

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76001**

**REFUGEE APPEAL NO 76002**

**REFUGEE APPEAL NO 76003**

**REFUGEE APPEAL NO 76004**

**AT AUCKLAND**

**Before:**

M A Roche (Chairperson)  
B L Burson (Member)

**Counsel for the Appellant:**

C Curtis

**Appearing for INZ:**

No Appearance

**Dates of Hearing:**

26, 27, 28, 29 March 2007,  
2 April 2007 and 14 May 2007

**Date of Decision:**

26 June 2007

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**DECISION**

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[1] These are appeals against decisions 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 appellants who are Sri Lankan Tamils.

**INTRODUCTION**

[2] The appellants are all members of the same family, consisting of a husband, a wife and their two children. They arrived in New Zealand in January

2006 and applied for refugee status on 13 February 2006. The husband was interviewed by a refugee status officer (RSO) on 22 and 23 March 2006. The wife was unable to be interviewed for health reasons. The children were sighted and briefly questioned by the RSO but not interviewed in any depth. In a decision dated 20 December 2006, their applications were declined. The appeals have been heard jointly as they are founded on a similar set of factual and legal grounds.

[3] The wife's mother ("the grandmother") arrived in New Zealand on 27 July 2005. She made an application for refugee status on 12 April 2006 which was based on events that had occurred because of her relationship to the appellants. Her appeal, *Refugee Appeal No 76000* (26 June 2007), was heard jointly with that of the appellants.

[4] The appellants claim to be at risk of being persecuted in Sri Lanka because of their association with their relatives, the AB family, who were harassed by the Sri Lankan police and who fled from Sri Lanka to New Zealand in 2000 where they were granted refugee status. The appellants also claim to be at risk because of the husband's association with Gerald Perera who was murdered in November 2004, shortly before he was due to give evidence in the criminal trial of officers of the Sri Lankan police in relation to their torture of him. The central issue to be determined in these appeals is the veracity of the appellants' claims.

#### Non-attendance of wife and children at appeals hearing

[5] The wife did not appear and give evidence at the hearing. Prior to the hearing, counsel filed a medical report dated 26 March 2007 from Dr Linda Friend, a psychiatrist from Auckland Mental Health Services, and Corinna Friebel, a psychotherapist also from Auckland Mental Health Services. In this letter, Dr Friend and Ms Friebel outlined the wife's various psychiatric symptoms and expressed the opinion that these symptoms impaired her from participating in an interview. Dr Friend and Ms Friebel also expressed the view that should she be asked to record details of the trauma she has experienced in Sri Lanka, the result would be a "decompensation of her mental state with possible suicidal ideation".

[6] Given the evidence presented concerning the wife's mental health and her consequent inability to participate in an interview, the wife did not appear before and give evidence to the Authority. However, the wife's claim is based on similar factual and legal grounds to the husband. He, and the other witnesses who

appeared in support of the appeals, gave evidence relevant to her claim. In addition, submissions were made on her behalf by counsel.

[7] The non-appearance of an appellant due to mental illness does not prevent the Authority from proceeding to hear and determine an appeal: *Refugee Appeal No 75016* (8 June 2006). In determining an appeal in such circumstances, regard must be had to the relevant provisions of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (Geneva January 1992) which recommends different techniques in the examination of persons suffering from a mental disability. Paragraph 210 is particularly relevant:

“210. It will ... be necessary to lighten the burden of proof normally incumbent upon the applicant, and information that cannot easily be obtained from the applicant may have to be sought elsewhere, e.g. from friends, relatives and other persons closely acquainted with the applicant, or from his guardian, if one has been appointed. It may also be necessary to draw certain conclusions from the surrounding circumstances. ....”

[8] At the commencement of the hearing, counsel for the appellants accepted that the Authority is empowered to determine the wife's appeal and that it is appropriate to do so in all the circumstances. She concurred with the course of action proposed by the Authority, that evidence in support of the wife's claim be presented through other family members and that all evidence presented would be on behalf of all the appellants.

[9] The minor appellants did not appear before the Authority. Their interests were represented at the appeal hearing by their father as the responsible adult on their behalf pursuant to s141 of the Immigration Act 1987 (the Act).

#### The husband's evidence

[10] What follows is a summary of the evidence given by the husband at the hearing. This evidence will be assessed later in this decision.

[11] The husband, a married man aged in his mid-40s, is Tamil.

[12] The husband's early life contained no incidents of relevance to this appeal. After completing high school he obtained a mechanical qualification and thereafter obtained employment in a grocery shop.

[13] Following the 1983 Tamil riots, the husband went to live in Z suburb, a district near Colombo where he rented a house. There he met the AB family and, consequently, met his future wife who was the sister of Mrs AB.

[14] In 1992 the husband and wife married. Shortly thereafter, the wife's niece, DL, eloped with her Muslim work colleague, GG. The marriage of DL and GG caused great difficulties for the AB family. GG's family objected to the marriage and used their influence with the Sri Lankan police to harass the AB family.

[15] In or around 1998, the AB family decided to relocate within Colombo in order to escape the harassment they were receiving from the police. They decided not to attract attention to their move by openly selling their home. Instead they accepted 5 *lakh* from the husband for the property on the understanding that he would, at a later date, sell the property and give them the remainder of its value, which was approximately 15 *lakh*. After buying the property, the husband rented it out to a Tamil tenant.

[16] In May 1998, the husband departed Sri Lanka for a Middle Eastern country where he had obtained a three-year contract to work as a generator mechanic.

[17] In April 2000, the home of the AB family was raided by the Sri Lankan police as part of the campaign of harassment that had been waged against them by GG's family. GG was arrested and detained overnight before being released on bail the following day. A few days later Mr and Mrs AB were arrested. They were also released on bail. The AB family requested the wife to sign a bail surety for them. She telephoned the husband to discuss this request. The husband advised the wife that she should comply with this request which she did.

[18] The AB's younger daughter, DT, also signed a bail surety for them. However, DT, who was married to a European national, subsequently decided to return to Europe. It then became necessary for another family member to sign the bail surety in the place of DT. DL initially did this. However, because she was the wife of "the prime suspect" (GG), the family needed someone else to replace her as the bail suretor. The wife telephoned the husband again and asked him to return to Sri Lanka to sign the surety form to replace DL as the suretor for Mr and Mrs AB.

[19] Although returning to Sri Lanka meant that the husband broke his employment contract overseas and, consequently, had to fund his own air fare, he

duly returned to Sri Lanka. Ten days after his return, he attended the registrar's office at the court where he signed a page in a book as directed by the AB family's lawyer. In this way he became the suretor in the place of DL.

[20] After returning to Sri Lanka, the husband and wife assisted the AB family with their problems. From time to time the AB family needed to hide from the police and on these occasions, the husband and wife allowed them to shelter in their home. However, because it was a small house, when they stayed, Mr AB would sleep outside the house in his van which was parked so that it could not be seen from the road.

[21] As a condition of their bail, GG and Mr and Mrs AB were subject to a weekly reporting requirement. The husband drove them to the police station on these occasions.

