

**RŌPŪ TAKE MANENE, TAKE WHAKAMARU
AOTEAROA**

Appellant:	FP (Sri Lanka)
Before:	C M Treadwell (Member)
Counsel for the Appellant:	P Sundar
Counsel for the Respondent:	No Appearance
Date of Hearing:	4 June and 2 August 2019
Date of Decision:	9 August 2019

DECISION

[1] This is an appeal against a decision of a refugee and protection officer declining to grant refugee status or protected person status to the appellant, a citizen of Sri Lanka, of the Tamil race.

INTRODUCTION

[2] The appellant claims to be at risk of serious harm of a qualifying kind, arising from an adverse interest in him by officers of the Sri Lankan Criminal Investigation Bureau (“the CID”) on a number of occasions since 2006, culminating in their suspicion of his involvement in a cache of 80 kilograms of C4 explosive discovered in 2014. The central issue is whether the appellant faces a real chance of being seriously mistreated by the authorities in detention, in the course of their investigation.

[3] For the reasons which follow, the appellant is found to be a refugee.

[4] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

THE APPELLANT'S CASE

[5] The account which follows is a summary of that given by the appellant and his witnesses (his wife, a friend, a former employer and a priest, all in Sri Lanka) at the appeal hearing. It is assessed later.

Evidence of the Appellant

[6] The appellant was born in Z town on the Jaffna Peninsula, in 1981, an area which came under the control of the Liberation Tigers of Tamil Eelam ("the LTTE") in the mid-1980s, as a result of the civil war which began in 1983.

[7] In 1995, the appellant's area was overrun by the Sri Lankan Army and the family was forced to relocate to another area, still controlled by the LTTE. There, he was often visited by a school-friend, HH, who was in the Intelligence section of the LTTE.

[8] In 1997, the family was moved again, this time to an army-controlled area, Y, because the LTTE was forcibly recruiting people and the area was subject to army attacks. In Y, the appellant was questioned by the CID about his links to the LTTE and he was shown a photograph of HH. He admitted that he knew him but denied being involved with the LTTE. He was given a letter in Sinhalese (which he could not read), to take to the local army camp. However, when he went there the next day with a village official, he discovered that the letter accused him of being involved with the LTTE. He was, fortunately, not mistreated.

[9] When the ceasefire was brokered in 2002, the appellant began to get occasional visits from HH.

[10] The appellant completed his studies in 2003 and found work as an electronics technician. He would service equipment for members of both sides of the conflict and tried to keep out of trouble.

[11] With the end of the ceasefire in 2006, the army began to detain people in the appellant's village and he decided to move to Colombo to avoid further trouble. He obtained a permit to travel there and another to stay at a lodge there. Once he arrived, he found work by advertising.

[12] In June 2007, the appellant was detained at the lodge by CID officers. They inspected his identity card and took him to the Keselwatte police station, where he was held for five days in a cell. Twice, he was taken from the cell and made to

strip. He was then beaten with a plastic pipe while being interrogated. On the fourth day, he was told that he would be transferred to a detention facility and it was suggested that he might call a family member to help him before that happened. He called an aunt, AA, who lived in Colombo and she negotiated the appellant's release for Rs200,000 (approximately NZ\$700).

[13] In October 2007, the appellant became employed by an electronics repair company, ABC, as a serviceman. The CID visited the shop often because the employer, BB, was a former LTTE member and the appellant's identity card was inspected by the CID as well. After some four months, the appellant resigned because he was concerned that the CID would come to associate him with their suspicions about BB. He returned to working for himself, advertising in the newspaper for business.

[14] In March 2008, the appellant and a cousin, CC, were detained by the CID one night when walking home from a restaurant. They were taken to Wellawatte police station, where they were stripped naked and locked in a room. CC gave the police his identity card, to prove that he worked for an international NGO, the DEF. CC was released the next day but the appellant continued to be detained. He was again beaten while being interrogated, with CID officers wanting to know why he had come to Colombo and whether he was hiding weapons.

