

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76075

AT AUCKLAND

<u>Before:</u>	M L Robins (Chairperson) M A Roche (Member)
<u>Counsel for the Appellant:</u>	E Griffin
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	4 & 5 September 2007
<u>Date of Decision:</u>	17 January 2008

DECISION DELIVERED BY M A ROCHE

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, who claims to be a citizen of Sri Lanka.

INTRODUCTION

[2] The appellant is single Tamil woman. She arrived in New Zealand on 29 June 2001 and applied for refugee status at the airport. She was interviewed by a refugee status officer on 20 September 2001. Her application was declined in a decision dated 23 August 2002, leading to her appeal to this Authority.

[3] Following a hearing held on 1 February and 22 August 2006, the Authority dismissed the appellant's appeal in a decision published on 4 October 2006. On 30 October 2006, the appellant filed proceedings in the High Court seeking judicial review of that decision. On 15 May 2007, the decision was set aside by consent. The appeal now falls to be determined by a differently constituted panel of the

Authority.

[4] The appellant claims to be at risk of persecution in Sri Lanka because of her status as an unaccompanied Tamil woman from the north. She claims that a person of her profile is at risk of being persecuted in Sri Lanka because of the breakdown of the 2002 ceasefire and the resumption of hostilities between the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan Army (SLA).

[5] The essential issues for determination in this appeal are, first, whether she is in fact an unaccompanied Tamil from the north of Sri Lanka and, if so, whether in light of current circumstances in Sri Lanka she has a well-founded fear of being persecuted there.

THE APPELLANT'S CASE

[6] What follows is a summary of the evidence given by the appellant at the hearing. An assessment of that evidence follows later in this decision.

[7] The appellant is aged in her early 30s. She is from village A which is located about half a mile from a large town in the north of Sri Lanka. The appellant's area is populated predominantly by Tamils.

[8] The appellant was the only child of her parents. Her father had a business buying and selling groceries and later worked as a farmer assisting his foster brother (the appellant's uncle) on his farm in B village some 30 miles away.

[9] The appellant attended school in the town. Her father always accompanied her to and from school. Because of the conflict between the SLA and the LTTE, her parents did not think it would be safe for the appellant to walk to school alone.

[10] In or around 1991, the appellant's father was shot by the SLA in town. The appellant knows nothing about the circumstances. After her father's funeral, the appellant and her mother remained in village A for approximately six months. They then left and went to live with her uncle in B village.

[11] The appellant stopped attending school after her father's death. Instead, she spent her time working on her uncle's farm and doing housework. After moving to B village, she began to receive private English tuition from a nun in the village.

[12] The appellant and her mother remained in B village for the next 10 years. The appellant's mother was reclusive and rarely socialised. The appellant, however, made a number of close female friends.

[13] The appellant's early years in B village were relatively peaceful. However, in the mid-1990s conflict in the area between the LTTE and the SLA intensified. The appellant found herself torn between the LTTE, who demanded assistance from the villagers and attempted to recruit her, and the SLA who visited her and her mother on a number of occasions wanting information about the LTTE.

[14] In late December 2000, SLA soldiers requested the appellant and her mother to report to their camp the following day for questioning about the LTTE. Fearing that if they went to the camp they would be raped or killed, the appellant and her mother, accompanied by the uncle, left village B and went to village C which was between 20 and 30 miles away. They travelled by foot carrying their possessions. In village C they stayed with a worker from the uncle's farm.

[15] The appellant's mother and uncle decided to send the appellant overseas to ensure her safety and, after arriving in village C, began making arrangements for her departure, through an agent.

[16] In June 2001 the appellant, accompanied by the agent, left village C and travelled to Colombo. After spending three days in Colombo, they departed Sri Lanka from Colombo airport and flew to Malaysia. The agent did not give the appellant her passport and presented it on her behalf when they checked in together. He did, however, give the appellant her boarding pass which she noted was in her own name.

[17] The appellant and the agent stayed in Malaysia for three days before departing for New Zealand. Again, the agent gave her a boarding pass to present when they boarded the plane but did not give her her passport. This time, however, the appellant did not look at the boarding pass and does not know what name was on it.

[18] The appellant's flight stopped in Australia on the way to New Zealand. The appellant and the agent got off the plane in Australia for several hours. When it was time to re-board, the agent accompanied the appellant onto the plane and told her to wait for him upon her arrival in Auckland. He also told her to say that she

was a refugee when she got there and that she was not to contact her mother and uncle in Sri Lanka.

