

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75972

AT AUCKLAND

<u>Before:</u>	R J Towle (Chairperson) B L Burson (Member)
<u>Counsel for the Appellant:</u>	I Uca
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	18 and 19 December 2006 and 18 January 2007
<u>Date of Decision:</u>	30 April 2007

DECISION DELIVERED BY B L BURSON

INTRODUCTION

[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 national of Sri Lanka.

[2] The appellant claims to have a well-founded fear of being persecuted in Sri Lanka because he has continued to trade in areas controlled by the Liberation Tigers of Tamil Eelam (LTTE) when he had been warned not to by the Sri Lankan Army (SLA). The appellant also fears that he may be targeted by the LTTE because he has ceased to trade in their area and they may regard him as a spy. Finally, the appellant fears that as he will be persecuted by the Sri Lankan authorities simply because he is a young Tamil male from the north of the country.

THE APPELLANT'S CASE

[3] What follows is a summary of the appellant's evidence. An assessment

follows thereafter.

[4] The appellant was born in 1977 in X, a village in the north of Sri Lanka. He is a Tamil. His parents continue to live in X. His four siblings continue to live in Sri Lanka. The appellant had another brother who was detained by the SLA in 1985 on suspicion of being a member of the LTTE and later killed in detention.

[5] The appellant completed his schooling in early 1992. Thereafter, he began helping his father at his place of employment.

[6] In February 1995, the appellant was compelled to go to a meeting called by the LTTE. At the meeting, the LTTE representatives explained what was happening in the country and what the Tamil people's situation was. They told all of the boys at the meeting to join the LTTE and many of them did so. The appellant, however, said that he would not join. The LTTE responded by telling him that they would detain him until he agreed to join them. The appellant still refused and he was taken into LTTE detention.

[7] He was kept in LTTE custody until approximately mid-July. At that time, government forces conducted an air raid on the camp where he was being held. The appellant used that opportunity to escape from detention with another Tamil person from a different province. This companion was intending to travel by sea back to his own village and X was located en-route towards a port where this companion was hoping to go to in order to travel home. The two of them travelled to X but found that the appellant's parents were not home. They, along with their neighbours, had fled as a result of the outbreak in fighting. The appellant told his companion that he had an uncle who lived in a different village, Z, which was located in the same province as the companion's home village. His companion agreed to travel with him that far.

[8] The two of them therefore travelled from X to the nearby port and boarded one of a number of boats carrying persons fleeing the recent outbreak of fighting. However, shortly into their journey, the flotilla of eight or so boats was intercepted by government naval forces. The appellant and other occupants were rounded up and taken to an SLA camp.

[9] As soon as he arrived at the camp, Tamil persons began questioning him as to his movements. They asked him whether he had undertaken any LTTE training. The appellant did not state that he had escaped from an LTTE camp. He

feared that if he mentioned that he had been detained they would not believe him and assume that he was at the camp voluntarily because he was an active member of the LTTE. He believed that this would have caused him to have been killed.

[10] However, detained by the LTTE, the appellant had been required to undertake manual work such as carrying water. As a result, his body had become physically hardened. The SLA took this as a sign that he had done LTTE training. Also, the appellant's captors were also suspicious because he had a faint tattoo on his forearm of the first letter of the surname of a school girlfriend. His captors took this to be some sort of symbol affiliating him to the LTTE.

[11] As a result, he was interrogated and beaten by four or five people. He was beaten with an iron bar resulting in him suffering a broken leg. They later put him on some sort of machine and tortured him. His clothing was removed and he was sprayed with water. During this mistreatment he was interrogated about his involvement with the LTTE. His captors wanted him to sign a statement saying that he was an LTTE member. The appellant refused. The following morning the appellant received treatment for his broken leg. He was then flown by helicopter to a prison in Colombo.

[12] For the first few days of his detention at this prison in Colombo, the appellant was interrogated about his involvement with the LTTE. He was subjected to torture during these interrogation sessions. After the first two days he was transferred into a special block reserved for Tamils suspected of being LTTE members. He was detained there for one month before being released.

[13] One of the people detained with the appellant was from Z. When this person was released, he let the appellant's family know that the appellant was detained. The appellant's family secured the services of a lawyer who secured the appellant's release from detention. As a condition of his release, the appellant was required to remain in Colombo and to report weekly to the police station. As far as he knows he was not facing any particular charges but the authorities wished to undertake further investigations.

[14] The appellant stayed in Colombo with a distant relative of his father for the following two or three weeks. When the appellant went to report to the police station as directed, the police asked him why he came to sign. When the appellant explained the circumstances he was hit by the policemen. They said

that he was a LTTE member. This happened each time he reported. He decided to leave Colombo.

[15] The appellant therefore went to Z to stay with the uncle he had been intending to travel to after his escape from the LTTE detention. His uncle told him that his parents had been displaced to W because of heavy fighting between the LTTE and the SLA. The appellant stayed with his uncle until mid-1996. The area where the uncle lived was controlled by the LTTE. On one occasion, the LTTE came to the uncle's house and forced the appellant and his uncle to help the LTTE dig bunkers and build fortifications. The LTTE began pressuring the appellant and his uncle to join them.

[16] In mid-1996, the SLA attacked the area in which Z was located. The appellant thought that if he was captured in an LTTE area having breached his conditions of release, and having already been suspected of LTTE involvement, this would make matters far worse. The appellant therefore went to W, where he had heard his parents were still sheltering.

[17] In W there was no proper civilian control. Rather, it was controlled by the SLA. He encountered no particular problems with the SLA in W. The appellant remained in W until the middle of 1998. At that time, there were increasing reports of people disappearing. The appellant became afraid that this would happen to him and his family arranged for him to go to the United Kingdom (UK). His parents made all of the arrangements.

[18] The appellant claimed asylum on arrival in the UK in 1998. However, it was only in 2002 or 2003 that his claim was heard and dismissed by the UK Home Office. He appealed. At the appeal hearing he said that he told the adjudicator hearing his appeal of his past experiences both at the LTTE camp and at the SLA detention. The adjudicator asked the appellant whether he had any documents to prove his case. The appellant had arranged for his lawyer in Colombo to send to him a copy of a court summons that had been issued against him as a result of his failure to report to the police station. He gave the original of this document, along with a medical report confirming that he had been beaten with an iron bar, to his English lawyers before the appeal hearing. When the appellant told the adjudicator that he had submitted these documents, the adjudicator said that he did not have a copy of them on the file. The appellant's representative indicated that he also did not have a copy on the file and requested a further two weeks to produce the documents. However, it transpired that this original document had

been lost by the appellant's lawyers and it was not produced to the court. The appellant's appeal was then dismissed.