[15] After four days, the appellant was told that he could pay money to be released and he again contacted his aunt, who paid a further Rs200,000, obtained by the appellant's mother pawning her jewellery.

[16] In May 2009, the LTTE was defeated and effectively wiped out, and its leader, Vellupillai Prabhakaran, was killed. As a result, the civil war ended.

[17] Some five months later, the appellant went north to Jaffna, to attend a friend's wedding. The next day, he was detained by four soldiers in a jeep as he was cycling along a road. The soldiers took him to a nearby army camp at a school and he was questioned (though not beaten). He was asked about his own activities and was also asked about HH (who he had not seen since 2006).

[18] Alerted to the appellant's whereabouts, his parents contacted Father DD, the priest of the main church in their area. Father DD went to the army camp and, as a result of his intervention, the appellant was released the next day.

[19] Back in Colombo, the appellant started working for an electronics company, GHI, in 2011. He married a woman from Jaffna, EE, in 2012 but his wife remained

living in the north thereafter, while he returned to Colombo to work. This arrangement meant that his wife could be near her parents (her son was born in 2013) and the appellant could earn better money to support them. He would return to the north to visit his wife every few months.

[20] In February 2014, the appellant travelled to Jaffna to visit his family as usual. While there, however, a cache of 80 kilograms of C4 explosive was found by the authorities, hidden in the ruins of an abandoned house near the appellant's sister's home, where he and his wife were staying.

[21] On the appellant's first night at his sister's house, he and his wife were talking at about 11pm when they heard dog's barking. Looking out the window, the appellant saw a white van stopping outside the house. Plain-clothes men alighted, one carrying a gun. The appellant told his wife to say that he was not at home and he ran out the back of the house, still wearing only a sarong. He made his way to a beach area, where an aunt owned a derelict house and he hid there until the next day.

[22] Early the next morning, the appellant located his uncle, who would come to the beach in his van every day to pick up fishermen. With his uncle's help, he made his way to Father DD's church in a town some 40 kilometres away. Father DD took him in and went in person to the appellant's sister's house, to fetch him some clothes. He heard from the appellant's father that CID officers had been to the appellant's parents' house, looking for him. They had told the officers that the appellant had returned to Colombo for work.

[23] A few days later, Father DD drove the appellant to Colombo. They had no difficulty at checkpoints because Father DD was recognised.

[24] Back in Colombo, the appellant kept a low profile and did not go out unless it was unavoidable. He decided that he needed to leave the country to be safe. After some time, he found an employer in New Zealand who was willing to offer him a position, for a fee of NZ\$30,000, and the appellant raised the money by selling some land and mortgaging his sister's land. The employer was related to people in the appellant's village and the appellant was to travel to New Zealand with two relatives of the employer.

[25] In the course of applying for a New Zealand work visa, the appellant was told that he would need to provide a police certificate. He obtained one by paying a bribe of Rs50,000.

[26] The appellant left Sri Lanka in late October 2015, after a work visa had been granted to him. He was stopped at the airport on departure but only in relation to the genuineness of his work visa. A telephone call to the employer in New Zealand resolved the issue and the appellant was allowed to depart.

[27] In New Zealand, the appellant sought, in due course, a further work visa. At about the same time, the two men who had come to New Zealand with him returned to Sri Lanka. Not long after their return, CID officers visited the appellant's parents' house, enquiring about him. His parents told them that the appellant was working overseas.

[28] When the appellant's further work visa was declined, he lodged a claim for refugee and protected person status. That application was declined by the Refugee Status Branch, leading to the present appeal.

[29] Since the decision of the Refugee Status Branch, the appellant has heard from his wife that the CID made further visits, looking for him, in January 2019. On 16 January 2019, two men came to the house and, on 22 January 2019, four men came. They told the appellant's wife that it would be better for him if he came to see them himself. She became distressed at this and started crying, at which the men left. The appellant's wife took their son and went to stay at her parents' house. That was the last time she has been troubled by the CID.