[22] On 25 May 2000, GG made a complaint to the President's Committee on Unlawful Arrests and Harassment about the treatment that he and the AB family had been subjected to by the Sri Lankan police, particularly the raid and arrests of family members that had taken place in late April 2000. In addition, he lodged a fundamental rights petition with the Supreme Court in Colombo and made a complaint to the United Nations Human Rights Committee in Geneva.

[23] In late November 2000, an arrangement was made whereby the charges against the AB family were dropped in return for their withdrawal of the fundamental rights petition against the police.

[24] Because the AB family wished to leave Sri Lanka, the husband introduced GG to an agent, HH, who obtained visas for the AB family to enter New Zealand. In December 2000, they departed from Sri Lanka. The AB family spent the night prior to their departure at the appellants' home.

[25] The appellants' lives were relatively uneventful following the AB family's departure for New Zealand until 3 June 2002. On that date, the appellants were at home when a group of policemen arrived looking for the husband. They accused him of being a "Tiger" (a member of the Liberation Tigers of Tamil Eelam (LTTE)). However, the real reason for their interest in him was that "human rights in Geneva" had made an enquiry of the Sri Lankan government about GG. Because the husband had signed a bail surety for the AB family, the police, when unable to locate the AB family, traced the husband from the address he had given on the

surety document. Although he had given the address for his rental property in Z suburb (the property he had purchased from the AB family), the tenant there gave them his actual address.

[26] The police arrested the husband and took him away in their jeep. When the grandmother (the appellant in *Refugee Appeal No 76000*) attempted to intervene, she was pushed over and fractured her arm. She subsequently ceased living with the appellants and left to stay with relatives in D town.

[27] The husband was beaten in the jeep. When he arrived at the police station, he was placed in a cell. Soon afterwards another prisoner, who was blindfolded and handcuffed, was brought into the cell with him. The man, who gave his name as Gerald Perera, spoke to the husband expressing his anger about the police and their treatment of him. He asked the husband why he was there. Mr Perera advised the husband that he should file a "FIR case" against the police. He told the husband that he had been wrongly arrested because he had been mistaken for someone else and also told him that he was a cook who lived in Z suburb and that he worked at the harbour. The husband told Mr Perera his name and that he had been wrongly accused of an association with the LTTE.

[28] After half an hour, Mr Perera was removed from the cell. Thereafter, the husband heard the sound of Mr Perera being beaten and screaming nearby. Half an hour after that, the husband was taken out of the cell and led to another room. On his way, he saw Mr Perera hung upside down from a beam in another room and noticed that he was bleeding from his face. The husband was taken to the "OIC" room where he was beaten and interrogated as to the whereabouts of the AB family.

[29] The police told him that he had rented his Z suburb property to Tamils and demanded that he evict his tenant and bring the keys for the property to the police station. The husband agreed to do so and was released in the late afternoon. The husband followed the police instructions and surrendered the keys to the property to the police. They then forced him to rent the house to a Muslim man named JJ, who was a relative of GG's estranged family. JJ duly moved into the house but never paid any rent to the husband. When the husband went to the house to collect rent from him he said to get it from the police. When he went to the police they told him to get it from JJ.

[30] Around this time, the appellants were experiencing harassment from their neighbours who, until the police raid in June 2002, had been unaware that they were Tamils. Also around this time, the grandmother returned from D town and recommenced living with the appellants. The husband thinks she returned because she had been neglected by “the D town relatives” but was not certain of this.

[31] In February 2003, the husband went to another Middle Eastern country to work and remained there until July 2004. Prior to his departure, the police had come to his house to “scold him” on several occasions. On these occasions, the police would call at the appellants’ house while passing, and ask the husband to come to the door. They would then tell him that he had helped the “Tigers” (LTTE). After delivering such a “scolding”, the police would then leave without further incident.

[32] While the husband was overseas, the Z suburb police came to his home asking where he was on three occasions. On the last of these occasions they smashed furniture in the house before they left. In addition to this, the local police also harassed the wife, calling in regularly at the instigation of the neighbours. The neighbours also harassed the wife and on a number of occasions threatened her that they were going to “catch her” and take her to the police. On these occasions a family friend, EN, sheltered the wife at his home and informed her when it was safe for her to return home.

[33] After being informed by his wife of the final incident of police harassment of her (when items around the house were smashed), the husband decided that he should return to Sri Lanka. He also thought that he would now be able to repossess his rental property from JJ.

[34] In July 2004, after returning to Sri Lanka, he consulted his lawyer who suggested that he submit a petition concerning his grievances against the police to the Inspector-General of Police. Accompanied by his lawyer, the husband filed the petition at the Colombo police headquarters.

[35] Approximately two weeks later, a van arrived at the appellants’ home. A man came into the house and informed the husband that his lawyer wanted to see him and that they were there to collect him on his lawyer’s behalf. The husband got into the van. He was then set upon by the occupants of the van, who blindfolded him and beat him until he became unconscious.

[36] When he regained consciousness, he found himself in a police cell. A policeman entered the cell and removed his blindfold before leading him to a bench outside the cell where he beat him and told him he had to withdraw his petition to the Inspector-General.

[37] The husband wrote his name on a piece of paper and also wrote that he was withdrawing his complaint to the Inspector-General. He then signed the piece of paper. After he signed the paper, the policeman told him if he did anything against the police again they would kill him. The husband subsequently overheard this policeman telling another that they would forge a suicide note from him confessing to having sold the Z suburb house and to having gambled away the proceeds.

[38] After being released, the husband was required to report to the Z suburb police station every Saturday which he did from July 2004 until November 2004, when he went to stay at Trincomalee.

[39] The husband resolved to find a place in Sri Lanka where his family could live and be safe. He first went to Trincomalee where he stayed for approximately one and a half months. He kept in touch with his family while in Trincomalee. They did not report any police visits resulting from his failure to report to the Z suburb police station. After one and a half months, his landlords asked him to leave. They had been requested to do this by the LTTE, who were suspicious of the husband's sudden appearance in Trincomalee and who considered that he may be an informant for the Sri Lankan Army (SLA).

[40] From Trincomalee the husband went to Jaffna, where he stayed for approximately three weeks. While in Jaffna, he was approached by the LTTE who offered to protect him in Colombo and to provide him with a place to live in return for him "working" for them. The husband feared that if he refused the LTTE outright he would suffer reprisals from them so, after agreeing to work for them, he quickly left Jaffna and returned to Colombo.

[41] On 21 November 2004, while the husband was in Jaffna, Gerald Perera was shot, shortly before he was due to give evidence in court about his torture by members of the Sri Lankan police in the Z suburb police station in June 2002.

[42] In December 2005, Gerald Perera's brother called at the appellants' house and spoke to the wife. The Perera family wanted the husband to appear as a



witness in the court case concerning the torture of Gerald Perera by the Sri Lankan police.