[19] Following the dismissal of his appeal, the appellant had to report regularly to the UK immigration authorities. His lawyer told him that the British authorities were beginning to repatriate failed asylum-seekers to Sri Lanka. The appellant did not want to return. A friend told him that for the payment of approximately £7,000 he could secure for him a false passport and tickets to enable him to travel to Canada.

[20] The appellant gave his friend the sum of money and his friend made the necessary arrangements. However, at the airport the appellant was intercepted and prevented from travelling. He was arrested, charged and convicted for using a false passport. He spent four months in prison. At the end of his detention arrangements were made for him to be returned to Sri Lanka in 2003.

[21] Upon arrival in Colombo he was questioned for about an hour about his personal details and then released. The appellant returned to his family home in X, his parents having returned there at the end of 1999.

[22] While he had been in England, the appellant had been sending money regularly back to Sri Lanka. He used this money to set up a business selling particular electronic goods in his area. The appellant did not own the business and premises but rather obtained orders from people in his area for the goods. He would then travel to Colombo and purchase the goods and deliver the goods to the customers. The goods were stored at his house.

[23] The appellant opened a bank account for his business at the Hatton National Bank in Colombo. He opened it in Colombo because it was safer for him to withdraw the money he was using to purchase the goods there, rather than in a branch in the north of the country and carry large amounts of cash with him. When the appellant was in Colombo buying goods for his business he used to stay in a particular lodge. He used the lodge's name and address to open the Hatton National Bank account because he always stayed at the same place and could be sure to receive his correspondence if sent to an address in Colombo rather than an address in the north.

[24] In August 2003, the appellant met his wife and they married four or five months later. After the marriage, the appellant and his wife lived in

accommodation they rented from one of the wife's relatives in Y, a town situated a few kilometres from X.

[25] Initially, the appellant conducted his business in areas controlled by the SLA. However, from the beginning of 2005, he expanded his operations to include areas controlled by the LTTE. Unlike areas controlled by the SLA, there were relatively few people supplying the particular electronic goods and consequently profits were higher. The appellant therefore travelled regularly between the two areas to take orders and deliver goods to his customers.

[26] The appellant was required to pass through both SLA and LTTE checkpoints when travelling between their respective areas. While the SLA required him to show no more than his identity card and state where and why he was going, the controls by the LTTE were more rigorous. At LTTE checkpoints he was given a form to complete, the bottom portion of which was to be signed by the recipient of the goods. The appellant would then have to take this portion to the local LTTE office where an LTTE official would mark the document with their seal. This sealed document would have to be presented on the outward journey. It was only with this seal that the appellant would be able to leave LTTE-controlled territory.

[27] The appellant's business boomed, particularly in the LTTE area. In mid-2005 fighting between the government and the LTTE worsened. At that time, the LTTE began forcing people to attend meetings and then taking them to do military training. Furthermore, people doing business in LTTE-controlled areas were being kidnapped and murdered in increasing numbers. The appellant and his family became more concerned about his safety. The LTTE were detaining and questioning people who were travelling between the two areas to obtain information about troop movement in the SLA areas. Furthermore, as the situation worsened, the SLA began retaliating against attacks on their soldiers. The appellant decided that it would be better if he left the country altogether.

[28] Trapped, he felt he had no option but to travel to Canada. He secured the services of another agent. This agent charged US\$28,000. The appellant agreed to pay US\$7,000 to the agent upon successfully leaving Sri Lanka and pay the balance once he had safely arrived in Canada. The agent agreed. The appellant therefore set about obtaining money from debtors over the course of a number of days before depositing the collected money into his Hatton Bank account. The agreed sum was then transferred into a bank account that he established in the

name of his wife and nephew. The reason for doing this was to enable him to instruct the wife and nephew to hand over the balance to the agent when he had successfully arrived in Canada, something he could not do if the money stayed in his Hatton Bank account.

[29] The agent arranged for the appellant to be issued with a false passport that had a student visa in it. The agent accompanied the appellant as far as Thailand where the appellant paid him approximately US\$7,000. From Thailand the appellant went to Japan. In Japan he was intercepted by immigration authorities who noticed that he had a false passport. Other officials came to visit him and he explained to them his problems and that he was going to Canada to apply for refugee status. He was told that Japan did not accept refugees and that he would be returned to Sri Lanka. The appellant was sent back to Thailand where he remained for one week. In Thailand he telephoned his wife and asked her to transfer some money into his account.

[30] When the appellant arrived back in Sri Lanka he was questioned at the airport then handed over to other officials. He was questioned about his personal details. When they found out about his brother who had been killed, they accused the appellant of being a member of the LTTE as well. They said that the LTTE had sent him overseas to help them. The appellant was held at a camp associated with the airport.

[31] The appellant was mistreated during this detention. He was hit with rods by four or five officers who kept on accusing him of being involved with the LTTE. One of them hit him with a ruler. They said that if he signed a statement admitting that he was an LTTE member they would be prepared to release him. The appellant refused. On the day before his release, the officers asked him how he knew, AA, a particular member of the Sri Lankan Parliament. The appellant explained that his cousin knew AA. The officers mocked the appellant about his relationship with AA and AA's impotence in securing his release.

[32] Although he did not know it at the time, his cousin, who had been waiting for him at the airport, had spoken to AA about the appellant's detention. The appellant had informed his wife of his scheduled arrival in Sri Lanka from Thailand and his cousin was to meet him in Colombo. When he did not emerge from the airport, his cousin raised the matter with AA who, via a letter, raised his detention with the immigration officials and this was the reason why they started questioning him about his relationship with AA.

[33] Eventually, one of the officers indicated that he would release the appellant on the payment of a bribe. The appellant therefore went with the officer to a bank and withdrew 500,000 Sri Lankan rupees over the counter. On being given the money the officer let him go. He was warned that he should not deliver electronic items to the LTTE. They said if they caught him again the same things that happened to his brother would happen to him.

[34] The appellant returned to Y. His wife, who was pregnant at the time, miscarried because of the stress his detention caused. He resumed his trading but confined his business to his area. Rather than travel to Colombo to purchase his goods he now purchased them from outlets in Jaffna town. However, on one occasion in late 2005 he went to an area controlled by the LTTE. When the appellant went to have his document sealed as per the usual procedures, the persons in the LTTE office asked him why he was not trading in their area anymore. They wanted to know what had happened at the airport. The appellant was very surprised that they would ask this question. The appellant did not say anything and was allowed to go on his way.