Evidence of the appellant's wife, EE

[30] EE gave evidence by telephone. She confirmed the appellant's account of having fled the house in the middle of the night in 2014, because of the arrival of the CID. She told the Tribunal that, after the appellant had gone, the men had come into the house and, after searching it, told her that they "knew how to capture" her husband and left.

[31] EE is aware that a number of men were arrested in connection with the cache of C4, which was well publicised, but she does not know their fate. She thinks they were not taken to court because there was no such news reported in the papers.

[32] As to recent events, EE confirmed that CID officers visited the family home in December 2017 and twice in January 2019, looking for the appellant. She was so upset by the visit on 22 January 2019 that, the next day, she went with her

father to meet GG, a (Tamil) Member of Parliament for Jaffna District, to seek his assistance.

Evidence of Father DD

[33] Father DD confirmed to the Tribunal that he had intervened on behalf of the appellant in 2008, when he was taken to an army camp, and managed to secure his release.

[34] In February 2014, Father DD also assisted the appellant when he turned up unexpectedly one day, wearing only a sarong. Once he had explained his predicament, Father DD drove to the appellant's sister's house and retrieved two small bags of clothes for him. A few days later, he drove the appellant to Colombo without incident.

Evidence of the appellant's cousin, CC

[35] CC confirmed that he is the appellant's cousin. Formerly, he worked for DEF, a non-governmental organisation.

[36] As to the incident in 2008, CC confirmed that he and the appellant were stopped in the street by plain-clothes CID officers, who took them to a police station, where they were stripped naked and interrogated. CC secured his own release by showing his work identity card but it took several more days to get the appellant released.

Evidence of the appellant's former employer, FF

[37] FF is the proprietor of GHI, for which the appellant worked on a contract basis from 2011 until his departure from Sri Lanka in 2015.

[38] FF remembers the appellant as a good worker. He does not remember the appellant having any difficulties while he worked for the business but, since his departure, FF's business was visited by plain-clothes officers from the CID in January 2019. FF was out at the time but the officers spoke to a member of his staff. The staff member gave them FF's telephone number but the men have never called him. He does not know what the enquiry was about.

Material and Submissions Received

[39] The Tribunal and the appellant have each been provided with a copy of the Refugee Status Branch file, including all documents submitted by the appellant at that time.

[40] Counsel has filed written submissions dated 30 May 2019 (and made oral closing submissions) and has also filed (routine identity documents are omitted here for clarity):

- (a) statements by the appellant (17 May 2019), his wife (11 March 2019), Father DD (undated but certified on 24 May 2019) and FF (27 February 2019);
- (b) a letter dated 6 May 2019 from GG, the Member of Parliament approached by the appellant's wife, confirming that she told him of two visits in January 2019 by the CID and that, on meeting her, she presented as "really frightened";
- (c) a bundle of emails between the office of counsel and two law firms in Sri Lanka as to whether police station records of arrests can be accessed (the answer being, in substance, "no");
- (d) colour photographs of HH (including one with the appellant), the staff of DEF, and CC standing beside a DEF vehicle and a derelict house (said to be the appellant's house in 1995);
- (e) household registration documents (under emergency regulations) for a house in Wellawatte in 2009/2010, showing the appellant as a lodger; and
- (f) various items of country information.

ASSESSMENT

[41] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 *Convention Relating to the Status of Refugees* (“the Refugee Convention” or “the Convention”) (section 129); and
- (b) a protected person under the 1984 *Convention Against Torture* (section 130); and
- (c) a protected person under the 1966 *International Covenant on Civil and Political Rights* (“the ICCPR”) (section 131).

[42] In determining whether the appellant is a refugee or a protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant’s account.

Credibility

[43] The evidence of the appellant and the witnesses is accepted.

[44] It is not overlooked that the Refugee Status Branch raised a number of concerns about the appellant’s account, including what it said was the convenient nature of the timing of the 2017 and 2019 visits by the CID to the appellant’s home. The Tribunal, however, has had the advantage of hearing from four witnesses in Sri Lanka whose evidence was not before the refugee and protection officer, and it has been provided with a number of documents which corroborate the appellant’s claim. Cumulatively, the weight of the evidence points to the truth of the appellant’s claim in every material respect, certainly such that the benefit of any lingering doubt should be given to him.

