

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76507

AT AUCKLAND

Before: S A Aitchison (Member)

Counsel for the Appellant: J Hindman

Appearing for the Department of Labour: No Appearance

Date of Hearing: 24 May 2010

Date of Decision: 5 August 2010

DECISION

[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, a national of Sri Lanka.

INTRODUCTION

[2] The appellant claims to have been kidnapped in Colombo with a ransom demanded for his life. He claims to hold a well-founded fear of being persecuted by members of the Eelam People's Democratic Party ("EPDP"), the military, and police in Sri Lanka.

[3] The central issue in this appeal is whether the appellant's account is a credible one.

THE APPELLANT'S CASE

[4] A summary of the appellant's evidence in support of his appeal follows. An assessment of this evidence will follow later in the decision.

[5] The appellant is a Tamil male of the Hindu faith, born in Jaffna. He is 18 years of age. He attended "A" College from January 1998 until December 2007, completing grade ten. During this period he lived in Jaffna with his mother and two older sisters.

[6] His father relocated to Colombo for work purposes in 1996. He operated a business importing and selling food and spices, both wholesale and retail. He shared the business with four partners.

[7] On 27 January 2008, the appellant's family home was destroyed by the Sri Lankan Army ("SLA") in Jaffna. The family moved to live with a relative while they made arrangements to relocate to Colombo. A friend of the appellant's father arranged for the family to leave Jaffna and travel by road to Colombo. They undertook this journey on 2 February 2008, and arrived in Colombo the same evening. The appellant travelled together with his mother and one of his sisters. His elder sister had left Jaffna a year earlier to study in Colombo.

[8] Upon arrival in Colombo, the appellant enrolled at "B" College. The appellant also attended private tutoring classes and stated that he was bullied by students there because of his Hindu religion.

[9] On 21 July 2009, the appellant caught a public bus from home to school. When he was walking from the bus stop to the school grounds a van came up behind him. One of the men inside the van reached out and grabbed him by the neck, as two other men inside the van pulled him inside the van. The appellant noticed four men inside the van including the driver.

[10] The appellant screamed. He was blindfolded and gagged, and hit in the stomach. The men brought him to a building and led him past the entrance to a corridor. Once inside the corridor the blindfold and gag were taken off him. His ankles were then immediately tied together and his arms were placed behind his back and similarly tied. Two of the men dragged him into a far room at the end of the corridor. The appellant again screamed, and one of the men beat him with a stick. He was beaten on the left knee and left shoulder.

[11] Two of the men were heavy-built and had dark thick beards. They wore blue trousers and t-shirts. Another was short, had marks on his face, and wore shorts and a sleeveless t-shirt. He may have carried a gun. The appellant considered that the men could be members of the EPDP as, at the time, EPDP members were working together with the government to kidnap Tamil people. The appellant's father expressed this opinion to him several days after the kidnapping. Furthermore, there were several EPDP camps in the vicinity of his school. Two of the men spoke Sinhala, and one of them spoke in broken Tamil. He had seen some Sinhalese members in the EPDP.

[12] Approximately twenty minutes after being placed in the room, two of the men re-entered and called the appellant's father. It was not until the appellant was released that his father advised him that the men had requested a ransom payment of \$50,000 USD for his release. His father was told that if he went to the police they would kill his son, and that he should not bother to complain as the police were not interested in helping Tamils.

[13] Approximately ten minutes after the men had called the appellant's father, they called his mother, passed the telephone over to the appellant and told him to speak to her. He managed to say hello, but was immediately beaten with a pole to both legs. He screamed and the men took the telephone away from him.

[14] The appellant was released the following day at 6 pm. His father later advised him that he had been asked to drop off a ransom payment on an abandoned block of land near the area the appellant was kidnapped. He placed \$50,000 USD there, next to some rubbish. His father collected the money from a variety of sources that included his shop, friends and business partners, savings from his bank account, and the sale of his wife's jewellery.