[43] In January 2005, members of the Perera family returned to the appellants' home. This time they spoke to the husband and requested that he become a witness for them in the case against the police. Initially the husband refused. The Perera family then threatened him that if he did not become a witness for them they would burn down his house. Feeling intimidated, he agreed to do as they asked and be a witness against the police.

[44] Some time later the same month, the husband was at home when a police officer arrived and asked him to come and speak to the officer in charge (OIC) at the Z suburb police station. At the police station, the OIC told him that he had to write a statement saying that he had seen Gerald Perera being questioned, but that the police had not mistreated him and that he was released the following day. The husband initially refused but, after being beaten and threatened by the police, he capitulated and wrote the statement saying that he had seen Gerald Perera and that the police had not mistreated him.

[45] The husband was now in a difficult situation. He had agreed to be a witness for both the Perera family and the police, and feared retribution from both. To escape this situation, he decided to leave and work overseas again. In March 2005, he left Sri Lanka for a Middle Eastern country. After arriving there, he learned that his real destination was Iraq. Although he was frightened of going there due to the high levels of violence and insecurity, he felt he had no choice. Two days later, he departed for Iraq where he worked until early August 2005. He planned that when he returned from Iraq he would find a safe place overseas for himself and his family to live.

[46] From Iraq, the husband was permitted by his employer to make one telephone call a month to his family in Sri Lanka. He made monthly calls from March until June. Through these calls he was reassured that his family had experienced no particular difficulties in his absence. However, in July 2005 when he called his wife's cellphone, it was answered by EN who informed him that his wife had been sexually assaulted by a group of Sri Lankan policemen. He also told the husband that the wife and children were en route to D town where they were going to stay with the same distant relatives who were looking after the grandmother. These relatives owned a shop in D town.

[47] After learning what had happened to his wife, the husband immediately made arrangements to return to Sri Lanka. He arrived in early August 2005 and, on his arrival, went and joined his family in D town. From there, he began to make arrangements through the agent, HH, for the family's departure for New Zealand.

[48] While the appellants were staying in D town, enquiries were made about them there by the police. Fearing apprehension by the police, the appellants then went to stay in a suburb of Colombo at a unit attached to a house owned by their agent HH. After approximately a month there they were warned of an imminent police raid at the unit and so left and went to Kandy for a few days. From Kandy, they returned to D town. However, while there, members of the Perera family came and made enquiries about them in the shop leading them to flee again to Colombo where they again stayed at the unit owned by their agent.

[49] In January 2006, the appellants' visitor visas to New Zealand were issued. Approximately three weeks later, the family departed Sri Lanka legally using their own passports. The husband believes that HH made some arrangement at the airport to enable them to depart without difficulty.

[50] The appellant children are both attending school in New Zealand. Although when they arrived, they were traumatised as a result of their experiences in Sri Lanka, they have become more settled while in New Zealand. The husband claimed that the elder boy was sexually assaulted during the July 2005 attack on the wife in that his genitals were grabbed by a police officer. He has had sleeping difficulties since then but is now more settled. The husband told the Authority that the younger son used to make statements to the effect that he would like to kill the police. However, he has now stopped making such statements and seems happier.

[51] The husband fears that should the family return to Sri Lanka the police will seek retribution against him for filing a petition complaining about them to the Inspector-General in Colombo in 2004.

#### Witnesses in support of the appeals

[52] A number of members of the AB family appeared as witnesses in support of the appeals.

Evidence of DL

[53] DL is aged in her mid-30s. She lives in Auckland with her husband GG and her three daughters and is a part-time office worker. She is one of the two daughters of the AB family and is the niece of the appellant wife.

[54] DL told the Authority about the difficulties experienced by the AB family as a result of her marriage to GG. She gave evidence about the police raid on the AB family home in April 2000 that led first to the arrest of GG and, a few days later, to the arrest of Mr and Mrs AB. She claimed that, prior to Mr and Mrs AB's release, her sister DT and the appellant wife signed bail papers in respect of Mr and Mrs AB.

[55] DL explained that there was ill feeling between her parents and the husband and wife which had arisen from the failure of the husband to pay the remainder of the purchase price for the house in Z suburb he had bought from them. Also, the wife was rather hesitant and required some persuasion to come and sign the bail documents when requested. This hesitation on her part only served to increase the ill feeling between the husband and wife and the AB family.

[56] Some time after Mr and Mrs AB were released on bail, DT decided to return to Europe. It was necessary for someone else to take her place as a bailee. The AB family requested the wife to ask the husband to return from the Middle East and do this. As a temporary measure, DL took her sister's place as suretor and signed the bail document. When the husband returned from overseas, he replaced DL and signed the bail form so that her name could be removed.

[57] Between that time and the AB's eventual departure for Sri Lanka the AB family stayed with the appellants from time to time when they felt under threat from the police. However, Mr AB did not stay because the appellants' house was too small and, after dropping off the remainder of the family, he would go in his van and sleep at a building site.

[58] The husband provided other assistance to the AB family prior to their departure from Sri Lanka. He introduced GG to the agent who helped the family secure visas for New Zealand. GG met this agent two or three times a week while preparations were being made for their departure and as a result became friends with him. The husband also drove the AB family to the airport when they departed.

[59] After arriving in New Zealand and obtaining refugee status here, the AB family maintained contact with the appellants in Sri Lanka. Through them, they learnt that the grandmother (the appellant in *Refugee Appeal No 76000*) had been pushed over in a police raid in the house and had fractured her arm and become unwell. Towards the end of 2003, they received news from relatives with whom the grandmother was living in D town that she was dying. Upon receiving this news Mr and Mrs AB decided to travel to Sri Lanka to see her.

[60] DL was very worried about Mr and Mrs AB while they were in Sri Lanka and telephoned them daily while they were there to make sure that they were alright.

[61] DL agreed with the Authority that a letter written on the grandmother's behalf to the then Minister of Immigration contained untrue and exaggerated details and was intended to present the grandmother's circumstances in Sri Lanka in the worst possible light in order to secure residence for her in New Zealand.

#### Evidence of GG

[62] GG told the Authority that, after DT left for Europe, the husband returned to Sri Lanka from overseas and that he drove the husband to court to sign the bail form that DT had originally signed.

[63] GG said that he and the AB family stayed with the appellants from time to time when they needed to hide from the police. However, because the appellants' house was so small, he and Mr AB would sleep in their vehicle at Mr AB's work place. He also said that he sometimes slept at the house and he thought that Mr AB also did so once or twice.

[64] He gave evidence that he could not recall whether or not DL kept in touch with Mr and Mrs AB when they returned to Sri Lanka. He thought that she may have spoken to them once but was uncertain. He gave evidence that the husband introduced him to the agent and that he thought that he (GG) had met the agent on more than one occasion but could not be sure if he had met him on more than two occasions.

### Evidence of Mrs AB

[65] Mrs AB told the Authority that the husband was introduced to the wife, her sister, by the AB family and that the husband worked for Mr AB for several years before he left to work overseas.

[66] Mrs AB stated that bad feeling developed between the appellants and the AB family when the appellants failed to pay them the remainder that they owed for the house that they had purchased from them. However, she and Mr AB had stayed at the appellants' home the night of the police raid on 26 April 2000.