[45] The facts on which the appeal is to be determined need not be laboured. They are as set out above, but can be summarised as including the appellant’s occasional detention by CID officers (once, the army) between 2006 and 2009, during most of which he was physically mistreated and had to pay bribes to be released, culminating in an attempt to detain him in the middle of the night in February 2014 in connection with a cache of explosives and his subsequent flight to New Zealand, followed by occasional enquiries by the CID for him in 2017 and 2019, at his home.

[46] What will not be apparent from the above narrative, but which bears recording, is the existence on the Refugee Status Branch file of an article dated 20 February 2014 from the *JKL* newspaper, reporting on the discovery of the cache of C4 explosives in the area of the appellant’s sister’s house and the arrest

of a number of people in connection with it, with the comment that the explosives were believed to have been “carried from Vanni” (the Vanni being the region of Sri Lanka between, approximately, Vavuniya and Elephant’s Pass).

The Refugee Convention

[47] Section 129(1) of the Act provides that:

“A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.”

[48] 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, is unable or, owing to such fear, is unwilling to return to it.”

[49] In terms of *Refugee Appeal No 70074* (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 Claim to Refugee Status

[50] For the purposes of refugee determination, “being persecuted” requires serious harm arising from the sustained or systemic violation of internationally recognised human rights, demonstrative of a failure of state protection – see *DS (Iran)* [2016] NZIPT 800788 at [114]–[130] and [177]–[183].

[51] In determining what is meant by “well-founded” in Article 1A(2) of the Refugee Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379, where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective – see *Refugee Appeal No 76044* (11 September 2008) at [57].

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Sri Lanka?

[52] It is appropriate to record first the relevant country information.

[53] As a current overview of the human rights situation in Sri Lanka, the United States Department of State *Country Report on Human Rights Practices 2018: Sri Lanka* (13 March 2019) notes:

“Human rights issues included unlawful killings; torture, notably sexual abuse; arbitrary detention by government forces;...

Police reportedly harassed civilians with impunity, and the government had yet to implement a mechanism to hold accountable government security personnel accused of crimes during the civil war. During the year, however, the government took steps to investigate, prosecute, and punish some officials who committed human rights abuses.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were reports that the government or its agents committed arbitrary or unlawful killings.

...

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

... The government maintained a Committee on the Prevention of Torture to visit sites of allegations, examine evidence, and take preventive measures on allegations of torture. Police reportedly tortured and sexually abused citizens, often to extract confessions for alleged crimes. The Prevention of Terrorism Act (PTA) allows courts to admit as evidence any statements made by the accused at any time and provides no exception for confessions extracted by torture. In February 2017 the government announced it suspended making arrests under the PTA due to widespread concerns about several of its provisions; however, the government made at least four arrests under the PTA during the year. An estimated 70 to 130 individuals remained in detention from prior PTA arrests.

The Human Rights Commission of Sri Lanka (HRCSL) reported that torture committed by police forces was routine and continued throughout the country, and that it received 193 allegations of physical and mental torture by state actors as of June. It stated that many reports of torture referred to police officers allegedly ‘roughing up’ suspects to extract a confession or otherwise elicit evidence to use against the accused.

Interviews by human rights organizations found that torture by police remained endemic throughout the country. As in previous years, suspects arrested under the PTA since the civil war ended in 2009 gave accounts of torture and mistreatment, forced confessions, and denial of basic rights such as access to lawyers or family members. Some released former combatants reported torture or mistreatment, including sexual abuse by state officials while in rehabilitation centers and after their release. Excessive use of force against civilians by police and security officials also remained a concern.”

