untrue nature.

Regarding the delay in claiming asylum in New Zealand

[60] The appellant arrived in New Zealand on 21 May 2006 but did not lodge an application for refugee status until 19 September 2007, some 16 months later. He seeks to explain this by saying that he relied on Ravi's advice that the New Zealand authorities would not grant him refugee status and that at all times he was trusting Ravi to make good his promise to come to New Zealand and take him to Canada. This is rejected. Using B3's passport he obtained a further extension to the original visitor's visa and thereafter obtained two further work permits. The last of these work permits expired on 30 September 2007 less than two weeks after the refugee claim was lodged. The Authority has no doubt whatsoever that the timing of the refugee claim was made in the knowledge that the work permit he had obtained was due to expire and that the lodging of his refugee claim was a mechanism by which he could prolong his sojourn in New Zealand.

Conclusion on credibility

[61] On their own, each of these matters above would not have caused the Authority to have sufficient doubt to reject the appellant's credibility. However, when considered alongside each other and weighed cumulatively, the appellant's evidence is vested with a palpable sense of invention. Put simply, his evidence does not have the ring of truth about it. While other aspects of his evidence were also implausible it is not necessary to discuss them in any detail as the cumulative weight of the above matters means the Authority has no doubt that the appellant's account is not a truthful one.

[62] The Authority has no doubt whatsoever that the untrue nature of the claim explains the delay in lodging the claim. The Authority has no doubt that the fortuitous timing of the claimed assault on B3 has been engineered by the appellant to bolster his claim by creating the impression of an escalating level of risk at a time close to the date of his hearing so as to maximise the prospect of a well-founded fear of being persecuted being established.

[63] In coming to this finding, the Authority does not overlook that the appellant has filed a number of medical reports and letters relating to his psychiatric condition, including two from a psychiatrist, Ms Sara Weeks. In a brief report, dated 18 March 2008, addressed to the appellant's general practitioner, Ms Weeks refers to allegations made by the appellant that he had begun seeing visions of "his torturers" but, for the last six or seven months, these visions had been replaced by aural hallucinations of their voices. She notes the appellant does not appear to have any formal thought disorder, but his presentation was consistent with Post-Traumatic Stress Disorder with psychosis. She further notes that at that time he claimed to still be suffering physical pain as a result of the torture.

[64] As to this, the Authority observes that it is not clear what torture Ms Weeks is referring to. While the appellant referred in his evidence to being beaten by the SLA when arrested, at no time did the appellant mention any torture, let alone torture of such a level or type as to leave him in physical pain nearly four years after the event. Moreover, Ms Weeks, not being a witness to the trigger event, is unable to say what may have, in fact, caused the appellant to display these self-reported symptoms.

[65] The Authority also has noted the statement of the appellant's brother B2. However, B2 was not called as a witness. When the issue was raised by the Authority, Ms Uca expressly advised that she did not wish the Authority to exercise its powers to issue a summons compelling his attendance at the hearing. The weight that can be attached to his evidence is limited by his non-attendance. In any event, his not being a witness to any of the core events means the probative value of his evidence would have been limited.

[66] The Authority notes that there are on file documents relating to the registration of the ABC, an "On Approval" form and the appellant's study at various institutions. These may well be genuine documents. It may well be the case that

the appellant was employed by ABC, used "On Approval" forms, did apply to study in New Zealand at the named institute and did attend a programme of study in Malaysia. However, these facts are essentially peripheral to his claim. The Authority is in no doubt that the appellant has attempted to weave an entirely untrue account around elements of his life which may well be true.

[67] For these reasons the Authority finds the appellant not to be a credible witness. His claim is rejected in its entirety. The first principal issue is answered in the negative. The need to consider the second does not, therefore, arise.

CONCLUSION

[68] For the reasons mentioned above, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"B L Burson"

B L Burson
Member