[19] When she arrived in New Zealand the appellant waited for the agent. However, she has never seen or heard from him again.

[20] The appellant refrained from contacting her mother until after her RSB interview in September 2001. Shortly after the interview, she wrote between 10 to 15 letters to her mother which she sent to her uncle's address in village B. She received no reply to her letters. Although there were a number of other people with whom the appellant could have made enquiries about her mother's whereabouts and well-being, such as her close friends in village B, the appellant did not attempt to contact anybody else in Sri Lanka. She was frightened that she may be at some risk if information about her whereabouts was passed to the SLA or the LTTE.

[21] In or around late 2004, the appellant came across a Tamil woman in a shopping centre in Auckland. This woman was on holiday in Auckland from the United Kingdom but was originally from Colombo. She told the woman that she had lost contact with her mother in Sri Lanka. The woman told her that she would try and find someone in Sri Lanka who could make enquiries about her mother. The appellant gave the woman her name and her mother's addresses in village A and village B. She did not learn the woman's name and has never seen her again.

[22] In early 2005, the appellant received a letter from a resident of her town in Sri Lanka. The author of the letter advised the appellant as follows:

"I went to see your mother but no one was available at that address. Your house had been demolished and was totally in bad shape. I enquired with the neighbours about your mother. They said after you went to New Zealand, the army and "tigers" were interrogating your mother often and after a few months they did not see your mother at all. Since they could not find your mother, your house was demolished and destroyed. But, your neighbours could not say exactly what happened to your mother."

[23] Since being in New Zealand the appellant has suffered from depression and sleep disturbances. In 2004, she consulted a psychiatrist who diagnosed her with post-traumatic stress disorder (PTSD). She is on medication for this condition.

[24] The appellant fears that if she is returned to Sri Lanka she will again be put under pressure to assist both the LTTE and the SLA. She also fears being raped and killed by the SLA.

Witness evidence

[25] The appellant's psychiatrist, Dr Greig McCormack, attended the hearing and gave evidence on her behalf. Dr McCormack had previously provided reports on the appellant dated 30 May 2005 and 24 February 2006 which have been filed in support of her refugee claim.

[26] Dr McCormack briefly explained the diagnostic criteria for PTSD and the reasons why he had made this diagnosis in respect of the appellant. He told the Authority that he considered that the appellant had chronic PTSD because her symptoms had persisted for more than three months. He described the appellant as an anxious, frightened woman with a downcast presentation. He said that the characteristics of PTSD she particularly exhibited were her intrusive thoughts and flashbacks, heightened anxiety and her depressive presentation which, despite medication, had been constant and chronic since his first meeting with her in 2005. He also said that she had a secondary depression which has developed in the context of her chronic PTSD and the life difficulties she currently faces particularly her unresolved immigration status.

[27] Dr McCormack expressed the view that the appellant's psychiatric symptoms were genuine. He commented that he considered her to be a genuinely frightened person and lacking in the sophistication necessary to fake her psychiatric condition. While giving evidence, Dr McCormack referred to the notes of his first consultation with the appellant in 2005. He stated that at this consultation she had complained of being under pressure from, and living in fear of, the rebels and the Sri Lankan police and that she had also complained of an occasion where she had been handled roughly by soldiers who spoke to her and touched her in a sexually inappropriate way. She was also extremely anxious because her mother was missing and she presumed the worst.

THE ISSUES

[28] 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."

[29] 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

[30] Prior to determining the framed issues it is necessary to make an assessment of the appellant's credibility.

[31] The appellant was an unimpressive witness. She was notably evasive while giving evidence and, on occasion, would change her evidence when difficulties with it were pointed out. During the hearing, she admitted lying to the Authority at her previous appeal hearing.

[32] In her closing submissions, counsel suggested that the appellant's evidence was affected by her mental illness (the PTSD) and reminded the Authority that over the two days of the hearing, the appellant had vomited repeatedly as a result of her anxiety while giving evidence.

[33] In assessing her evidence, the Authority has had regard to the appellant's psychological state. We are not satisfied however, that this state explains or excuses the problems with her evidence which will be detailed below.

[34] The Authority questioned the appellant about village A and her town. Her answers indicated familiarity with the layout of the village and town. When asked, she was able to name roads and give other information about the town. Her estimate of distances between various sites (such as between her home and her Convent school) and the locations of buildings such as her school and the town cemetery were in accordance with a map of village A and the town obtained by the Authority. When questioned about the town at her RSB interview in September 2001, she named streets that also appear on the map located by the Authority.