[35] After that time the appellant continued to trade in his area only. In January 2006, the appellant went to Jaffna town for business on a couple of days. While he was away some people came to his house and threatened his wife. Some of the people were in uniform and some were not. They demanded to know where the appellant was. They told the appellant's wife that he was required to report to a camp in Y. They said that if they caught him before he reported voluntarily he would not be alive. When he returned home, his wife told him what had happened. The appellant went to see BB, a local MP. BB said that there were many people being killed and kidnapped and there was nothing that he could do. BB said that the problem was only going to get worse and he advised him that it would be dangerous to go to the camp as requested.

[36] From there, the appellant went to see his parents in Z. It was agreed that the best thing to do was for the appellant to try and leave Sri Lanka for a third time. It was decided that because the appellant would be travelling illegally it was dangerous for the wife to accompany him and he should send for the wife once he was safe in another country. Another agent was found and the family paid US\$18,000 to secure his departure from Sri Lanka. He left Sri Lanka in early 2006 and arrived in New Zealand approximately three weeks later.

[37] When he left Sri Lanka, his wife went to stay with his parents. Since the

appellant has been in New Zealand he had had regular contact with his wife. He has learnt from a brief telephone conversation that she is now living with her parents. She moved approximately one and a half to two months prior to the hearing. The appellant understands that she moved to her parents' home because of serious fighting in the area. Many people were killed and she said she wanted to stay with her parents for a while. In their last telephone conversation, his wife indicated that even though his family live no more than two or three kilometres away she has no news of them. It is dangerous for people to go outside their house.

[38] The appellant's wife has written him a number of letters. In these letters she has told him that while she was staying with his parents in X, officials from the SLA's Central Intelligence Department (CID) came to his parents' home and questioned her as to his whereabouts. One of the officers said that, if she was lying, she also would be in "big trouble". In another letter he was told that in March 2006 that the CID had searched "the whole house" and enquired about the appellant. They asked her numerous questions about where he was and what he was doing.

[39] The appellant is afraid that if he is returned to Sri Lanka he will be killed. People connected to the SLA are looking for him and many people who have been detained by the SLA have been killed.

Documentary material received

[40] The appellant has filed a number of documents in support of his appeal. These documents comprise:

- (a) A supplementary statement in support of his refugee appeal dated 12 December 2006;
- (b) Memorandum of Counsel dated 14 December 2006 enclosing:
 - (i) a medical report dated 3 December 2006 from A M F Reeve, Public Health Medical Officer confirming the existing of three scars on the appellant's knee consistent with being "stabbed with the end of an iron bar" as claimed by the appellant; and
 - (ii) country information as per counsel's attached schedule of documents.

[41] On 18 January 2007, counsel further served on the Authority a copy of the UNHCR position on international protection needs of asylum-seekers from Sri Lanka dated December 2006 together with further country information comprising:

- (a) a printout of a page from a SLA website dated 18 January 2007 which gives details of fighting between the SLA and LTTE forces at some places on the north and east over the previous two days;
- (b) an undated printout from TamilNet, a well-known Tamil website listing various incidents throughout Sri Lanka between 1 and 17 January 2007.

[42] On 2 February 2007, the Authority received from counsel her written closing submissions. Accompanying these submissions were:

- (a) the original of the appellant's Hatton Bank account bank book;
- (b) the original of the appellant's personal notebook ;
- (c) 3 items country material from the Immigration and Refugee Board of Canada Documentation Centre, one dated 22 September 2006 and two dated 7 December 2007 relating to the freedom of movement of Tamils.

[43] All of this material has all been considered in reaching this decision.

THE ISSUES

[44] 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."

[45] 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

[46] The Authority finds that the appellant is not a credible witness. Rather, it finds him to be adept at constructing an untrue narrative around documentary evidence which has come into existence in circumstances other than that which he claims. The Authority accepts that the appellant is a Tamil from the north of Sri Lanka. It accepts that he was in the UK for a number of years between 1998 and 2003, at which time he was returned to Sri Lanka. However, the Authority rejects the core of the appellant's claim of having had difficulties with the LTTE or the SLA. This is due to the cumulative weight of the following matters.

The appellant's history of deception

[47] The appellant admits that he has not been forthcoming with the truth with the authorities in New Zealand. Indeed, he told the Authority that it was only the week before the appeal hearing that he decided that he should tell the whole truth about his circumstances.

[48] By this time he had:

- (a) been interviewed at the airport on arrival;
- (b) completed a conformation of claim form;
- (c) provided the RSB with a written statement on two separate occasions;
- (d) been interviewed by the RSB over the course of three days; and
- (e) provided further statements replying to concerns put to him for comment by the RSB officer.

Throughout this lengthy process, he had ample opportunity to tell the whole truth about his circumstances.

[49] During this time, his account has shifted from being a person who had:

- (a) never sought asylum in any country;
- (b) never been in prison or detention; and
- (c) never experienced any problems in Sri Lanka until 2005, at which time he was detained at the airport upon his return from Japan where he had been purchasing electronic goods for his business;

to a person who had been:

- (a) detained by the LTTE in the mid-1990s;
- (b) detained by the SLA after escaping from this LTTE detention;
- (c) subjected to torture while in SLA detention;
- (d) released from SLA detention subject to conditions that he subsequently broke;
- (e) in the UK between 1998 and 2003 where he unsuccessfully tried to claim asylum;
- (f) sentenced to a period of detention in the UK after being arrested trying to thereafter leave the UK for Canada and being deported back to Sri Lanka.

[50] The metamorphosis of the appellant's account to the "truth" did not occur at a single stroke but rather occurred over a period of time and was not completed until 12 December 2006, some six days prior to the first hearing date before the Authority. At this time, the appellant filed a further supplementary statement, stating for the first time that contrary to what he had steadfastly claimed up to that point as being the truth, and despite having previously admitted the other falsehoods mentioned above, he was not arrested in July 2005 after voluntarily returning to Sri Lanka after a business trip to Japan. Instead, he now claimed that his arrest in 2005 occurred after he had been involuntarily returned to Sri Lanka from Japan. He stated he had been intercepted by Japanese immigration officers travelling on false passport with the purpose of transiting Japan to try for a second time to reach Canada to claim asylum.

[51] What emerges from this history is a picture of a claimant who has been economical with the truth throughout a substantial portion of his refugee determination process. It was only when confronted with the very real possibility that the signing of a Privacy Act waiver would give the New Zealand immigration authorities knowledge of his claim in the UK, that the appellant admitted that his previous denials in this regard had been false. Even then, he did not tell the whole truth about his immigration history but rather continued to conceal the true nature of his trip to Japan until the eleventh hour. Moreover, it was only at this late stage that the appellant changed the reason for his claimed detention in 2005 from being suspected of supplying the LTTE with electronic goods to the less dramatic claim that he had been returned from Japan after being refused transit to Canada.

