

REFUGEE APPEAL NO. 497/92

K G

AT AUCKLAND

Before: B O Nicholson (Chairperson)
R P G Haines (Member)
A Rozdilsky (Member)

Counsel for the Appellant: Ms M Robins

Representative of NZIS: No appearance

Date of Hearing: 18 October 1993

Date of Decision: 3 February 1994

DECISION

This is an appeal against the decision of the Refugee Status Section of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a 23 year old single female who is a national of Sri Lanka.

The appellant is of Tamil ethnic origin and comes from Jaffna in the north of Sri Lanka, in an area which is subject to civil war conditions due to the conflict between the Liberation Tigers of Tamil Eelam, (LTTE) and the Sri Lankan government.

The appellant's parents and three sisters still live in Jaffna. One of the sisters is married with one child. She and her husband reside with the rest of the appellant's family. An older sister came to New Zealand with the appellant on 17 January 1992. The older sister has since been granted residence on grounds other than that of refugee status. She has a university education but the appellant has not.

The appellant's account is that in 1987 in the course of the insurgency in the north of Sri Lanka the appellant's family were moved to a refugee camp when their village was bombed. Living conditions were very difficult with reduced supplies and no electricity being available.

In March 1988 the Indian Peace Keeping Force (IPKF) took control of most of Jaffna and the appellant's family was required to leave the refugee camp and return to their home and schools. In February 1990, however, the IPKF withdrew from Jaffna on the basis that the LTTE and the Sri Lankan government would begin peace talks. In June 1990 these negotiations collapsed and in July 1990 there was a pitched battle between the LTTE and the Sri Lankan army at the Dutch Fort on the Jaffna Peninsular. The Sri Lankan army withdrew from the fort. The LTTE then attacked Pallaly camp and a call

went out for helpers to render first aid to the injured LTTE soldiers in late September 1990.

In October 1990 LTTE members called upon the appellant and her older sister to join the force as first aid members. They were obliged to join a helpers group where they did first aid work, cooking and cleaning and made donations of blood to the injured from the fighting.

In January 1991 the LTTE called upon them again to do cleaning work at the Jaffna hospital and, day by day, pressure was put upon the two sisters to become active members of the LTTE.

In July 1991 there was an attack upon the Sri Lankan army camp at Elephant Pass and in August 1991 the LTTE required the appellant and her sister to undertake military training with a view to becoming full-time soldiers in the LTTE. In the same month the appellant's family home was destroyed by a bomb in the course of an air raid.

The appellant's father went with the appellant to the LTTE camp to seek permission for the appellant to leave the area to go south. Three attempts were made for permission for this appellant to leave. The appellant's sister obtained permission to leave the area for a period of one month as a student. Using the ruse that she was planning to get married in the south of Sri Lanka, this appellant obtained permission to leave also from the LTTE in October 1991, but in obtaining that permission she had to give a guarantee and take an oath that she would come back to Jaffna at the end of two months.

On 20 November 1991 the appellant and her sister left Jaffna and, by an arduous journey involving both land and sea journeys, they arrived in Colombo. On 13 December 1991 the appellant's passport was issued and on 5 January 1992 the two sisters left Colombo for Singapore.

After the appellant's arrival in New Zealand on 17 January 1992 she made her application for refugee status on 30 January 1992. She was interviewed by the Refugee Status Section on 21 July 1992 in company with her sister. Both sisters were refused refugee status, but as we have already indicated, the appellant's older sister has succeeded in obtaining permanent residence in New Zealand on another basis.

The appellant fears that, if she returns to the Jaffna area where her family live, she will be executed by the LTTE for failing to honour her oath that she would return to the Jaffna area, and because she obtained permission to leave on false grounds.

The appellant also states that she is not able to relocate in Colombo. She has no work skills, having been brought up in a simple village life. She has no prospect of employment in the Colombo area where employment is difficult for Tamils. Accommodation is also difficult for Tamils because landlords are refusing to accept them as tenants, and her only relatives living in Colombo are planning to leave Colombo to come to New Zealand in the very near future.