[35] The appellant's knowledge of village A and the town was such that the Authority accepts that she may have lived there at some stage as a child. However, this was the only part of the appellant's evidence we are able to accept.

Life in village B

[36] The appellant's evidence about her later life, particularly the 10 years she spent in village B, was unsatisfactory. She was unable to give any meaningful description of her day to day life there. When questioned as to what she did with her time there, given that she was not employed and did not attend school, she described activities she might have participated in as a child but that would be inappropriate for an adult. For example she said that she played games such as hide-and-seek with her friends and listened to fairy tales told by her mother. When the Authority reminded her that she had been aged 23 or 24 when she left village B and pointed out that it was unlikely she would have engaged in such activities at that age, she claimed to have had some conversations with her friends about boys. She was unable to convey any sense of having lived an adult life in village B. This indicates that she left the north of Sri Lanka much earlier than she has claimed.

Lack of knowledge about parent's backgrounds

[37] She claimed to have no knowledge of her mother and fathers' families. For example, she was uncertain as to whether her father had any siblings. She explained this through the fact that her parents had had a love match and were therefore estranged from their families. She was not able to name any of her parents' friends or acquaintances. She claimed that her mother had no friends and that her father did not bring his friends home, with the exception of the uncle with whom she lived after her father's death. She claimed not to know this uncle's full name despite having lived with him for the best part of fifteen years.

[38] She was unable to explain what had happened to her family home in village A, claiming variously that her mother had been unable to let it because a funeral had been held in it and that she did not know because adult affairs were never discussed with her. This claim, that serious matters were never discussed in her presence because she was a child, or was treated as such, was raised by her at other times during the hearing. For example, it was used to explain her claimed

lack of knowledge concerning the arrangements made for her travel to New Zealand.

Ability to speak English

[39] She was questioned at her RSB interview and by the Authority about her ability to speak English which, when interviewed by the RSB in 2001, was beyond the level that would have been expected, given her claimed background including her limited education. In response, she claimed to have received English tuition from a nun for many years in village B and that the purpose of this tuition was to prepare her for a life overseas, her mother having decided many years previously that it was inevitable that she would be sent away one day.

[40] We find this evidence implausible and contrived. It is not accepted that the appellant's mother would have had her tutored in English for years in case problems arose in the future necessitating her departure from Sri Lanka. Her ability to speak English, which she would not have picked up in day to day life in village B, indicates that the appellant has concealed her true whereabouts prior to coming to New Zealand and that she has spent a significant period of her adult life somewhere other than a rural village in the north of Sri Lanka.

Travel route

[41] The appellant's evidence about her travel to New Zealand was also unsatisfactory. In her evidence she initially stated that she flew directly from Colombo to Malaysia in June 2001, where she spent three days, and that she then flew from Malaysia to New Zealand, stopping only briefly in Australia on the way.

[42] A document on the appellant's DOL file records that in fact, she travelled to New Zealand on a Thai Airways flight from Bangkok. When asked to comment on this document, the appellant changed her evidence and claimed that she had flown from Colombo to Bangkok where she stayed until the evening before flying on to Malaysia. Her willingness to change her evidence in this way underscores her unreliability. Her amended evidence also fails to address the inconsistency between her claim to have flown from Malaysia having spent three days there, with a document recording her arriving in New Zealand on a flight from Bangkok.

[43] The appellant claimed for the first time before the Authority that her own name had been printed on the boarding pass she used for her flight from

Colombo. Prior to this, she had repeatedly stated in previous immigration interviews that she had no idea of either the nationality or the identity that she had travelled under. Once again, her contradiction of earlier evidence demonstrated her unreliability. Whatever her travel route was, it is not what she has claimed in her evidence.

The agent

[44] The appellant's evidence about the agent she claimed assisted her to travel from Sri Lanka to New Zealand was in a similar vein. She initially claimed that the agent had instructed her never to contact her mother in Sri Lanka and that she had disobeyed this instruction when she wrote to her mother several months after her arrival in New Zealand. When the Authority commented on the implausibility of an agent telling a client never to contact their family again, she changed her evidence and claimed that the agent had advised her only to refrain from contacting her family for a short period after her arrival in New Zealand. Her willingness to change her evidence in this manner further underscored her untruthfulness.