[52] The appellant claims that he failed to mention his asylum application in the UK and the events upon which it was based on the advice of a person in the Sri Lankan community here in New Zealand who had earlier fraudulently taken a sum of money from him. The person had then contacted the appellant and warned him not to talk about him otherwise they would both be in trouble. Scared by this, the appellant claims he was frightened to mention anything about his trip to England or the truth surrounding his trip to Japan.

[53] This explanation is rejected. The appellant is an intelligent man, well versed in the refugee process and clearly conscious of the potential adverse impact of his failed UK refugee claim on his present application in New Zealand. The Authority is satisfied that the predominant reason for the appellant withholding the important information of his refugee claim in the UK was to manipulate the prospects of a successful claim in New Zealand, his original account to the UK authorities having been rejected. Having had that account exposed via the Privacy Act waiver, the appellant was forced to adopt it for the purposes of his present claim contrary to his original plan.

[54] The problems with the appellant's evidence did not finish there. Other concerns have arisen which, when added to the concerns arising from his history of deception, cause the Authority to have no doubt that the core of his account is untrue.

As to the appellant's movements after his release from detention in 1995

[55] In his statement filed shortly before the appeal hearing, the appellant stated that after his release from detention in 1995, he kept on moving from "one place to

another” but “no place was safe”. This picture of continual displacement, however, contrasts significantly with his oral evidence before the Authority where he claimed he stayed only with his uncle before moving to join his parents in W. At first he had no explanation for this discrepancy apart from asserting he had made “a lot of mistakes”. He then asserted this was a “general statement” about his past experiences. In addition, the appellant now also stated that when he went to report to the police station after his detention he had been beaten. This, however, was the first time he had mentioned being beaten at the police station, something that can reasonably be expected to have been mentioned earlier if true.

As to the claimed July 2005 detention

[56] In his original statement in support of his asylum application, and in his interview with the RSB, the appellant explained that he was released from detention in July 2005 following the intervention of AA who had been approached for help by the appellant’s cousin. However, in his written reply to the interview report sent to him by the RSB, the appellant changed his evidence. He now claimed that he had in fact been released through his payment of a bribe directly to one of the officers who had been detaining him. He repeated this before the Authority.

[57] To corroborate his new version of what had happened, the appellant relied heavily on his Hatton Bank Account Book. He referred the Authority to an entry showing a withdrawal of 500,000 *rupees* on a particular date. This was, he said, the notation of the withdrawal he made to pay the bribe. However, this date of withdrawal is inconsistent with a letter by the MP, AA, on the appellant’s behalf. This letter (the MP letter) is addressed to the controller of the relevant department, and copied to a particular immigration desk. It is headed “The Arrest and Detention of [the appellant]” and gives his passport number. The letter goes on to state:

“My attention has been drawn to the fact that the abovenamed [the appellant’s name] holder of the above passport ... was taken into your custody by your officers on [date] when he was returning from Japan after the purchase of electrical goods. The information was given to me by one ... detainee the said [the appellant’s name].

Upon his landing he was arrested by your officers and to my knowledge, he is still in the custody of your department.” (emphasis added)

[58] However, the MP letter is dated some five days *after* the date at which the appellant, referring to his Hatton Bank account book, told the Authority he had

been released. Moreover, the date of the bank book entry that the appellant gave as evidencing his release from detention is stated in the MP letter to be his date of detention. Asked to explain why the MP was writing this letter stating he was still in detention after he had been released, the appellant stated that after his release, he and his cousin had driven straight to the appellant's home and that he had not himself informed the MP of his release. However, this does not resolve the issue. It is implausible that his cousin, who had asked for AA's intervention, and who had picked the appellant up following his release after paying the bribe, would not have made the MP aware of his release at some point in the following five days, if the appellant's account of being detained was true.

[59] Moreover, the MP letter asserts that the appellant had been arrested following an overseas trip to purchase electrical goods. This is the account that he originally gave to Immigration New Zealand officials but which he later resiled from and admitted was false. He told the Authority that this story had been invented by his agent whilst they were in Malaysia, en-route to New Zealand in 2006. He claims that it is simply a matter of coincidence that the false story his cousin told AA about the trip to Japan was the very same false story his agent suggested he use while they were in Malaysia. The appellant suggested that the cousin must have done this because it may have meant AA would be more willing to help him than if AA knew that he was trying to get to Canada. The Authority rejects this explanation as highly implausible. Rather, the identical nature of the two accounts of the reason for the trip to Japan evidences a common planned falsehood originating with the appellant.

As to the Hatton Bank book

[60] The Hatton Bank book featured prominently in the appellant's account as to the arrangements made for his departure from Sri Lanka in 2005. The appellant explained that a series of entries represented outstanding money he received for prior purchases and the sale of other business-related items, money which he gathered for the express purpose of paying to the agent. Asked to explain why he had put this money in the bank and had not simply paid it over to the agent, the appellant stated that he needed to pay the money onto his own account first to show to a witness of the agent that he did, in fact, have the money. He then transferred it to the special account he set up in the name of his wife before he left. This was so that his wife could withdraw the money from the account to pay the balance owing to the agent upon his safe arrival in Canada.

[61] This Byzantine explanation evidences a degree of invention and forward planning. His account of an agent willing to smuggle him through immigration control simply on having a witness sight a bank book showing an amount of money, and without having some form of up-front payment, is implausible to the point of absurdity.

[62] Moreover, the Authority also notes that the appellant also used a particular entry the same bank book to support two different accounts of “the truth”. In his written reply to the interview report, at which time he was maintaining the false account of travelling to Japan to purchase electrical goods, he indicated that a particular entry evidenced his wife transferring money into his account “from our other account” because he “was planning to buy more stock in Colombo on my return from Japan”. In contrast, having abandoned that account, the appellant now told the Authority that the same entry was money his wife deposited from the account set up in the name of his wife and nephew after he telephoned her from Thailand with the instruction to do so in case he needed to pay a bribe to be released. This is, of course, precisely that which the appellant now claims to have happened.

[63] Having seen and heard the appellant, the view that the Authority has firmly gained is of an appellant who is seeking to bolster an untrue narrative by reference to a document, namely, his Hatton Bank account book. While this bank book may reflect actual transactions, the Authority is satisfied the true circumstances of those transactions do not lie in the explanation the appellant now gives. This underlying untruthfulness has manifested itself in an account of improbable and implausibly complex proportions.