[15] Two days after the appellant's release, the appellant's father received a further telephone call. The caller advised him that his son would be kidnapped if he did not pay \$50,000 USD. The appellant did not know if the caller was connected to the persons who had previously kidnapped him. His father did not pay the money requested. His response was to tell the caller that he would go to the police. The caller responded that the police would not help Tamils. The appellant's father decided against reporting the matter to the police. He feared that if he did the police would commit sexual violence against his daughters.

[16] As a result of these events, the appellant's sisters ceased working for two to three days. To protect the appellant, his father sent him and his mother to India. After spending a week in India the appellant's father called him back to Sri Lanka advising that he had made arrangements for him to travel to Australia. His father paid an agent \$30,000 USD, who assisted the appellant to depart Colombo on 3 September 2009, together with three other Sri Lankans, who were family friends. They travelled through Singapore to Peru. In Peru, an assistant of the agent provided the appellant with a false Malaysian passport. He travelled on to Bolivia and Argentina and then flew to New Zealand.

[17] The appellant arrived in New Zealand on 19 September 2009. He lodged his claim for refugee status with the RSB on 30 September 2009. He was interviewed by a refugee status officer on 5 October 2009. By decision dated 26 February 2010 the RSB declined the appellant's claim. The appellant duly appealed to this Authority.

[18] Since arriving in New Zealand, the appellant has been informed by his family that a former business partner of his father ("AA") had been threatened by persons in March 2009, some months before the appellant was kidnapped, and told that his son would be kidnapped unless \$50,000 USD was paid. AA refused to pay and instead arranged for his son to travel to Australia. In approximately February 2010, AA was again threatened that his daughter would be kidnapped if he did not pay \$50,000 USD. AA's family, consequently, fled to India in February 2010. While there, AA died. The appellant's father discovered this information in late February 2010 following AA's death, from his wife.

[19] Since this time, the appellant's father requested that the appellant's sisters cease working for their own protection. The appellant's eldest sister ceased working several months ago and his other sister intends to stop. The appellant stated that kidnappings continue to occur in Colombo and it is not safe for young females.

[20] The appellant also fears that he will be taken for questioning by the police upon return to Sri Lanka and may go missing. If he is able to leave the airport he fears being killed by the persons who kidnapped him.

Documents

[21] Counsel filed submissions with the Authority on 19 May 2010, together with an additional witness statement signed by the Appellant.

[22] Subsequent to the hearing, the Authority wrote to counsel by letter dated 28 May 2010, providing the following news articles, in addition to several more questions, for the appellant's comment. These articles included the following:

- (a) TamilNet "Irate Civilians Smash Travel Office in Jaffna", 30 January 2007;
- (b) Asian Tribune "LTTE Prevents Opening Up of A-9 Road", 24 December 2007;
- (c) The Sunday Times "After 19 years, the A9 road opens for public transport", 20 December 2009.

[23] Counsel responded to the Authority, on behalf of the appellant, by letter dated 11 June 2010.

[24] Subsequent to the hearing it came to the attention of the Authority that a document relied upon by the RSB relating to a verification request had not been disclosed to either the appellant or the Authority. Upon obtaining this document, the Authority duly disclosed this to the appellant on 23 June 2010, and received a response from the appellant, through counsel, on 29 June 2010.

[25] Counsel further submitted to the Authority on 8 July 2010 a letter from the Jaffna Hindu Primary School concerning the appellant's school attendance.

[26] On 13 July 2010, the Authority again wrote to the appellant through counsel, disclosing the recently issued "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", 5 July 2010, for comment. In addition, the appellant was referred to the United Kingdom Home Office "*Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009*" (22 October 2009), and the UNHCR "*CORI Country Report Sri Lanka, April 2010*" (April 2010), and provided the opportunity to file further submissions concerning this material as it relates to the appellant's appeal.

[27] On 27 July 2010, counsel duly filed further submissions with the Authority.

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

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

CREDIBILITY

[31] The appellant's claim involves a single account of kidnapping, mistreatment, and release upon payment of a ransom. In addition, he states that threats of a further kidnapping were made but not carried out. In spite of the claim's apparent simplicity, the appellant's narration of events in his statement, before the RSB, and the Authority, has been characterised by multiple inconsistencies and contradictions. Before the Authority, his evidence frequently grew mobile when asked to explain apparent discrepancies.