Contact with mother

[45] The appellant's evidence about her attempts to contact her mother in Sri Lanka was unsatisfactory and, frankly, unbelievable. She gave evidence that her loss of contact with her mother and lack of knowledge about her fate and whereabouts were extremely distressing to her. Her claimed distress and concern were at odds with her failure to make any real effort to locate her mother. She has made no attempt to contact her mother at her last known address (being the home of her uncle's employee in village C). She offered no satisfactory reason for failing to do so.

[46] She claims to have written to her mother only at her address in village B, despite her mother having left there for village C six months prior to the appellant's departure for New Zealand. She has not made enquiries about her mother with the Red Cross or any other relevant organisation. She claims that, despite knowing the names and the surnames of people in village B with whom she could correspond, her fear of being located by the SLA and the LTTE in New Zealand has prevented her from making enquiries with them about her mother. We regard as specious the irrational assertion that the SLA or LTTE might cause her harm if they knew she was in New Zealand.

[47] The appellant also told the previous panel of the Authority that she had given the stranger in the shopping centre the address in village C and that she had written to her mother in village C. Before us, she admitted that this was not true. To this panel, she claimed that she had given her mother's addresses in A and B village to the woman and that she had no idea in which village, the person who wrote to her had looked for her mother. She also introduced into her evidence to us the claim that the woman she had met was on holiday from the United Kingdom.

[48] The problems with her evidence in this regard were such that the Authority disbelieves the appellant's evidence relating to her mother's whereabouts and her lack of contact with her.

Appellant's identity

[49] The appellant did not have a passport in her possession when she arrived in New Zealand. The airport infringement notice on her file records that she travelled to New Zealand from Bangkok under a name that is different from the one she used on arrival in New Zealand. After she claimed refugee status at the airport she was interviewed and asked whether she had any identity documents in her possession. She answered that she did not. At her RSB interview in September 2001, she presented a certified copy of a Sri Lankan birth certificate.

[50] Given that she claimed to have had no contact with anyone in Sri Lanka since her arrival in New Zealand, the Authority asked her where she got the birth certificate from. In response, she claimed that her mother had given it to her before she left Sri Lanka and that she had concealed it in her bag and had forgotten about it when she was questioned at the airport.

[51] We do not accept that the appellant forgot about her birth certificate at the airport. We note that her bag was searched on arrival and that this search did not reveal the certificate. Further, it is unlikely that, had the appellant been travelling under a false name (as she claims), she would have taken the risk of carrying her birth certificate with her. We find that the appellant received her birth certificate from a third party after her arrival in New Zealand.

[52] At her RSB interview, the appellant was observed carrying a bag with her into the toilet during the break. When asked to show the RSO what was in the bag, she showed the RSO some sheets of paper and documents. She was then

asked to show the RSO the remaining contents of the bag. Inside was a sheet of notes containing biographical information such as the appellant's full name and date of birth, her status as an only child, her parents' names and dates and places of birth, her ethnicity, and key dates such as the date her father was allegedly killed.

[53] When asked why she had needed notes to prompt her recall of her own biographical information, she claimed that she had been advised by other asylum seekers to take notes of what she had said at the airport in case she became confused and forgot something. This explanation is not accepted. It is unlikely the appellant would have forgotten the type of details recorded in the notes such as her own name, her parents' names and where they were from, or her own status as an only child.

[54] The appellant's possession of these notes at her RSB interview strongly suggests that she required a memory aid in respect of the identity she claimed in New Zealand. Her need for such an aid, coupled with her extreme vagueness about her own and her parent's backgrounds, the late appearance of her identity document, her false claim to have had the document in her possession since arrival, her unexplained fluency in English on arrival, and her false evidence about her contact with her mother, suggests that the identity claimed by the appellant in New Zealand is false.

[55] The Authority's reservations about the appellant's identity and account are such that all we are prepared to accept about her is that she has PTSD, she speaks Tamil, and may have spent part of her early life in the Vavuniya district. Because of the lack of credibility of her account of her teenage and early adult years, we are unable to reach any conclusion as to which country she lived in prior to coming to New Zealand and what her current nationality is.

[56] It is the appellant's responsibility to establish her case (see *Jiao v Refugee Status Appeals Authority and Attorney General* [2003] NZAR 647). The Authority can only determine an appeal on the information that is before it. Given the paucity of information about the appellant upon which we can rely, we are unable to find that she has a well-founded fear of being persecuted in the country of her nationality, whatever that may be.

CONCLUSION

[57] For the above reasons, our concerns about the appellant's true identity and background are such that we decline to find that she is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"M A Roche"
M A Roche
Member