The appellant’s problems with the LTTE in late 2005

[64] The appellant told the Authority that in late 2005, he was questioned by the LTTE when he made a business trip in LTTE controlled territory as to why he had been absent from their area for some time. He further claimed that the LTTE knew that he had been interrogated at the airport. However, in the statement he filed in support of his refugee application, he said that he did not encounter any problems while in their area on this occasion. He then repeated this in his RSB interview. Asked by the Authority to explain why he had not mentioned this interrogation previously, the appellant stated he did not consider it a big problem. This somewhat blasé approach to an interrogation by the LTTE, an organisation with a

reputation for dealing harshly with known and suspected government spies, contradicted evidence he gave earlier. When asked why he continued to trade in LTTE areas despite a deteriorating security situation, he stated that he could not simply stop trading in LTTE controlled areas was because if he did, the LTTE would think he was a government spy and this would cause him problems.

The threats in 2006

[65] In support of the appellant's claim to have received threats in January 2006 the appellant relies on a number of letters he has received from his wife and mother. Again, there are discrepancies between what he has told the Authority and the contents of the documents he relies on to support his case. The appellant told the Authority that when he left Sri Lanka as a result of the visit to his home in January 2006, he asked his parents to look after his wife because it was dangerous for her to travel illegally as a woman and he would send for her once he was settled. However, in a letter dated 10 March 2006, written shortly after the appellant's arrival in New Zealand, the appellant's wife indicates she had been "living alone" and only became sufficiently frightened to go and stay with his mother and father at some point between his departure some weeks earlier and the date of the letter.

[66] Moreover, in this letter the appellant's wife also states that the SLA had come and the whole house was searched from top to bottom. She claims that they enquired about the appellant and were continuously asking her a lot of questions about his whereabouts. After describing these events, his wife states "[the] situation is getting bad to worse and I was so frightened to stay here and went to stay with your Mum and Dad". The implication is that it was the search of the house where the wife was staying alone which caused her to move to his parents' home, and not the prior visit in January 2006 after which the appellant fled Sri Lanka as the appellant claims.

[67] The appellant states that this letter, along with two others from his wife and one from his mother, were written at the request of his former representative to explain what was happening in Sri Lanka after he left. That may be so and may explain the stilted and forced tone of these letters. More important, however, is the discrepancy between the appellant's version of events and the wife's account in her letter. These are matters in which one would ordinarily expect there to be

no room for discrepancy, if the appellant's account of having his wife stay with his parents after the visit in January 2006 were true.

Summary on credibility

[68] Looking at the appellant's evidence in the round, it is characterized by a history of the appellant being less than forthright with the immigration officials about his true circumstances. This has resulted in a constant drip feeding of statements purporting to be (the truth). He has shown himself to be accomplished at weaving detailed and complex narratives around documents to support untrue assertions. The Authority has no confidence that his detailed account of trading in electronic goods, types of mobile phones and digital audio players and possession of references and business cards of purported customers of and dealers in such goods is not simply another example of this tendency. He has shown himself willing to use this claimed business as the basis for asserting an untruthful motivation for his trip to Japan as well as providing the basis for an untrue official interest in him when he returned from Japan. His knowledge of checkpoint procedures would be matters of common knowledge to persons from his area and in themselves do not provide compelling evidence of his having been a trader in electronic goods.

[69] Weighing the above matters in the round, and reminding itself again that the fact the appellant has told lies in some respects is not necessarily determinative of credibility, the Authority finds the appellant is an unreliable witness and it has no confidence that it can safely accept what the appellant has said as representing the core of his true circumstances. Specifically it does not accept the appellant:

- (a) was detained by the LTTE in the mid 1990s;
- (b) was detained and ill-treated by the SLA and released on condition in the mid-1990s;
- (c) carried on business as a trader in electronic goods;
- (d) was arrested, detained and ill-treated by the Sri Lankan authorities in July 2005;
- (e) was questioned by the LTTE in late 2005; and
- (f) the subject of inquiries in early 2006 as to his whereabouts.

[70] While the Authority notes the appellant has produced letters purporting to corroborate his account of having been a trader in electronic goods and the letters from his wife and mother referred to above as to interest in him after his departure, having regard to these credibility findings, no weight is placed on them. The Authority notes the medical report of Dr Reeve dated 3 December 2006 regarding the scarring to the appellant's body, however, Dr Reeve plainly cannot say how, in fact, the injuries were caused. The Authority does not accept that these injuries were caused in the circumstances that the appellant claims.

[71] However, as noted above, there are some underlying facts that the Authority does accept. These are that the appellant:

- (a) is a 30-year-old married Tamil male;
- (b) is from Jaffna Province in the north of Sri Lanka;
- (c) travelled to the UK in 1998 and unsuccessfully claimed refugee status;
- (d) was deported back to Sri Lanka in 2003 after serving four months imprisonment for using a false passport to try and leave the UK for Canada; and
- (e) the appellant has a faint tattoo "J" on his arm.

[72] His claim will be assessed against this background.

A well-founded fear of being persecuted

Submissions

[73] In her closing submissions dated 2 February 2007, at paragraph 23, counsel submits the appellant faces a well-founded fear of being persecuted for a number of different reasons. Some relate to his being a businessman or to his past problems with the LTTE and SLA. Having regard to the Authority's findings on credibility it is not necessary to consider these submissions.

[74] However, counsel further submits that he faces a well-founded fear of being persecuted simply because he is a Tamil male from the north of Sri Lanka. Counsel also submits that the appellant faces a well-founded fear of being

persecuted on the basis that, if returned, he would be arrested at the airport because of his past immigration history and his Tamil ethnicity, a disproportionate sentence amounting to his being persecuted would be imposed.

[75] Counsel's submissions in her memorandum of counsel dated 14 December 2006 adopt the submissions made by previous counsel in her submission to the RSB dated 5 July 2006. In these submissions it is argued at paragraph 7 that the appellant faces a fear of being forcibly recruited by the LTTE because he is a young Tamil male. It is argued he "is at increased risk of persecution if he encounters the LTTE again and if he refuses to co-operate with the LTTE".

Country information

[76] The human rights situation in Sri Lanka following the 2002 ceasefire was considered in detail by the Authority in *Refugee Appeal Nos 74071 and 74072* (23 June 2005). There, the Authority stated:

"[39] It is acknowledged by counsel that the current ceasefire in Sri Lanka has been in force since late 2001, formalised by an accord in 2002. Since then, there has been a substantial reduction in the conflict, with much of the attention of the LTTE directed towards the internal split between the "Vanni" faction in the north and the "Karuna" faction in the east. Currently, the peace talks are stalled, with no progress having been made since 2003, when the LTTE withdrew.