[32] While a reasonable margin of appreciation has been applied to these apparent flaws in the appellant's testimony, and the Authority will not recount much of the inconsistencies that relate to peripheral details in the claim, for the detailed reasons that follow, the Authority has found the appellant to be an unreliable witness and disbelieves his claim to have been kidnapped and to have been subject to a further threat of kidnapping.

Kidnapping

[33] The appellant gave inconsistent and contradictory evidence in his statement, at the RSB interview, and before the Authority, concerning key aspects of his kidnapping account. In all accounts he stated that he was taken to a building soon after being kidnapped. At the RSB interview and before the Authority, he described the interior layout of this building to include an entrance; a corridor, which led to four rooms, two on either side; and a room at the end of the corridor where he was detained. The discrepancies in his evidence relate to the location inside the building where his blindfold and gag were removed; the location he was rebound about the arms and legs; and how he was mistreated during the second beating he received whilst detained. These discrepancies are:

	Statement	RSB Interview	Authority Hearing
Removal of blindfold and gag	After taken from van	Unbound in entrance of building	Unbound in corridor of building
Binding of arms and legs	Bound before being placed inside room	Bound inside room; Later changed to bound at entrance of building	Bound in corridor of building
Mistreatment	Hit on legs	Hit on left arm and right calf	Beaten on left knee

[34] When asked by the Authority to comment on the discrepancy in his evidence concerning the location where the blindfold and gag were removed, the appellant stated that he had meant that he was unbound after he passed the entrance of the building. Called to comment upon the discrepancies in his evidence relating to where his arms and legs were bound he denied that he had told the RSB that he had been bound in the room and asserted that he had been bound before being placed inside there. With respect to the discrepancies in his account of mistreatment, the appellant told the Authority that he had been hit on his left leg, which touched his knee. When asked if he had been hit on the left arm and right calf as he had told the RSB, he added that he had, in fact, been hit on his left arm as well. He explained that he had told the RSB that he was hit on both legs, but that there was big blow to his left knee. When it was put to him that he had said to the RSB that it had been his right leg that had been hit he responded that he had said his right and left legs but there was a big blow on his left knee.

Ransom payment

[35] The appellant gave inconsistent accounts of how his father secured the money for his ransom. In his statement, he claimed that his father obtained the ransom money from his savings and from his shop. At the RSB interview, he maintained the same claim, adding that his father's savings were kept in the bank. At the RSB interview, and by letter, the RSB asked the appellant to corroborate his claim by presenting bank statements in support. Counsel's response, on behalf of the appellant, explained that the ransom money had not, in fact, been taken from the bank, but rather from friends and work colleagues, in addition to the sale of the appellant's mother's jewellery. The relevant portion of counsel's letter is reproduced below:

The appellant has asked his father about how the money was obtained.

He had assumed at interview the money had simply been withdrawn from a bank but his father has said that it is impossible for a Tamil to withdraw money from a bank in Sri Lanka because what happens is that Tamils are not able to go in and withdraw money because of the fears from the government and the banks that this money is still going to the LTTE.

The appellant's father had to borrow from his friends and work colleagues to raise the money to both pay the kidnappers and to send his son overseas. His wife sold her jewellery and this is how the money was accumulated. (*sic*)

[36] Counsel further explained in this correspondence that at the RSB interview the appellant had tried to guess how his father had obtained the ransom, but had since had the opportunity to ask his father and clarify the matter.

[37] Before the Authority, the appellant claimed again that his father had acquired the ransom money from his bank savings, in addition to other sources, including his shop, friends, and the sale of his wife's jewellery. The appellant stated that his father had advised him, the day after he was released, how he had collected the money for his ransom. Asked by the Authority to comment on the apparent discrepancies in his evidence, the appellant stated that it was not possible to withdraw a lot of money in Sri Lanka, and that his father had taken some money from the bank but not all. He did not know how much money had been withdrawn from the bank.

[38] The appellant's evidence of the identity of his father's business partners and their contribution to the ransom was vague and mobile. While not conclusive in itself, it tends to undermine the appellant's claim of how his father obtained the ransom.