[54] The Tribunal has, on many occasions, considered the situation for Tamil returnees to Sri Lanka, as referred to in the UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka* (April 2009, July 2010 and December 2012) and UNCHR *Note on the Applicability of the 2009 Sri Lanka Guidelines* (July 2009), and has accepted that Tamils suspected of being active in the LTTE or supporters of the LTTE remain at risk of arbitrary detention and serious mistreatment. See in this regard *BM (Sri Lanka)* [2014] NZIPT 800618, *CM (Sri Lanka)* [2015] NZIPT 800730 and *EA (Sri Lanka)* [2017] NZIPT 801015.

[55] Although now becoming somewhat dated, the December 2012 *UNHCR Guidelines* provide a summary of some characteristics which are known to aggravate the degree of risk to a Tamil returnee, noting:

“... previous (real or perceived) links that go beyond prior residency within an area controlled by the LTTE continue to expose individuals to treatment which may give rise to a need for international refugee protection, depending on the specifics of the individual case. The nature of these more elaborate links to the LTTE can vary, but may include people with the following profiles:

- 1) Persons who held senior positions with considerable authority in the LTTE civilian administration, when the LTTE was in control of large parts of what are now the northern and eastern provinces of Sri Lanka;
- 2) Former LTTE combatants or ‘cadres’;
- 3) Former LTTE combatants or ‘cadres’ who, due to injury or other reason, were employed by the LTTE in functions within the administration, intelligence, ‘computer branch’ or media (newspaper and radio);
- 4) Former LTTE supporters who may never have undergone military training, but were involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for the LTTE;
- 5) LTTE fundraisers and propaganda activists and those with, or perceived as having had, links to the Sri Lankan diaspora that provided funding and other support to the LTTE;
- 6) Persons with family links or who are dependent on or otherwise closely related to persons with the above profiles.”

[56] More recent country information before the Tribunal establishes that these remain factors which may aggravate or increase the risk to Tamil claimants.

[57] The past decade in Sri Lanka has seen the defeat of the LTTE and, in 2015, the end of the Rajapaksa Government. Even so, some four years into President Sirisena’s rule, his promises to restore the rule of law, eliminate corruption, write a new constitution, address the legacy of the war and to promote national reconciliation, remain largely unrealised. Little has been done to reform the security and intelligence services and to address their long-standing impunity for

human rights violations. Significant human rights issues remain, prominent among which is the routine use of torture and the ongoing existence of the oppressive Prevention of Terrorism Act. See, for example, International Crisis Group *Sri Lanka's Transition to Nowhere* (16 May 2017), the United States Department of State *Country Report on Human Rights Practices 2017: Sri Lanka* (20 April 2018) and Freedom House *Freedom in the World 2016 – Sri Lanka* (27 January 2016), at www.freedomhouse.org.

[58] Amnesty International's *Amnesty International Report 2016/17: The State of the World's Human Rights* (22 February 2017) reports that Tamils continue to suffer ethnic profiling, surveillance and harassment by police who suspect them of LTTE links. Recent country reports, including the Department of State report, also observe that Tamils viewed as sympathisers of the LTTE remain at risk of detention and ill-treatment.

[59] Notwithstanding the end of the war in 2009 and the annihilation of the LTTE, it is clear from the country information that Tamils still suspected of links to them continue to be at risk of serious mistreatment. Human Rights Watch continues to report serious human rights abuses against the Tamil population, including the arbitrary detention of Tamils under the Prevention of Terrorism Act ("the PTA"). It reports, in *Locked Up Without Evidence: Abuses Under Sri Lanka's Prevention of Terrorism Act* (29 January 2018):

"Human Rights Watch and other organizations have long documented widespread torture of individuals in custody, particularly of ethnic Tamils detained under the PTA for suspected involvement with the LTTE. Ben Emmerson, then the UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, said after his July 2017 visit to the country: 'The use of torture has been, and remains today, endemic and routine, for those arrested and detained on national security grounds'. He noted that the PTA was used 'disproportionately against members of the Tamil community,' and that the community 'has borne the brunt of the state's well-oiled torture apparatus'."

[60] It is against this backdrop that the appellant's claim is to be assessed.