[40] There is no doubt – and it is not disputed by the appellants – that there has been a significant improvement in both regional security and a lessening of human rights abuses since the ceasefire commenced in late 2001. Nevertheless, country information suggests that the state security forces continue to arbitrarily detain people suspected of LTTE activity and to use torture during interrogations, notwithstanding that there has been a significant reduction in such activity. The *Organisation Suisse d'Aide Aux Refugies* February 2004 report "The Situation in Sri Lanka", comments at p9 on the continuing use of the Prevention of Terrorism Act to arrest suspects without the right of bail, in breach of the moratorium on such arrests in the ceasefire agreement. The Sri Lankan police believe several LTTE units have infiltrated Colombo and are responsible for a number of assassinations. The *Organisation* reports, as examples of ongoing crackdowns against the LTTE, the arrest of over 500 Tamils in Colombo in June 2003, following the death of a police officer, with the searching of Tamil houses, shops and vehicles. A month later, 70 Tamils were detained, simply for not carrying National Identity Cards. There are reports from several areas of the country that Colombo intelligence forces continue to range widely, taking away LTTE suspects in "White Vans", a traditional hallmark of military death squads, with relatives being given no information of the reasons or their whereabouts.

[41] These ongoing - if vastly reduced - actions are coupled with a continuing climate of impunity for gross human rights violations against persons in custody. As noted by the United States Department of State's *Country Reports on Human Rights Practices: Sri Lanka* (March 2005):

"In April 2003, after participating in six rounds of talks facilitated by the Norwegian Government, the LTTE suspended the negotiations. During the [2004] year, both parties violated the 2002 accord, although the LTTE's violations were more numerous and more serious. ...

[T]here were extensive reports of torture and 13 custodial deaths as a result of police torture.... Prison conditions remained poor and there were reports of arbitrary arrests during the year....

Methods of torture included beatings, often with wire or hose, electric shock, the suspension of individuals by the wrists or feet in contorted positions, burning, slamming testicles in desk drawers, and near-drowning. In other cases, victims were forced to remain in unnatural positions for extended periods or had bags laced with insecticide, chili powder, or gasoline placed over their heads. Detainees reported broken bones and other serious injuries as a result of their mistreatment, and during the year 13 deaths occurred in police custody."

[42] The United Nations Human Rights Committee, in its *Concluding Observations of the Human Rights Committee: Sri Lanka*, dated 1 December 2003, (ref: CCPR/CO/79/LKA) also noted:

"The Committee remains concerned about persistent reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces.... It regrets that the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction and unlawful confinement, as well as on charges of torture, have been inconclusive due to lack of satisfactory evidence and unavailability of witnesses, despite a number of acknowledged instances of abduction and/or unlawful confinement and/or torture, and only very few police or army officers have been found guilty and punished."

[43] Human Rights Watch agree that the ceasefire has not seen the end of arbitrary detention and torture by the security forces. In its *Human Rights Overview: Sri Lanka* (2005), it records:

"Torture and mistreatment by government security forces and police continued to be a problem, as did harassment of Tamil civilians crossing government-controlled security check points....

The police continue to torture detainees. In 2003, the National Human Rights Commission and the Police Commission agreed on a set of steps to remedy the situation, including ensuring that families and lawyers have access to detainees, displaying written summaries of detainees' rights in police stations, and holding officers in command responsible for torture in their stations.

However, cases of police torture continue to be reported. On November 5, 2004, twenty-one-year-old Don Mahesh Duminda Weerasuriya was illegally arrested and tortured by police officers at Panadura North Police Station who apparently wanted information about Weerasuriya's uncle. After being tortured at the police station, he was charged and held at Kalutara Prison where he was detained until November 10."

[77] Since this decision was issued the security situation has further deteriorated. In August 2005, the Sri Lankan Foreign Minister was assassinated, an act attributed to the LTTE. Thereafter, a state of emergency was imposed. On 17 November 2005, Mahinda Rajapakse of the ruling party and backed by hard-line Sinhala nationalist parties, won the Presidential election by a slim margin on a platform that included a pledge to seek a solution of the conflict in Sri Lanka in the context of a unitary state. Voter turn-out at the polls in the north and the east were low after the LTTE discouraged Tamils from voting – see Human Rights Watch *World Report: Sri Lanka* (2006); *UNHCR Position on the International Protection Needs of Asylum-Seekers from Sri Lanka* (UNHCR December 2006) (the UNHCR position paper).

[78] The UNHCR position paper contains a detailed summary of the deterioration in the security situation in Sri Lanka since 2006. It notes:

“6. Since January 2006 the security situation, in particular in the North and East, further deteriorated with a marked increase in hostilities. Repeated violations of the ceasefire occurred on both sides, and culminated on 25 April 2006 with a female suicide bomber detonating a bomb inside an army camp in Colombo, seriously injuring the Army Commander, Lt. Gen. Fonseka. The Air Force conducted air strikes in Sampur and more violence followed. Although to date neither the Government nor the LTTE have officially renounced the Cease Fire Agreement, there is consensus among the UN, NGO and civil society leaders, at both the local and international levels, that the violence which unfolded in the North and East during the summer of 2006 is “clearly illustrative of non-international armed conflict”. There have been sparse and inconclusive talks between the Government and LTTE. Even the most recent encounter in Geneva during October 2006 did not produce any significant changes on the ground.

...

8. In the North, as of mid-August 2006, Jaffna Peninsula has been the scene of heavy fighting between the LTTE and government forces, particularly along the Northern Forward Defence lines. Curfews have been imposed through Jaffna District since 11 August, lifted only intermittently during the day. The main A9 road, linking Jaffna to the mainland, was closed in August. The fighting in the peninsula has taken a heavy toll on civilians, with some 60,282 persons (15,935 families) newly displaced by mid-September. Two months later, this number had been more than tripled. The combined impact of the curfews, restrictions on movements, fishing restrictions and closure of the A9 road has been especially harsh for civilians, restricting freedom movement and livelihood activities. Despite the Government’s efforts to supply Jaffna with essential food, medical supplies and other humanitarian assistance by sea, there are serious shortages and prices have increased dramatically.
9. With frequent confrontations between the parties to the conflict, which included aerial bombings, long-range shelling and claymore mines, the civilian population in the East and North face the risk of being caught in the crossfire. This has resulted in large numbers of civilian casualties and displacement. By mid-November, 204,163 persons (56,272 families) had been displaced in government-controlled and LTTE-controlled areas. These new displacements are in addition to the 312,712 persons displaced before the Cease Fire Agreement. Furthermore, over 16,000 Sri Lankans have fled to southern India since January 2006.
10. There are indications that all sides are drawing civilians into the conflict, and not respecting individual’s rights to seek safety and/or remain in displacement for as long as they deem it necessary for their own security. The Government has coerced displaced communities into going back to their homes before they were ready to do so for example in Jaffna and Muttur; and the LTTE has prevented communities from fleeing areas where their lives might be in danger from military attack for example in Vahari in Batticaloa District. The LTTE also has a practice of mandatory civil defence training, even in areas under government control. This includes the issuance of a training card as proof of participation. Non-possession of the training card in LTTE-controlled areas can lead to, among others, restrictions on freedom of movement. These may seriously impact the ability of individuals to secure a livelihood. In government-controlled areas, individuals suspected of having participated in LTTE training may be perceived as LTTE sympathizers, even if the participation was pressured.”