[67] Mrs AB stated that she signed the bail surety for GG when he was released and that the wife and DT signed bail sureties for Mr and Mrs AB. Around this time, the wife complained to her that she did not wish to get involved with the AB family's problems and expressed her concern that her involvement with their bail may cause difficulties for her.

[68] Because DT wanted to return to Europe, DL signed the bail surety in her place. However, DL was involved with the case and so the AB family asked the wife to get the husband to come back to Sri Lanka so that he could sign the surety in DL's place. The wife was reluctant to do this but eventually agreed and the husband returned. After arriving in Sri Lanka he visited the AB family home and shouted at them about involving him in their problems. The husband did, however, sign the bail surety although Mrs AB was not present when he did so.

[69] Mrs AB stated that the AB family used to stay with the appellants when they were having problems with the police. Whenever they did, she, along with DL and the children would sleep at the appellants' house while GG and Mr AB would sleep in a parked van. To her recollection, GG never stayed at the appellants' house.

[70] Mrs AB stated that in 2002, her mother (the grandmother) went and stayed with relatives in D town and that she sent them money to cover the cost of this accommodation. Later on, the grandmother returned to live again with the appellants. This arrangement was unsuccessful because the wife used to leave her alone in the house when she ran away from the police and the neighbours. Eventually the mother was returned to stay with the D town relatives again.

[71] Sometime after this, in late 2003, a priest called the AB family in New Zealand and told them that there was no one to look after the mother and that they

should come to Sri Lanka. About one and a half months after receiving this telephone call, Mr and Mrs AB travelled to Sri Lanka to see her.

[72] In August 2005, Mr and Mrs AB travelled to Sri Lanka on a second occasion, to collect the mother and bring her back to New Zealand. The day before they departed, the wife arrived in D town. She was brought there by EN, a man from her church. The wife was very disturbed and was shouting loudly even though she had been gagged. Mrs AB said that the wife did not tell her what had happened to her and that it was the D town relatives who told her what had happened.

[73] Mrs AB agreed that the AB family were the source of the husband and wife's problems because these problems began after they signed the AB family's bail sureties. She stated that, on the day that GG and the AB family withdrew the FIR case against the police, the husband was threatened by the police that they (the police) would come for his children. She claimed that no mention had been made of the husband and wife's role in assisting them in Sri Lanka when they made their refugee claims in New Zealand because the AB family was simply not thinking about the appellants when they got to New Zealand.

[74] She stated that the wife used to telephone her from Sri Lanka and shout and scold her blaming her for the appellants' problems and that, when the wife arrived in New Zealand, she was "scolding" them about being the source of the appellants' problems.

[75] Mrs AB was asked about a letter she had written about her mother's situation to the Minister of Immigration in New Zealand in which she had represented that there was no one in Sri Lanka to care for her mother when she had been cared for by the appellants and by the D town relatives. Although told by the Authority that DL had admitted in her evidence that the contents of the letter were not strictly true, Mrs AB did not resile from the statements made therein.

#### The evidence of Mr AB

[76] Mr AB gave evidence that he and his family suffered regular harassment at the hands of the police and, on these occasions, would go and stay with the appellants. However, because their house was too small to accommodate the entire AB family, Mr AB would park his vehicle at various of his building sites and

sleep there. The one time he stayed at the appellant's house was on the night of the 26 April 2000 raid on their home.

[77] Mr AB stated that the husband returned from overseas to replace DT as the suretor. He also claimed that the husband drove the AB family to the airport.

[78] When asked why he had not mentioned the husband's assistance in his refugee claim, he expressed bitterness about his failure to pay him money he owed him for the house sold by the AB family to the husband and wife.

[79] He recalled that the husband and wife had telephoned them in New Zealand about problems they were having in Sri Lanka but denied any knowledge of the specifics of the problems. He then said that he "only knew what they said".

[80] He recalled that in December 2003, the priest rang and told them that the grandmother was unwell and possibly near death. Soon afterwards, he and Mrs AB made their first visit to her in D town. They returned for a second time in July 2005 to collect her and bring her back to New Zealand with them.

[81] Mr AB gave evidence that the wife was brought to D town two or three days prior to their departure for New Zealand. He told the Authority that when he saw the wife in D town she was unwell but that he had no knowledge of what had happened to her. When questioned as to the nature of her illness he indicated that it was something to do with being female but beyond that he neither had, nor wished to have, further knowledge about it.

#### Evidence on behalf of the wife

[82] The wife did not appear and give evidence at the hearing, the Authority having accepted that her mental health precluded her from doing so. Instead evidence in support of her claim was given by the husband and the members of the AB family who appeared as witnesses.

[83] As noted earlier, the husband gave evidence that in July 2005, he was told by telephone by EN that the wife had been raped by a group of Sri Lankan police officers at her home. He told the Authority that the wife's mental health had been improving since she had been in New Zealand. Prior to arriving here she was not talking at all but she has now begun to talk a little. For example, she replies to questions. The husband is of the view that the wife is becoming happier and this is reflected in the fact that she now sometimes "teaches" the second child. She

also responds to and obeys directions that he gives her; however, she does not perform normal household tasks. For example, the husband still does all the cooking for the family. He also considers her unable to care for the younger child alone.

[84] A number of letters from medical professionals concerning the health of the wife appear on her DOL file. These are:

- (a) A report dated 13 March 2006 prepared by Dr A A McLeod at the Mangere Refugee Resettlement Centre Medical Clinic. This report notes that the wife is suffering from a major psychological illness. It records a medical history relayed to the doctor by the husband because the wife did not respond to questions at the examination. This history states that the wife was gang raped in July 2005, that she made a suicide attempt the following day, and that since then, has had ongoing health problems including major psychiatric illness. It records that she spends a lot of time staring into space or with her hands in her head, crying.
- (b) A letter from Dr Tony Wansbrough dated 17 March 2006 which states that the wife has post-traumatic stress disorder (PTSD) and that she has been prescribed medication for depression and headaches.
- (c) A letter dated 28 March 2006 from Dr Vuletic-Korac, a consultant psychiatrist at Auckland Mental Health Services which also notes the wife's diagnosis of PTSD and records that she has been under the care of the Crises Team intensive care but has not improved. It also records that she is unable to elaborate on her traumatic experience.
- (d) A letter from Dr Linda Friend dated 18 August 2006 which records the wife's symptoms as comprising of withdrawal, inability to concentrate, decreased appetite, dissociation, and nightmares. Dr Friend states that the wife has been seen regularly by her and that "there is absolutely no indication that she is malingering or attempting to falsify her mental state in any way".

[85] Also of note is a file note dated 31 July 2006 recorded by the RSO which notes that an attempt was made to interview the wife that day. It states that the wife snatched her hand away when the RSO attempted to shake it and thereafter sat on the floor with her head in her hands rocking repeatedly. The RSO recorded that DL was present and informed her that the wife was receiving medical for



PTSD following a prolonged sexual attack. The RSO terminated the interview because of her concern about the wife's mental state.

