

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76000

AT AUCKLAND

<u>Before:</u>	M A Roche (Chairperson) B L Burson (Member)
<u>Counsel for the Appellant:</u>	C Curtis
<u>Appearing for INZ:</u>	No Appearance
<u>Dates of Hearing:</u>	26, 27, 28, 29 March 2007, 2 April 2007 and 14 May 2007
<u>Date of Decision:</u>	26 June 2007

DECISION DELIVERED BY B L BURSON

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ) declining the grant of refugee status to the appellant, a Sri Lankan Tamil.

INTRODUCTION

[2] This appeal is to be read in conjunction with the decisions in *Refugee Appeal Nos 76001, 76002, 76003 and 76004* (26 June 2007). The appellant is the mother of the appellant in *Refugee Appeal No 76002* and the mother-in-law of the appellant in *Refugee Appeal No 76001*. The appellants in *Refugee Appeal Nos 76002 and 76001* will be referred to as the daughter and son-in-law respectively. She is the grandmother of the appellants in *Refugee Appeal Nos 76003 and 76004*.

THE APPELLANT'S CASE

[3] This appellant claims a well-founded fear of being persecuted in Sri Lanka because she has been targeted by local police officers in an attempt to put pressure on the son-in-law to abandon a complaint he had made against corrupt policemen who had pressured him to sell a house to a Muslim person. The daughter and son-in-law had, in turn, purchased the property from the appellant's other daughter, Mrs AB, and her husband Mr AB, when they had encountered difficulties with the corrupt police officers some years earlier.

[4] Before assessing the credibility of the appellant's claims in this regard, a summary of her evidence will be set out.

SUMMARY OF THE APPELLANT'S EVIDENCE

[5] The appellant is an 88 year old woman.

[6] The appellant told the Authority that she had for some time prior to her arrival in New Zealand been living with the daughter and son-in-law in a house they had purchased from Mr and Mrs AB some years previously (the house). She explained that one of Mr and Mrs AB's daughters, DL, had developed a friendship with a Muslim man, GG, and because of that Mr and Mrs AB and their entire family had "big problems".

[7] As a result, Mr and Mrs AB had to hand over their house to the daughter and son-in-law. However, the daughter and son-in-law said they did not have enough money to pay for the house and could only give them 5 *lakh*. She told the Authority that Mrs AB told the daughter that, when they sold the house, they should give them the rest of the money.

[8] After selling the house to the daughter and son-in-law, Mr and Mrs AB went to live in another part of Colombo for some time. Mrs AB took the appellant to the daughter and asked the daughter to look after the appellant. Thereafter, the appellant travelled from the daughter and son-in-law's house to Colombo to visit Mr and Mrs AB for one or two days and then return. From time to time, Mrs AB came to visit the appellant at the daughter and son-in-law's house (not the house they had purchased from Mr and Mrs AB which had been rented out) and stayed for a couple of days. Mr AB did not do so because he was working. Although he visited occasionally, he never stayed overnight. From time to time, DL, GG and their child, CC, would stay but would not stay for long and not overnight because

the house was not very big.

[9] In December 2000, Mr and Mrs AB, DL, GG and CC came to New Zealand. The appellant said she was unable to travel to New Zealand with them because she was sick. Since their departure, the appellant has had an operation on her stomach and an operation on her eye.

[10] Some time after their departure, the appellant had to move from the daughter and son-in-law's house. She could not remember exactly when this was. She remembers that they had a problem because, although they were living in a Sinhala area, the family were Tamil. They did not let the neighbours know they were Tamils.

[11] She recalled an incident when the police and Janatha Vimukthi Peramuna Party members came and began looking for the son-in-law. She was sitting outside their home at the time and the police asked her where he was. The son-in-law was inside the house at the time and the police went into the house. A short while later, the police emerged pulling the son-in-law behind them and beating him. They took the son-in-law with them. As she saw this, the appellant asked the police why they were taking him and told the police that this was not fair. One policeman told her to shut her mouth. He grabbed her by the neck and said he would kill her. He then pushed her to the ground. The appellant fell onto something and dislocated her wrist. This caused her to faint. She told the Authority that when the police came no one was prepared to help them because the police had told the people from their neighbourhood, when they arrived to arrest the son-in-law, that the appellant and her family were Tamil.