[79] Similar observations are made by Human Rights Watch *World Report: Sri Lanka* (2007) (the HRW 2007 report) which states:

“In 2006 the Sri Lankan government and the armed opposition Liberation Tigers of Tamil Eelam (LTTE) both undertook major military operations for the first time since agreeing to a ceasefire in 2002. The fighting resulted in a dramatic increase in serious violations of international humanitarian and human rights law and massive displacements of the largely Tamil and Muslim populations in the embattled north and east of the country.

Government forces were implicated in several massacres of civilians, indiscriminate aerial bombing and shelling, and complicity in the abduction of children for use as combatants. The LTTE was responsible for direct attacks on civilians with landmines and suicide bombings, targeted killing of political opponents, and the continued recruitment of children into their forces. Both sides conducted military operations with little regard for the safety of civilians in the conflict zone and interfered with the delivery of relief assistance by humanitarian agencies.

In the latter half of the year, government security forces and associated armed groups, as well as the LTTE, were implicated in dozens of killings and “disappearances” of Tamils in the north and east, and in Colombo. Impunity prevailed as government investigations of serious abuses produced no successful prosecutions.”

Violations of International Humanitarian Law

The resumption of major military operations between the Sri Lankan government and the LTTE in April 2006 placed civilians at greater risk than at any time since the signing of the 2002 ceasefire agreement. Violations of international humanitarian law, including indiscriminate attacks and summary executions, have resulted in numerous preventable civilian deaths and injuries. The Sri Lankan armed forces have engaged in indiscriminate shelling and aerial bombing with little regard to the expected harm caused to civilians.”

[80] The situation of Tamils from the north and east is also commented on in the UNHCR position paper. This states that Tamils from these regions are at risk of targeted violations of their human rights from all parties to the armed conflict. UNHCR notes:

- “14. ... harassment, intimidation, arrest, detention, torture, abduction and killing at the hands of government forces, the LTTE and paramilitary or armed groups are frequently reported to be inflicted on Tamils from the North and East.
15. Individuals suspected of having LTTE affiliations are at risk of human rights abuses by the authorities or allegedly government sponsored paramilitary groups.”

[81] The UNHCR position paper also confirms, at paragraph 17, what was noted by the Authority in *Refugee Appeal Nos 74071 and 74072* (*op cit* at [40]), namely, that paramilitary units travel in unmarked white vans and are reportedly responsible for a dramatic increase in the number of disappearances in the north of the country – some 62 of which have been formally registered with the Human Rights Commission of Sri Lanka over the previous year. This is in addition to the

Commission investigating a further 183 individuals who are still missing from previous years. The UNHCR position paper confirms that the SLA and LTTE have also been implicated in abductions, disappearances, extrajudicial killings and “other forms of persecution.”

[82] The impression gained from this material of a gradually worsening human rights situation is echoed in a report of Professor Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions who visited Sri Lanka from 28 November to 6 December 2005 (27 March 2006 E/CN.4/2006/53/ADD.5) (the Alston report). The Alston report states, at paragraph 3, that the instances of extrajudicial killings it found were symptomatic of the widespread use of police torture, the failure to rein-in abuses committed or tolerated by the military, and of “systematic efforts by the various armed groups and particularly the LTTE, to kill Tamils who refuse to support the LTTE and to provoke military retaliation”. The Alston report also notes that police and military investigations into the killing of Tamils or the broader range of deaths in custody have too often been poorly handled and remarkably few convictions have resulted.

[83] The HRW 2007 report also confirms that politically motivated killings and abductions drastically increased during 2006. It confirms that the Sri Lankan security forces are believed responsible for a number of extrajudicial killings and abductions during the year. Similar observations are made in respect of the LTTE. In “Halt abductions, Sri Lanka and Tigers urged” *Reuters* (5 April 2007) (<http://www.alertnet.org/thenews/newsdesk/COL144892.htm> accessed 10 April 2007) it is noted that Sri Lanka’s Human Rights Commission says hundreds of people have disappeared so far this year in addition to the 1000 last year although the Government disputes that some of these reports are, in fact, accurate.

[84] On 23 March 2006, the LTTE conducted an air assault on an air force base at Katanayake, north of Colombo. A number of air force personnel were killed or injured. This was the first time the LTTE had carried out such an operation. As a result a number of investigations have been launched – see *BBC News LTTE unveils latest tactic* (26 March 2007) (http://news.bbco.uk/2/hi/south_asia/6496391.htm accessed 10 April 2007). In the days after the attack security around the airport was tightened *Tamil.Net Sri Lanka Blackout on Air Force Losses* (26 March 2007) (<http://www.tamilnet.com/art.html?catid=13&artid=21681> accessed 10 April 2007) and have carried out cordon and search operations in Colombo and its suburbs in

which eleven Tamils from the North East have been arrested and detained for questioning – see TamilNet *Eleven Tamil Civilians arrested in Kohuwela* (31 March 2007) (<http://www.tamilnet.com/art.html?catid=13&artid=21719> accessed 10 April 2007). It appears that in at least one other part in southern Sri Lanka, persons arriving in the area who cannot prove their identity are being arrested – see Sri Lanka Air force bombs more rebel positions” *Xinhua News Agency* (1 April 2007).

[85] On 1 April 2007, the Sri Lankan Military High Command announced an extension of a curfew by three hours, from 6.00 pm to 5.00 am, possibly in preparation for a renewed ground offensive against LTTE positions in the Jaffna area - see TamilNet *SLA extends curfew in Jaffna by 3 hours* (1 April 2007) (<http://www.tamilnet.com/art.html?catid=13&artid=21735> accessed (10 April 2007). Moreover, cordon and search operations are being carried out in parts of Jaffna with young men and women being subjected to body searches and all pedestrians being asked to present their identity cards. In a recent operation on 9 April 2007, however, no one was arrested – see TamilNet *SLA conducts cordon, search in Potpathy Road* (9 April 2007) (<http://www.tamilnet.com/art.html?catid=13&artid=21843> accessed 10 April 2007).