[86] The full text of the letter of 26 March 2007 about the wife by Dr Linda Friend and Corinna Friebe at Auckland Mental Health Services is set out below:

"[The wife] is a 42-year-old Sri Lankan woman who has been in our care at Cornwall House since April 2006.

She has been seen previously by Dr. Korac of St. Lukes Community Mental Health Centre. Her support person related that after being interviewed and asked about the trauma by Dr. Korac, her mental state would deteriorate.

[The wife] presented with a history of multiple trauma, including sexual torture (interpersonal violence within a political context). Due to cultural inhibitors and the impact of her traumatic experiences she has been unable to share the full extent of her traumatisation until now.

[The wife] presented with Major Depressive Episode in conjunction with Post Traumatic Stress Disorder. There are no signs of a psychotic disorder operating.

Our assessment of [the wife] is that she is currently severely clinically depressed with a history of suicide attempt following the sexual assault in July 2005. The diagnosis is made on the basis of her depressed mood and her associated symptoms of sleep, appetite, enjoyment, motivation, concentration and energy reductions.

[The wife] also presented with classic posttraumatic symptomatology, including intrusive experience (frequent nightmares), avoidance and hyperarousal and meets the criteria for PTSD. Her traumatic experiences in Sri Lanka have not found any resolution. [The wife] also presents with a high level of dissociation as indicative of multiple trauma. This does limit her ability to stay present and focused during conversation, due to her psychological need "to forget everything".

During initial interview at Cornwall House [the wife] was unable to articulate her experience. Even after 20 sessions (with a female interpreter present) [the wife] has continued to speak in a very low, sometimes inaudible voice, often being unable to articulate full answers to questions.

All these symptoms impair her from participating in an interview. Of great concern is the risk involved of a deterioration of her mental state if she has to recall the details of the trauma.

It is our professional opinion that an interview with immigration regarding the trauma she has endured would result in decompensation of her mental state with possible suicidal ideation.

Furthermore we believe that if [the wife] would have to return to her home country she would be at high risk of being re-traumatised due to multiple triggers (eg police uniforms, language/dialect as related to perpetrators), which could lead to decompensation and psychotic breakdown."

### Documents filed

[87] Counsel filed written opening and closing submissions. She also filed various items of country information.

## **THE ISSUES**

[88] 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."

[89] 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 APPELLANTS' CASE**

### **Credibility**

[90] Prior to determining the framed issues, it is necessary to make an assessment of the husband's credibility and the credibility of the witnesses.

[91] The Authority did not find the husband to be a credible witness. It is accepted that he is a Sri Lankan Tamil and that his and his wife's familial relationship to the AB family, and to the appellant in *Refugee Appeal No 76000*, is as they claim it to be. Our acceptance of the husband's evidence as to the core elements of his claim stops at this point.

[92] The husband claims that his signing of the bail surety for the AB family was the catalyst for a string of incidents whereby he and the wife, and to a lesser extent, the children, were subjected to abuse at the hands of members of the Sri Lankan police. The husband's account featured three main incidents when he was arrested and detained by the police and severely mistreated while in detention. The first arrest related to the disappearance of the AB family. The second and third arrests and all further problems with the police arose from events that occurred during his first police detention (in particular his interaction with Gerald

Perera and the surrender of his Z suburb property to a Muslim associate of the police).

[93] For reasons which follow, the Authority rejects his evidence (and that of his witnesses) about the signing of the bail surety and rejects the husband's evidence about each of the claimed incidents with the police. We also reject the evidence of the husband and the witnesses about assistance provided by the appellants, particularly the husband, to the AB family prior to their departure from Sri Lanka.

#### Signing of bail surety

[94] The husband gave inconsistent evidence about how the Z suburb address came to be entered on the bail document. His entry of this address on the surety form had been a pivotal event in his refugee account as he claimed that, two years later, enquiries were made at this address that led the police to him. However, when giving evidence about signing the surety, he appeared to forget this detail and stated that the only thing he personally entered on the form was his signature, as his name, address, and identification number had been provided in advance by DL. When asked which address had been provided for him on the form he signed, he stated that it was his home address (in Y suburb). Later in the hearing, he contradicted this evidence and reverted to his claim that he had supplied the Z suburb address on the bail document.

[95] We do not accept that, were his account true, he would be unable to consistently recollect such an important detail, especially given the significance that the Z suburb house played later in his account. It will be recalled that the husband claimed that after the police traced him from the Z suburb address, they forced him to tenant it to a Muslim police associate who paid him no rent. This arrangement was the catalyst for his complaint in 2004 to the Inspector-General of Police which in turn was the catalyst for his arrest in July 2004.

[96] The husband's account of his signing of the bail surety evolved significantly between his RSB interview and the appeal hearing. Initially he claimed to have signed the form to replace DT in order to enable her to depart for Europe. In its interview report, the RSB challenged this claim and pointed out to the husband that an examination of DT's passport showed that she had left for Europe several weeks prior to his return to Sri Lanka from the Middle East. In response, the husband made the claim that DL temporarily replaced DT, allowing her to leave for Europe and that he then returned to Sri Lanka and replaced DL.

[97] The evidence of the four witnesses from the AB family similarly evolved between their RSB interviews and their appearances before the Authority. The AB family were questioned extensively by the RSB about the claim that the husband and wife had signed surety documents for them. To the RSB they did not claim that the husband replaced DL as suretor only after she had already replaced her sister DT. Before the Authority they did.

[98] The husband claimed that he returned to Sri Lanka reluctantly and that he suffered financial loss in doing so. However, he had difficulty providing details about the loss he incurred. For example, he claimed to be unable to remember the approximate cost of the air ticket he had to purchase to return and also initially claimed to be unable to remember the amount of earnings he had had to forgo in order to return. His inability to spontaneously provide such details was surprising given his evidence that breaking his Middle Eastern work contract and having to return to Sri Lanka was a “big issue” for him.

[99] Having regard to the totality of the evidence about the husband’s signing of the bail surety, we conclude that his claim to have done so was false.

#### Provision of assistance to AB family

[100] We disbelieve the claims that members of the AB family regularly sheltered from the police at the appellants’ home, that the husband was involved in the introduction of the AB family to their agent, and the claim by the AB family (not corroborated by the husband) that he transported them to the airport when they departed.

[101] The husband and his witnesses all gave evidence that from time to time the AB family would shelter from the police at the appellants’ home. However, there were differences between the various witnesses and inconsistencies which we would not have expected had this evidence been true.

[102] For example, Mr AB stated unequivocally at his RSB interview in July 2006 that, the AB family had never stayed with the appellants and commented that the appellants’ house was too small to accommodate them. In contrast, when giving evidence before us, Mr AB stated that he and Mrs AB had stayed at the appellants’ home on the night of the 26 April 2000 police raid and that the AB family regularly sheltered there after that. He went on to say that because the

house was small, he would drop the rest of the family at the appellants' home but would himself sleep in his van at building sites.