[12] The appellant does not know how long she was unconscious for. A neighbour who lived close by and heard her shouting for help came running. They asked her what happened. She told them what had happened. She then got up and was taken to the local priest. When she got to the church, the appellant, who was crying, told the priest what had happened. She said she did not know where the daughter and her children had gone. The priest asked her whether there was anywhere she could go and she informed him that Mr AB had some distant relatives in another town. She asked the priest to take him there. The priest did so and took her to this other town. When she arrived at their house she was taken to hospital. She was in hospital for one week and then returned to stay at Mr AB's relative's house for the next two or three months. In the meantime, the priest contacted the daughter and son-in-law and told them what had happened to the

appellant and that she was with Mr AB's relatives.

[13] After her hand had healed, she returned to live with the daughter and son-in-law. However, the police came to visit looking for the son-in-law but he was not living at the house at that time. The appellant was worried for her safety because every time the police went to the house looking for the son-in-law, the daughter ran away leaving the appellant to face the officers' questions. As a result, the appellant told the daughter that she would not stay there any longer and went and hid in a nearby house owned by a neighbour who used to attend the same church.

[14] The appellant's neighbour was told of the problems. This neighbour agreed to hide her but would not let her stay in the house. Rather, she was made to stay in a shed in the coconut garden at the back. This neighbour asked the daughter to pay her some money for looking after the appellant. However, after the appellant had been hiding with the neighbour for two or three days, the police came to the neighbour's house and asked where the appellant was. The neighbour told the police that she had already asked the appellant to leave. However, the police saw the appellant's suitcase in the main house and conducted a search of the premises but failed to find the appellant. The neighbour then told the appellant that the police had said that if they found out she had been hiding the appellant she would also be in trouble.

[15] The appellant left the neighbour's house and went back to the church to see the priest. The priest said that she should return to Mr AB's relatives and that he would inform the daughter of this. The priest arranged for the appellant to be sent to Mr AB's relatives.

[16] At this point in the appellant's evidence, it became clear that the appellant was very tired. The Authority decided to stop the interview. The appellant then reported suffering pains in her heart and was taken by ambulance to hospital where she was placed under observation.

[17] She was not recalled by counsel at any point subsequent to the completion of the oral evidence on 14 May 2007. By letter dated 6 June 2007, the Authority wrote to counsel advising that all issues, including credibility, were at large and sought confirmation from counsel as to whether, having regard to the appellant's statutory duty under s129P(1) of the Immigration Act 1987 to establish her claim, the appellant was to be recalled. The Authority indicated that, should the appellant be recalled, the Authority would have further questions to put to her.

[18] By letter dated 11 June 2007, counsel advised the Authority in the following terms:

“[The appellant] is asking that she is able to be excused from giving further evidence because she is physically unable to attend. She was very unwell when she was at her last hearing and she becomes very distressed when she remembers past events.”

[19] The appellant was not recalled to give evidence by counsel.

The evidence of the son-in-law

[20] The Authority heard from the son-in-law. Although he spoke at great lengths about his own problems, he also discussed how these problems had affected the appellant. A full summation of his evidence as to his own problems is set out in *Refugee Appeal Nos 76001, 76002, 76003 and 76004* (26 June 2007) at paragraphs [12]-[51] to which the Authority refers.

[21] Specifically in relation to the appellant, the son-in-law told the Authority that when he was arrested in 2002, he saw the officers pushing the appellant over and he saw her fall onto the ground. The son-in-law confirmed that, after this incident, the appellant had been sent to live with relatives of Mr AB for three months. He told the Authority that the appellant returned to live with him shortly before he went to live overseas. He thought she was looked after well by the people. At the time she returned, her arm was still in a sling and she complained about the pain.

[22] The son-in-law had intended to remain overseas until 2005. During this time, he was in contact with his wife (the daughter) and through her learnt of some of the appellant's situation. He said he understood that the police came to the house regularly searching for him and, when they did, the appellant was often left alone by herself. The son-in-law said that when Mrs AB learned of this she became angry and therefore arrangements were made for the appellant to go and live with a nearby family. The son-in-law said that, although intending to return in 2005, he in fact returned in the middle of 2004 and lodged a fundamental rights petition against the police with the aid of a lawyer in respect of the harassment he and his family had encountered.

The evidence of Mrs AB

[23] Mrs AB confirmed that the daughter is her birth sister. At the time of the marriage between her daughter, DL, and GG, the appellant was residing with both

Mrs AB and the daughter. However, as the problems of Mrs AB's family increased, it was agreed that it was better for the appellant to go and live on a permanent basis with the daughter and son-in-law.