[86] As to the “cordon and search” operation being carried out, country information *Sri Lanka: Treatment In Colombo by members of the Sri Lankan Security forces and police (2005 – 2006)* Research Directorate, Immigration and refugee Board of Canada LKA102016.E (11 December 2006) states that while these operations can result in the arrest and detention of approximately 1000 persons when conducted in Colombo over a period of weeks:

“most had been detained briefly, but released after fingerprinting or photographs had been taken.”

[87] A finding of a deteriorating human rights situation throughout 2006 and 2007 following resumption of open armed conflict between Sri Lankan Government forces and the LTTE is reinforced by the various items of country information that have been provided by and referred to by counsel in her submissions. For example, at paragraph 14 of her 14 December 2006 submissions, counsel cites the Amnesty International report *Sri Lanka: Amnesty International calls for urgent action to protect civilians* (18 August 2006) which refers to attacks by both government forces and the LTTE, which have involved the deliberate targeting of both civilians and aid workers. Attached to these submissions was report *Killings, abductions on the rise* South Asia Media Net (24 October 2006) noting that in the days preceding the report, a monitoring

committee has charged that nine killings, 33 disappearances and nine abductions had been reported. The ethnic origins of the victims are not, however, particularised.

[88] In paragraphs 28 and 29 of her submissions dated 2 February 2007, counsel refers to various items of country information as to the same, as well as confirming the existence of kidnappings and disappearances. At paragraph 21 counsel refers to *BBC News* "Sri Lanka invokes Terror Law" (6 December 2006) which states that:

"Ministers stopped short of banning the rebels but tightened existing emergency laws which have been dormant since a 2002 ceasefire that is now in shreds.

Security forces will have wide ranging powers to search, arrest and question. Last week the rebels said the truce was defunct. They have yet to respond to Wednesday's cabinet announcement. More than 3400 people have been killed in Sri Lanka since late last year, the authorities say...

The pro-rebel TamilNet Website said that the cabinet decision was "a major breach" of the truce accord and gave "excessive powers of arrest and detention to the Sri Lankan armed forces".

It recalled that "thousands of men, women and children were indiscriminately arrested tortured and detained for indefinite periods" until previous anti-terror laws were suspended as part of peace moves."

Conclusion on country information

[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.

Application to the appellant's case

Fear of harm from the SLA

[90] Notwithstanding the above finding, and after considering this issue at length, the Authority finds that the situation has not deteriorated to such an extent

that all young Tamil males face a well-founded fear of being persecuted by that reason alone.

[91] Firstly, while young Tamil males may well be caught up in bombardments by the SLA (and, for that matter, the LTTE) which result in the indiscriminate injury and death of civilians in the north of the country, the chance of the appellant being caught up in such an attack is speculative and does not rise to the level of a real chance.

[92] Secondly, while it is accepted that in the heightened state of security and increasing arrests of young Tamil males including those from the north, during “cordon and search” operations in Colombo available country information at present states that most are detained only briefly and released after being fingerprinted and photographed. The Authority accepts that the appellant may be stopped and questioned at such roadblocks and checkpoints. However, the appellant does not possess any background or characteristic beyond his being a young Tamil male from the north, such that would operate to create a suspicion of his having some involvement with the LTTE and thereby expose him to detention, ill-treatment or extra-judicial execution. His tattoo is faint and was barely discernable when shown to the Authority. It has no obvious linkage to the LTTE. There is no credible evidence that his having a faint tattoo of this nature has caused him any difficulty in the past.

[93] The Authority observes that while the UNHCR position paper paints a picture of a deteriorating human rights situation, it does not call for the recognition of all Tamils from the north as refugees but rather calls for their cases to be “favourably considered” – see paragraph 34(a)(i). The UNHCR itself distinguishes between persons facing the risk of being specifically targeted by the state, LTTE or other non-state agents and those who face levels of generalised violence. The UNHCR position paper, at paragraph 34(a)(i), is clear when advocating that only the former should be recognised as refugees subject to the application of any exclusion criteria. The appellant, on the facts as found by the Authority, simply does not fit into this category.

[94] Counsel submits that, if returned to Sri Lanka, the appellant faces a real chance of being arrested on passport charges because of his previous immigration history. As to this, counsel relies from excerpts from the United Kingdom Home Office *Sri Lanka: Country of Origin Information Report* (25 October 2006). At

paragraph 32.14 of that document (p127) the report quotes a letter from the British High Commissioner in Colombo dated 24 August 2006 which states:

“The Sri Lankan authorities have a good IT system to track arrivals and departures at the main airport and are able to trace, in most cases, whether an individual is in the country or not. Our own experience of the return of failed asylum-seekers and the shared information of other missions, particularly the Canadians, and the International Organisation of Migration is quite clear. As we have reported earlier [26 September 2005] the vast majority are questioned for a short period of time to establish identity and possibly questioned on security issues and then released. Normally only when there is an outstanding warrant are individuals detained for longer periods. “

[95] The Authority accepts that the appellant, as a young Tamil male from the north of the country may well be detained and questioned at the airport. Having rejected the appellant's account of his previous problems, the Authority finds that there is nothing in his background or circumstances to suggest that he would be subject to anything other than the routine questioning.

[96] Country information does not establish that his removal from New Zealand, which would constitute his second enforced return as a failed asylum seeker, creates a real chance that he will be suspected of having any connection with the LTTE as opposed to simply being one of the many thousands of Sri Lankans who have fled abroad to avoid being indiscriminately caught up in a violent civil war that has lasted for many years. Similarly, there is no country information to support the assertion that he will be detained for a lengthy period of time simply because he is a Tamil.

Risks from the LTTE

[97] Turning to the issue of forced recruitment by the LTTE, the UNHCR position paper notes that young Tamil men and women in the north of the country continue to be at some risk of forced recruitment by the LTTE. The risk of this appellant being recruited is, however, speculative. There is no credible evidence of any interest in him for this purpose by the LTTE.

[98] The Alston report at paragraphs 21 and 22 refers to the continued use of violence by the LTTE in the ceasefire period of de-escalation to control the Tamil population. This violence included the targeting of those it deemed were traitors or otherwise opposed to the LTTE. The appellant has not claimed he faced any problems in this regard after he had been deported back to Sri Lanka from the UK during the ceasefire. There is no reason to believe that he will do so in the future.

Conclusion on well-foundedness

[99] For these reasons, the Authority answers the first principal issue in the negative. The need to consider the second issue does not, therefore, arise.

CONCLUSION

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

.....
B L Burson
Member