[103] The husband gave a similar account but claimed that when they stayed, Mr AB parked his van behind the appellants' house and sleep in it there. When told that Mr AB had claimed to sleep in the van at building sites, he denied this and maintained that Mr AB only ever slept in the van outside the house.

[104] There were similar disparities between the husband and between the witnesses as to the manner in which the husband "introduced" the agent to them. Mr AB told the RSB that he knew the agent because he had been a friend of his deceased brother. He made no mention of the husband having any role in obtaining the assistance of the agent. When asked whether he had approached the agent himself and asked him for help, Mr AB replied "Yes I went and asked him if he could help [us] to leave the country". In contrast, he told the Authority that he did not speak to the agent and that the husband made the suggestion that he approach him.

[105] The husband gave evidence that he took GG to meet the agent. When asked by the Authority about this, GG was markedly evasive. He claimed not to be able to remember whether the husband had ever been present when he (GG) met the agent. When asked about an earlier statement in his evidence that the husband had introduced the agent, GG claimed that Mr AB had told him that he (Mr AB) had met him through the husband.

[106] Finally it is noted that DL and GG gave contradictory evidence about the agent. DL told the Authority that the agent and her husband met several times a week for several weeks thus becoming close friends. In contrast, GG told the Authority that he was sure that he had met the agent more than once but was unsure as to whether it had been more than twice.

[107] The four witnesses from the AB family all gave evidence that the husband drove them to the airport when they left Sri Lanka. When asked, the husband did not corroborate this claim and gave evidence that it was the agent who drove the AB family there.

[108] For the reasons outlined above, the evidence of the husband and his witnesses about further assistance provided by him and the wife to the AB family, prior to that family's departure for New Zealand, is rejected. The husband's (and

his witnesses') false evidence in this regard appears to be an attempt to graft the appellants into pivotal events of the AB's successful refugee claim.

June 2002 arrest

[109] The husband claims that, after his 2002 arrest, he was informed while in police custody that the police needed to locate the AB family because "human rights in Geneva" were trying to find out about them. In support of this claim, the husband filed an extract from a report (Tamil Centre for Human Rights *Reports of the United Nations Concern Sri Lanka Year 2003* [http://www.tchr.net/report\\_un\\_reports\\_2003.htm](http://www.tchr.net/report_un_reports_2003.htm).) which noted GG amongst a list of persons about whom enquiries had been made of the Sri Lankan government. The report went on to note in respect of GG that:

"The Government responded that an investigation initiated on 11 October 2002 revealed that the alleged victim had left the country."

[110] In a handwritten commentary added by the husband it is noted:

"The government got the police to act. The case was lodge (*sic*) to investigate in April 2000. The police and the government deliberately dragged to reply and waited until 11 October 2002 to update and revenged (*sic*) the [appellants' surname] family".

[111] After perusing the extract filed by the husband, the Authority located a full copy of the report. It is a compilation of extracts that relate to Sri Lanka from reports made by various United Nations Special Rapporteurs. At Paragraph 1487 of the report, it is stated that requests for information about individuals (including GG) were only made of the Sri Lankan government by the United Nations Special Rapporteur on Torture on 2 September 2002.

[112] This date is significant. The husband claimed that the catalyst for his June 2002 arrest was the fact that information about the AB family had been sought by "human rights" in Geneva. Yet, the claimed June 2002 arrest predates the request by the UN Special Rapporteur for information by some three months. When the inconsistency was pointed out to him he had no explanation and merely reiterated that that had been what the police had told him.

[113] Given that the request for information about GG was made of the Sri Lankan government in September 2002, it is not possible this request was the catalyst for the husband's June 2002 arrest. Rather, we find that the husband has used information about the UN Special Rapporteur's interest in GG in an attempt

to provide corroboration for his false refugee claim which he has grafted on to public and credible information about GG.

### Gerald Perera

[114] A significant feature of the husband's first episode of detention and mistreatment by the police was his claim to have shared a cell with Gerald Perera.

[115] In his evidence, the husband claimed to us that Gerald Perera was his cell mate for approximately half an hour at the Z suburb police station. He claimed that he saw Perera blindfolded, that Perera was Sinhalese, that Perera told him that he was a cook and that he resided near the harbour in Colombo. He then claimed that Perera was removed from the cell and that he heard him being tortured before he observed him being hung upside down from a beam and bleeding. He named the police officers who had dealt with both him and Mr Perera.

[116] The Gerald Perera case achieved considerable notoriety in Sri Lanka. Every detail of the husband's evidence about Mr Perera is in the public domain and can be found in news articles such as the ones filed by the husband. The husband provided no information about Mr Perera that could not be sourced by a review of media reports about him.

[117] The media reports about Mr Perera note that he was arrested in a case of mistaken identity and falsely accused of a crime. None of the media reports viewed by the Authority specify the crime of which he was accused. When asked by the Authority what Mr Perera had been accused of, the husband stated that Mr Perera had not told him. Thus he confirmed that he knew nothing more about Mr Perera than any other member of the Sri Lankan public who has followed the case in the news. The text of the Supreme Court judgment in Mr Perera's favour notes that the crime he was falsely accused of was murder.

[118] The husband also claimed that, during the half hour they spent together in the police cell, Gerald Perera advised him to file a fundamental rights petition against the Sri Lankan police. Given that Gerald Perera had not received legal advice at that point concerning his torture by the police, we consider far-fetched in the extreme the notion that he would be dispensing legal advice to the husband during their brief encounter in the police cell.

[119] The husband claims that, following Gerald Perera's highly publicised murder in late November 2004, he was approached by both the Perera family and the police and asked to give evidence on behalf of both of them concerning his knowledge of what had happened to Gerald Perera at the police station in June 2002. In his narrative, the pressure placed on him by the Perera family and the police were both the reason for his departure to the Middle East in early 2005 and his flight with his family to New Zealand in January 2006.

[120] We do not accept that he was pursued by the police and the Perera family to be a witness as he claims. During the hearing it was pointed out that, according to court records, Mr Perera's fundamental rights application in the Supreme Court was argued on 27 February 2003 on the basis of affidavit evidence. Furthermore, the criminal case against the police officers involved was due to be heard on 2 December 2005 which is prior to when the husband claims to have first been approached by either side as a witness.

[121] Had the husband really been a witness to the torture of Gerald Perera in June 2002, it is inexplicable that both sides would be pursuing him as a witness in January 2005 when neither side sought to secure his evidence for either the earlier February 2003 Supreme Court hearing or the hearing scheduled for 2 December 2005. The husband had no explanation for this surprising omission to seek his evidence at an earlier stage and, when asked about it by the Authority, his only comment was that he did not know why the police had not sought to have him as a witness in 2003.

[122] Because the date of the United Nations Special Rapporteur's enquiry about the AB family pre-dates the husband's arrest (although he says that it was the reason for it) and because the husband's evidence about Gerald Perera is implausible, we reject the husband's claim to have been arrested in June 2002. It follows that we reject all of the events he claimed occurred in the course of this arrest and the detention which followed it. These events include the installation by the police of a Muslim tenant in his home who paid no rent.