[24] Mrs AB told the Authority that as their problems escalated they would sometimes stay with the daughter and son-in-law.

[25] Mrs AB told the Authority that she was called by the priest here in New Zealand and told that the appellant had broken an arm. Mrs AB told the Authority that she informed the priest that her husband's relatives were in another town and that the appellant should go there. She rang the husband's relatives and told them what was happening and agreed to pay them 100 *rupees* a month to look after the appellant. After this incident, Mr and Mrs AB returned to Sri Lanka for a short period and visited her mother. They said they would try and arrange for her to come to New Zealand.

[26] She said that the appellant had been with the relatives for three or four months and then went back to live with the daughter. After returning to living with the daughter, the appellant telephoned Mrs AB and told her that she was scared. The appellant was crying all the time on the telephone. The appellant told her that people had come to the house looking for the son-in-law but the daughter (Mrs AB's sister) kept leaving the appellant at home to deal with the people. On one such occasion she had a hand placed on her neck.

[27] Mrs AB told the Authority that in one of these conversations the appellant had told her she would go and stay with the daughter's neighbour. However, soon afterwards she received a telephone call from the priest who told her that the police had come looking for the appellant at the neighbour's home and that the neighbour had told the appellant to leave because the neighbour was afraid she would have more problems if she stayed. The priest also told Mrs AB that the appellant had in any event been forced to stay in a coconut shed. Mrs AB told the priest to send the appellant once more to Mr AB's relatives.

Other material received

[28] On 21 March 2007, the Authority received counsel's written submissions in relation to the appellant and related appeals. On 1 June 2007, the Authority received counsel's final submissions together with a brief note from the appellant's general practitioner, Dr Rasalingham, dated 21 May 2007. In this letter, Dr

Rasalingham states that the appellant suffers from hypertension, severe anxiety, disorientation, memory loss and suffers “flashback memories of trauma.” Dr Rasalingham then sets out the medicines the appellant has been prescribed. On 12 June 2007, counsel submitted further country information in relation to Sri Lanka in support of this and the related appeals.

THE ISSUES

[29] 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.”

[30] 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

[31] The ability of the Authority to form a view as to the credibility of the appellant was, to some extent, hampered by her failure to complete her evidence due to her advanced age and frailty. In this regard, the Authority notes that neither the psychiatric assessment report of Dr M Louw, consultant psychiatrist, dated 21 June 2006 and provided to the RSB, nor the brief note from Dr Rasalingham states that the appellant was unfit to give evidence. The former merely suggests that she be interviewed with “special care and consideration”; the latter does not address the issue at all. However, having regard to the appellant’s advanced age, and the fact she did require some hospitalisation after her attendance before the

Authority, the Authority does not draw any adverse credibility finding in respect of her failure to attend to complete her evidence.

[32] The Authority also notes the provisions of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (Geneva January 1992) regarding approaches to be taken in determining the refugee status of persons who are suffering from mental disability. While not directly correlating to the appellant's health circumstances, these nevertheless offer appropriate guidance for dealing with a claim by a person of the advanced age and attendant frailty of the appellant insofar as they suggest that the appellant's claim be considered and determined by reference to other available evidence. In this regard, the Authority notes counsel for the appellant was also counsel for the related appellants and she confirmed that their evidence is to be treated as the evidence of the appellant.

[33] The Authority notes the appellant's account was, in broad terms, consistent with that of the other witnesses and the son-in-law, insofar as it suggested the problems experienced by both the daughter and son-in-law and Mr and Mrs AB were linked to a house that had been purchased by the former from the latter. The appellant also corroborated the account of a family dispute in respect of this transaction.

[34] However, there were a number of discrepancies in the appellant's evidence.

[35] First, she stated that DL and GG did not come to stay with the daughter and son-in-law prior to the departure for New Zealand because there was not enough space. When told that DL had told the Authority in her evidence that they did come and stay, the appellant changed her evidence to say that they did but did not stay for very long and they came back on the same day. She did not say that they stayed overnight in contrary to the evidence of DL.

[36] Secondly, she stated that she went to stay with Mr AB's relatives following the first instance when the son-in-law had been detained by the police. The son-in-law told the Authority this took place in 2002. However, in her confirmation of claim form, the appellant stated that she went to live with the relatives only in September 2004. She had no explanation for this. Furthermore, in her evidence the appellant stated she was the person who told the priest of the existence of Mr AB's relatives with whom she stayed. However, in her evidence, Mrs AB stated she was the person who told the priest.