Application to the facts

[61] This aspect of the claim can be disposed of shortly. While it is difficult to know whether the current interest of the CID in the appellant is informed by his past history with them between 2006–2009, it is not material to the Tribunal's finding that, currently, CID officers in the Jaffna area wish to detain him in connection with a cache of explosives found near his sister's house in February 2014.

[62] The legitimate duty of the police to investigate the cache of (illegal) explosives is not in question. Assuming a fair and just investigation, respecting the human rights of suspects in detention and under questioning, the Tribunal's enquiry would end there. However, as the country information above indicates, torture and other forms of serious physical mistreatment by the police are endemic and routine, particularly where the enquiry is into crimes associated with terrorism. The finding of a significant cache of explosives will inevitably attract such a concern.

[63] There is a real chance that, if the appellant returns to Sri Lanka, he will be detained, either at the airport on arrival or at some point in the near future, and will be subjected to interrogation which will include serious physical mistreatment amounting to cruel, inhuman or degrading treatment, in breach of his rights under Article 7 of the ICCPR. As the country information cited above makes clear, torture and other forms of physical and mental mistreatment continue to be a routine feature of police interrogations in Sri Lanka. While the 2019 Department of State report does note the prosecution of a number of police officers for both current and historic crimes, it speaks equally of an ongoing culture of impunity and continuing serious human rights abuses on a routine basis.

[64] Such mistreatment will constitute serious harm arising from breaches of internationally recognised human rights, demonstrative of a failure of state protection. The appellant's fear of being persecuted is well-founded.

Is there a Convention reason for the persecution?

[65] The Tribunal has reflected on whether the pervasive nature of the physical mistreatment of detainees means that the anticipated harm in this instance is not for any Convention reason but would be for reasons of state practice, albeit criminal. Not all human rights violations, even by the state security apparatus of a country, are necessarily for reasons of the person's civil or political status.

[66] Here, however, the Tribunal is satisfied that the long history of the conflict in Sri Lanka, and the continuing profiling of Tamils, as noted in the country information, are such that it could not confidently eliminate from *this* appellant's mistreatment an element of race and/or political opinion as underpinning and motivating the harm meted out to him. That others without those attributes may also be treated the same way on other occasions does not eliminate the likelihood of them informing this appellant's mistreatment. And, as counsel observed, we

cannot know whether those attributes would aggravate the duration or intensity of this appellant's mistreatment.

[67] The Tribunal finds that contributing reasons for the appellant's mistreatment would be race and political opinion.

Conclusion on Claim to Refugee Status

[68] For the foregoing reasons, the appellant has a well-founded fear of being persecuted for a Convention reason. He is recognised as a refugee.

The Convention Against Torture

[69] Section 130(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

Conclusion on Claim under Convention Against Torture

[70] The appellant is recognised as a refugee, as discussed above. In accordance with New Zealand's obligations under the Refugee Convention and by virtue of section 129(2) of the Act (the exceptions to which do not apply), he cannot be deported from New Zealand. Accordingly, the question of whether there are substantial grounds for believing that he would be in danger of being subjected to torture if deported from New Zealand, does not arise. He is not a person requiring protection under the Convention Against Torture. He is not a protected person within the meaning of section 130(1) of the Act.

The ICCPR

[71] Section 131 of the Act provides that:

"(1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

...
(6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment."

Conclusion on Claim under ICCPR

[72] For the reasons already given, the appellant cannot be deported from New Zealand. Accordingly, the question whether there are substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand, does not arise. The appellant is not a person requiring protection under the ICCPR. He is not a protected person within the meaning of section 131(1) of the Act.

CONCLUSION

[73] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the *Convention Against Torture*;
- (c) is not a protected person within the meaning of the *International Covenant on Civil and Political Rights*.

[74] The appeal is allowed.

Order as to Depersonalised Research Copy

[75] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant or the witnesses.

Certified to be the Research
Copy released for publication.

C M Treadwell
Member

"C M Treadwell"
C M Treadwell
Member