#### Harassment of wife between February 2003 and July 2004

[123] The husband claims that while he was working in the Middle East between February 2003 and July 2004, the wife was harassed by the Z suburb police, the local police and by their neighbours who, prior to his June 2002 arrest, had been



unaware that the appellants were Tamil. His evidence to the Authority about this was inconsistent with details he had provided to the RSB.

[124] To the Authority he claimed a significantly higher level of harassment had occurred to that which he had described to the RSB. In his evidence to us, the most severe harassment of the wife was carried out by the neighbours who on many occasions threatened that they were going to “catch her” and take her to the police. The husband claimed that on these occasions a family friend, EN, would shelter the wife at his home and then would tell her when it was safe for her to return to the house.

[125] The wife’s harassment by the local police and by the neighbours did not feature in the account the husband presented to the RSB. To them, he claimed that the harassment of his wife during his absence consisted only of three visits to her by the Z suburb police. It is inexplicable that, had the wife’s harassment been at the level the husband claimed to the Authority, he would have failed to tell the RSB about it.

[126] The husband’s evidence to us about EN’s role was also inconsistent with the account he gave to the RSB. In his account to the RSB, his wife was sheltered by EN on only one occasion which was when the Z suburb police visited for the third time and destroyed property. To the Authority he claimed that EN sheltered the wife from the police on many occasions but that after the third visit by the Z suburb police, EN only remonstrated with the police and provided no other form of assistance to the wife.

[127] In addition to these inconsistencies, the husband’s evidence about the wife’s harassment, particularly by the neighbours, had an unreal quality to it. He initially claimed that she would hide with EN when the police came. When asked how she was able to know they were coming (to know that she needed to hide) he responded by changing his evidence. He told the Authority that the wife was not able to hide from the police when they came as she had no warning of their visits. However, she would hide in response to threats the neighbours would make to “catch her” and take her to the police. This in itself is rather far-fetched but the husband adds to it the fact that EN was somehow able to ascertain when such threats had passed following which he would advise the wife who would be able to return, unharmed, to the home.

[128] The husband's evidence about the harassment of his wife between February 2003 and July 2004 was inconsistent and implausible. It is rejected.

#### Second arrest July 2004

[129] The husband's evidence to us about the 2 July 2004 arrest was significantly different from the account of this arrest he gave to the RSB.

[130] To the Authority, he claimed to have been blindfolded in the van and to have been transported, unconscious, from the van to a police cell. He told the Authority that he woke up blindfolded, not knowing where he was, and that a specific police officer, whom he named, removed the blindfold from him in the cell before taking him outside to another room where he was beaten. In contrast, he told the RSB that he woke up without a blindfold and recovered consciousness while alone in the cell. When asked about this inconsistency, he claimed that the account he had given the RSB was correct and that he had not been blindfolded when he woke up. Thus he contradicted the specific evidence he had given only minutes earlier about a particular named police officer removing his blindfold before leading him out of the cell.

[131] He told the Authority that after being beaten by the police he signed a withdrawal of his fundamental rights petition. He said he was questioned at length about what he had signed. He described it as a single sheet that had writing on one side and was blank on the other. He said that the writing on the side that he had signed was his own and what was written there was the text of the withdrawal of his fundamental rights petition. He made no mention of signing anything but this single sheet of paper.

[132] When describing the same incident to the RSB, he claimed that he had signed the withdrawal and had then signed three blank sheets of paper. When reminded about this at the appeal hearing, he told the Authority that "at the last minute", the police made him sign the three blank pages and that he had forgotten about them when giving evidence earlier.

[133] Another aspect of the husband's account of his July 2004 arrest that we find implausible is his evidence that he would, without hesitation or apprehension, voluntarily get into a van in the circumstances he described. He claimed that he did so because an unknown person from the van told him that he had been sent to

collect him by his lawyer, even though his lawyer had never collected him in this way previously.

[134] It was put to him that his willingness to get into a van with persons unknown was surprising given that one of the most commonly cited modes of human rights abuses perpetrated against Tamils in Sri Lanka was through people being abducted in vans. When this was put to the husband he agreed that that was the case, but reiterated that he had had no concerns about his safety when he got into the van. His explanation for this state of mind was that he trusted the person from the van because he had a drink of water at his house. This explanation is trite and implausible given the use of vans as a precursor to serious violence and disappearances in Sri Lanka.

#### Events between July 2004 and July 2005

[135] The husband claims to have left Sri Lanka again in March 2005 in response to the pressure placed on him by both the police and the Perera family.

[136] When questioned whether he had any concerns for the safety of his family when he left them behind in Sri Lanka, he replied that he did not. He had already claimed in his evidence that his wife had been severely harassed when he was last in the Middle East. He was also effectively absconding from the police after agreeing to be their witness and from the Pereras who had threatened to burn his house down if he did not cooperate with them. Against this background, his professed lack of concern for his family's wellbeing when he departed from Sri Lanka in March 2005 is inconsistent with his account.

#### Movements of appellants prior to departure from Sri Lanka

[137] The husband claims that, prior to their departure from Sri Lanka, the appellants moved from place to place to avoid the pursuit of the Perera family and the police. Having found that the husband was not in a police cell with Gerald Perera and that his claims concerning his association with Gerald Perera are false, it follows that the appellants were not pursued during their final months in Sri Lanka in connection with the husband's role as a potential witness in a court case concerning Gerald Perera.

[138] This finding is reinforced by the fact that the husband's account of the moves made by the family in his evidence to the Authority and at interview with the

RSB differed considerably. To us he claimed the family fled to Kandy from a unit provided to them by the agent in Colombo. He claimed to have stayed in Kandy for only a couple of days and then to have returned to D town. The reason for the flight to Kandy was a warning from the agent that a police raid on the unit was imminent.

[139] However, to the RSB he claimed to have spent a month in Kandy having fled there from D town and that from Kandy, the family went to Colombo where they stayed with relatives of the agent.

[140] When asked by the Authority to describe the accommodation provided to the appellants by the agent he said that it was a unit attached to a house that was tenanted and that he did not know the tenants. When reminded of his account to the RSB, he changed his evidence and said that he thought that the occupants of the house were relatives of the agents.

[141] The husband's account of the family's movements prior to their departure for New Zealand is rejected. Even allowing some latitude for the stress the family may have been under should their account be true, the Authority does not accept that the husband would be unable to remember whether he had stayed in Kandy for a period of two or three days or for a whole month given the events comprising this part of his account having occurred less than 18 months previously. We find with respect to the relationship between the agent and his "relatives" that the husband simply forgot a false detail of the detailed account he provided to the RSB.

[142] The husband claims that his decision to leave Sri Lanka with his family was precipitated by the pressure being placed on him to be a witness for both sides. This claim is rejected along with all his other claims concerning Gerald Perera. There is no credible evidence before us as to why the appellants left Sri Lanka when they did. We note that they made legal departures using their own passports. Although the husband claims that this was facilitated by an agent, the Authority finds that at the time they left Sri Lanka the appellants were of no interest to the Sri Lankan police.