[37] Thirdly, she describes the attack on her following the son-in-law's arrest as including a police officer putting his hands around her throat and threatening to kill her. However, in her statement this incident takes place on a separate occasion when the son-in-law had already departed for an overseas country. Mrs AB also told the Authority that contrary to the appellant's evidence, the incident in which she had the hands placed around her neck occurred after the incident in 2002 during which she was pushed over. Mrs AB knows this because she was not told of this incident until after her first trip back to Sri Lanka.

[38] On their own, these are matters which could be explained by the appellant's advanced age and frailty. However, it is impossible to separate out the credibility of this appellant's claim with the credibility of the claims of the daughter and son-in-law. Her fear of being persecuted depends entirely upon the claims by the daughter and son-in-law that they had suffered the problems they claim. No independent reason is offered.

[39] In this regard, the Authority refers to the credibility findings made in the related appeals of *Refugee Appeal Nos 76001, 76002, 76003 and 76004* (26 June 2007) at paragraphs [91]-[143]. After carefully reviewing the evidence, the Authority concluded at paragraph [144] that:

"The husband [referred to as the son-in-law in this decision] provided no credible evidence of any reason why he or the other appellants are at risk of being persecuted in Sri Lanka should the appellants return there."

[40] Insofar as this appellant relies on the evidence given in support of the related appeals, the Authority adopts the reasoning set out in paragraphs [91]-[144] of the decision in respect of the related appeals. Accordingly, it finds that the explanation given by and on behalf of this appellant as to the cause of her own problems, these being related to the claimed problems faced by the daughter and brother-in-law, is not credible. The Authority notes and accepts the contents of the psychiatric assessment report of Dr Louw in which he states that the appellant "presents as an elderly woman with low mood and symptoms of Post Traumatic Stress Disorder." However, it is plain that Dr Louw is in no position to offer any evidence as to the circumstances upon which this condition has arisen. It is clear from his report that he has relied, in principle, on the statement prepared by the appellant in support of her refugee claim and comments made by DL which, having regard to the credibility findings made in the related appeals, are not accepted.

[41] The Authority therefore finds that the appellant is an elderly, Christian, Tamil woman with low mood and symptoms of post-traumatic stress disorder. Her claim will be assessed against this background.

WELL-FOUNDED FEAR OF BEING PERSECUTED

[42] In *Refugee Appeal No 75972* (30 April 2007) the Authority has at paragraphs [76]-[88] reviewed country information relating to the human rights situation in Sri Lanka concluding:

“[89] The Authority finds that the above evidence establishes that over the past 18 months there has been a renewed escalation in the conflict between the Sri Lankan Government and the LTTE. This followed a period of de-escalation during which the level of violence subsided although, as the decision in *Refugee Appeal Nos 74071 and 74072*, shows, it never fully abated. Predictably, given the violent history of the conflict, this period of renewed escalation has resulted in a significant deterioration in the human rights situation in Sri Lanka. As a result of this escalation, a heightened state of security prevails in which the security forces conduct cordon and search operations checking the identity papers of young Tamils.”

The country information provided by counsel confirms this general picture.

[43] The Authority finds that, were the appellant to be returned to Sri Lanka, she too would face a real chance of being stopped at checkpoints, and of having her place of abode in Colombo and its environs periodically searched by security or police forces. As an elderly woman who is a long-standing resident of the Colombo area, with no history of actual, suspected, or presumed personal or familial connection to the Liberation Tigers of Tamil Eelam, she does not, however, possess any characteristic which means she may be at risk of suffering serious harm to the real chance level. While she may, having regard to her advanced age and her suffering from symptoms of post-traumatic stress disorder, be more affected by periodic searches of her home or checks on her identity at roadblocks, her subjection to these events do not, in themselves, constitute violations at the core of a fundamental human right she enjoys. In such circumstances, that she might find them more distressing because of her age and state of mental health is not sufficient to bring her into the scope of “being persecuted” for the purposes of article 1A(2) of the Refugee Convention as that phrase is explained in *Refugee Appeal No 74665/03* (7 July 2004) at paragraphs [56]-[91]

CONCLUSION

[44] For the above reasons, 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.

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B L Burson
Member