The appellant says that in the course of the sisters' journey from Jaffna to Colombo, they were accosted by the Sri Lankan army and were told that the army had

information that they had links with the LTTE. The two sisters explained what work they had done for the LTTE and that it had been done under duress. The army agreed to their passing through on the condition that they did not return to the Jaffna Peninsular.

The appellant has a fear, however, that security forces in the south of Sri Lanka will persecute her because she is a Tamil and because they are aware that she has had links with the LTTE in the past.

In its decision refusing the refugee status to the applicant, the Refugee Status Section found that it was open to both sisters to relocate in the Colombo area of Sri Lanka on the basis that they had relatives in Colombo, that they had educational opportunities there and could thus acquire qualifications to obtain employment. The Refugee Status Section accepted that it was not possible for the appellant and her sister to return to the Jaffna area because of the likelihood of their being persecuted by the LTTE for the reasons already mentioned.

Article 1A(2) of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees defines a refugee as:

“Any 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, is unable or, owing to such fear, is unwilling to return to it.”

On the issue of credibility this appellant appeared to us to be an honest witness, but not particularly intelligent. She suffered from poor memory, she was often vague in her answers and in one respect at least we found that her fears were exaggerated, namely her belief that the security forces in southern Sri Lanka would suspect that she, having returned from New Zealand, would have been involved in terrorist training which would assist the cause of the LTTE. Nevertheless we found her account to be a truthful one and we accept it in general as accurate, in spite of certain discrepancies which we put down to her poor memory.

We find therefore that the appellant has a genuine fear that she will be persecuted by the LTTE and by the Sri Lankan security forces.

We further find that the harm which she fears in the form of death at the hands of the LTTE and detention and/or death at the hands of the security forces, is of sufficient gravity to amount to persecution.

As to the possible Convention reason for the persecution feared, we find in relation to the LTTE that the persecution feared would be related to an imputed political opinion that the appellant was opposed to their cause. Insofar as the security forces are concerned, we consider that again the Convention reason assignable to the persecution feared would be a combination of her ethnic background and an imputed political opinion that she was a supporter of the LTTE.

As to the issue of the well-foundedness of her fear, we accept that there is a real chance that if she returned to the Jaffna area she will be subject to persecution at the hands of the LTTE for the reasons that she has enumerated. However, our duty is to examine whether or not the real chance exists in relation to the whole of her country of origin and we have considered the question of whether or not relocation is available and reasonable for this appellant elsewhere in Sri Lanka, notably in the southern area in the vicinity of Colombo.

We accept that relocation is available in the sense that large numbers of Tamils do live in the Colombo area, and while they are subject to discrimination at the hands of the Sinhalese in Sri Lanka and have been for a number of years, the fact remains that a substantial Tamil community exists in southern Sri Lanka. We are aware that regular security sweeps are made by the security forces among young Tamils, both male and female, in southern Sri Lanka. We are not prepared to find, given the ethnic background to the conflict between the LTTE and government forces, that these sweeps are necessarily persecutory in nature, so long as there is no ill-treatment of detainees from such sweeps. In the past unhappily there has been ill-treatment of such persons but Tamil politicians in the south of Sri Lanka have had sufficient influence to cause the government to issue instructions to forbid the ill-treatment of Tamil prisoners taken in these security sweeps.

Turning to the question of whether or not it is reasonable to expect this particular appellant to relocate, our conclusion is, on the evidence available to us (some of which was not available to the Refugee Status Section), that it would not be reasonable to expect this appellant to relocate in the Colombo area. She is a single woman. She is not particularly intelligent. As a single Tamil woman she would be vulnerable to the security sweeps which occur from time to time among young Tamils. She has no command of Sinhala. She would have difficulty in obtaining employment because of her lack of work skills and she would have difficulty in obtaining accommodation since her only relatives there are proposing to leave the country and other landlords are reluctant to accept Tamils as tenants.

Importantly too she will be bereft of her older, better-qualified sister and in relation to the security sweeps that she may encounter, she may experience further difficulties because of her admitted LTTE links in the past.

Accordingly we conclude that relocation is not reasonable for this particular appellant. We find therefore that her fear of persecution is a well-founded one throughout Sri Lanka. Her appeal is allowed and refugee status is granted.

"B O Nicholson"

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Chairperson