[143] It is significant that when asked at the conclusion of the hearing what he feared should he return to Sri Lanka, the husband did not mention his involvement in the Perera case but rather claimed that the police would seek revenge against him for filing a fundamental rights petition against them in 2004. This claim is

difficult to understand given his evidence that this claim was withdrawn in mid-2004, shortly after it was filed.

[144] The husband provided no credible evidence of any reason why he or the other appellants are at risk of being persecuted in Sri Lanka should they return there.

#### Assessment of medical evidence concerning the wife

[145] The Authority accepts that the wife has mental health symptoms. These are described in the letter and other medical reports set out earlier in this decision. The letter of 26 March 2007 from Dr Friend and Ms Friebel set out in full at [86] records that the wife has been unable to articulate her experiences to them and that they must rely on the reports of others including the husband, as to what the wife experienced in Sri Lanka. Dr Friend and Ms Friebel note the history provided to them of a suicide attempt following a sexual assault. The comments they make regarding police uniforms reflect details of the assault provided to them.

[146] The comments in the various medical reports about the cause or causes of the wife's symptoms must be viewed in the light of the observations in *Refugee Appeal No 19/91* (17 February 1992) and *Refugee Appeal No 73521* (13 February 2003), that where the account given by an appellant is not credible, the weight to be given to a medical report is limited. A medical practitioner cannot say more than that the injuries observed by him on her are consistent or inconsistent with the self reported account given as to their cause of origin. They cannot say that the injuries were in fact suffered the way claimed, unless, of course, the practitioner personally witnessed the events.

[147] Neither the wife, nor any other person who witnessed the assault upon her, gave evidence to the Authority. The husband gave evidence that EN informed him by telephone that the wife had been sexually assaulted by the police. However, we have found the husband to be an unreliable witness who has made false claims to have been pursued by the police and the Perera family. We have considered whether the wife's condition is corroborative of the husband's claims but have concluded that it is not. The problems with his evidence were such that the Authority, who observed him and questioned him over three hearing days, was left in no doubt that the account he presented to us of his persecution at the hands of the Sri Lankan police was false.

[148] The Authority has no evidence upon which it can rely about the circumstances that gave rise to the wife's "posttraumatic sypmtomatology". It has been alleged, and the Authority is prepared to accept, that these circumstances may have included a sexual assault upon her.

[149] There is no reliable evidence before us concerning the circumstances of such an assault or the identity of the perpetrator or perpetrators. Obviously, we have regard to the comment in the letter concerning police uniforms being a trigger for re-traumatisation and the remarks of the younger boy, reported in the husband's evidence, about his feelings towards the police. Such remarks, reported by a witness we have found to be unreliable, fall far short of establishing that the wife was sexually assaulted by the Sri Lankan police.

[150] There is no reliable evidence before us that the trauma experienced by the wife, and to a lesser extent, the children, in 2005, was the result of any profile the appellants had with the Sri Lankan authorities.

[151] The occurrence of a traumatic and tragic event in July 2005 does not establish that the wife or either of the children has a well-founded fear of being persecuted in Sri Lanka. The refugee enquiry is forward looking. The assessment to be made by the Authority concerns the treatment they would be subjected to should they return there now. Past trauma is relevant only to the extent that it provides an indication of what may be expected to occur in the future: *Refugee Appeal No 70366* (22 September 1997). Whatever the circumstances of the wife's trauma, there is no evidence before us that indicates that such an event is likely to reoccur should the family return to Sri Lanka. We have reached the conclusion, based on the evidence before us, that on a return to Sri Lanka, the appellants will face the same treatment there as other Tamils from Colombo who have no profile with the Sri Lankan police. This treatment is discussed below.

[152] In assessing what risks of harm, if any, the appellants would face in Sri Lanka, we are mindful that the 2002 ceasefire between the LTTE and the government has effectively ended and that, with the resumption of hostilities, security measures in Sri Lanka that in the past have adversely affected Tamil areas have been reinstated.

[153] Tamils from the north-east of Sri Lanka (where the Tamil minority is concentrated) are required to carry permits granting them permission to travel to and remain in Colombo: Human Rights Watch: *Sri Lanka End Expulsion of Tamils*

from Colombo (8 June 2007). Such measures affect Tamils from Colombo who, pursuant to security regulations, are subjected to a requirement to register with their local police station, and are subjected to house to house searches, checkpoints, and cordon and sweep operations in Tamil neighbourhoods.

[154] A comprehensive review of the deteriorating security situation in Sri Lanka and the consequent security measures imposed was recently made by the Authority in *Refugee Appeal No 75972* (30 April 2007). In that decision, the Authority found that the situation in Sri Lanka, while grave, was not such that young Tamil males face a well-founded fear of being persecuted for that reason alone.

[155] The Authority observed that, while a UNHCR position paper reviewed in the decision (*UNHCR Position on the International Protection Needs of Asylum-Seekers from Sri Lanka* (December 2006)) painted a picture of a deteriorating human rights situation, it did not call for the recognition of all Tamils from the north as refugees and that it distinguished between persons facing the risk of being specifically targeted by state and non state agents, and those who face only levels of generalised violence.

[156] Since the publication of *Refugee Appeal No 75972*, reports of deteriorating security conditions in Sri Lanka and repressive measures taken against Tamils by the authorities continue to emerge. Of recent note are reports of the round up and forcible removal from Colombo of 376 Tamils present in the city “without valid reason”: “Police Evict Tamils from Colombo” *BBC News* (7 June 2007).

[157] The term “being persecuted” is defined in refugee law as the sustained or systemic denial of basic or core human rights such as to be demonstrative of a failure of state protection: *Refugee Appeal No 2039/93* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60.

[158] Should the appellants return to Sri Lanka, it is likely that they will be subjected to the security measures being imposed on all Tamils in Colombo. It is reiterated that there is nothing about their particular circumstances that would lead to them being targeted above any other Tamils of similar profile.

[159] Tamil residents of Colombo presently face inconvenience, subjection to arbitrary searches, and some measure of restriction on their freedom of movement as a result of present security measures. These measures, while unpleasant and

inconvenient, do not amount to being persecuted. It is acknowledged that the wife, because of her mental health, may be more affected by searches of her home or identity checks at roadblocks. This comment may also apply, albeit to a lesser extent, to the children. However, their subjection to these security measures will not constitute a sustained or systemic denial of their basic or core human rights.

[160] It is the responsibility of the appellants to establish their claims (see ss129P(1) and 129P(2) of the Act (as referred to in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA)).

[161] There is no evidence before us that establishes that any of the appellants, including the wife and the children, face a risk of harm in Sri Lanka that rises to the level of being persecuted. The evidence before us does not establish that any of the appellants have a well-founded fear of being persecuted in Sri Lanka. The first question framed for consideration is answered in the negative making it unnecessary to consider the second issue of Convention ground.

[162] For the above reasons, the Authority finds the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

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M A Roche  
Chairperson