[39] When asked by the Authority who contributed to the ransom, the appellant stated that close friends and business partners of his father had. When asked which business partners in particular had contributed, he stated that he thought one of his father's business partners, AA, had contributed to his ransom. When asked if any other business partners had contributed he stated that he knew that one of them, AA, had for sure. Later in evidence before the Authority he named another partner, BB, who had also contributed to his ransom. When asked why he had not mentioned the name of this person before he stated that he had mentioned AA as he had provided most of the money for the ransom, but that others had also contributed.

[40] When asked at the RSB interview who his father's business partners were, the appellant responded that there were a total of four partners, but "I don't know who are the other three partners apart from my father". When asked in similar fashion by the Authority who his father's business partners were, he was able to name each of them. When asked why he had claimed not to know who these partners were at the RSB interview, he stated that the RSB had not asked him for their names, and that he thought the question was not who they were but whether he knew them.

Attendance at "B" College

[41] Credibility concerns arose concerning the precise dates of the appellant's attendance at "B" College.

[42] The appellant claimed at the RSB interview and before the Authority that he travelled to Colombo in early February 2008 and began classes at this time at the "B" College. Before the Authority he estimated his starting date as either the 6th or 7th of February 2008. However, in his confirmation of claim he stated that he started classes at the College on the precise date of 8 January 2008. In his confirmation of claim he had also given the date of his change of address from Jaffna to Colombo as 1 January 2008. When asked to comment on this apparent discrepancy in his evidence he stated that a mistake had been made in the confirmation of claim.

[43] The Authority asked the appellant to further comment on his college attendance register for 2008, which recorded him attending classes for eleven days out of the prescribed thirteen school days for the month of January. When

asked to explain this discrepancy the appellant claimed that he did not understand and reinforced that he had started school in February.

[44] When the RSB sought to verify the appellant's college attendance through an independent third party, an office assistant from the College responded that the appellant was a student in attendance from 27 January 1999, some nine years prior to the appellant's account of first attending the College in February 2008. The office assistant further stated that the appellant remained at the College until 31 December 2008, when he completed his GCE Ordinary Levels examinations. When asked to respond to this potentially prejudicial information, the appellant stated that he was enrolled in the College in 1999, but had not attended until 2008. He submitted a letter that his father had obtained from the Principal of the College, dated 30 November 2009, which stated that the appellant was an "A" Level student at the College from 3 June 2009 to 6 August 2009. However, the Principal's letter did not address the disputed issue of when the appellant first attended the College.

[45] Following this correspondence, the RSB sought further clarification from the independent third party, who contacted the office assistant who confirmed again that the appellant was, in fact, a student who had commenced classes at the College from 27 January 1999 and continued there until 31 December 2008, but added that he had also recommenced classes at the College for three months in 2009. An attendance register for the College was appended to this letter, signed by the Principal, recording that the appellant had attended "A" Level classes for three months in 2009, from June to August 2009.

[46] The appellant's account to the Authority of the dates of his college attendance in June 2009, supported by the Principal's letter of 30 November 2009, did not reconcile with the college attendance register. When these differences were put to the appellant for comment his evidence grew mobile.

[47] His evidence to the Authority was that after completing his "O" Level examinations in 2008, he resumed classes the following year in June 2009. However, his college attendance register for 2009 held no record of his attendance in June 2009. When asked to comment upon this apparent inconsistency the appellant stated that the college attendance register was not ready at the time he commenced classes. When asked to explain further he stated that some students had not received enough results from their "O" Level Examinations so classes were not fully formed at this time in June. Under continued questioning he varied

his explanation and stated that he was a prefect at the school and on account of prefect duties he would miss the first period of class, the only time of day when an attendance record was completed.

[48] Having regard to the above, the Authority notes that both responses from office assistant, tendered to Immigration New Zealand (“INZ”) through the independent third party, consistently state that the appellant began attending the College in 1999. The Principal’s letter does not suggest anything to the contrary.

[49] The Authority is concerned that it was only after further contact with the College by the appellant’s father, that the College, inexplicably and without explanation, advised that the appellant had not completed his studies at the College in December 2008, as earlier advised by the office assistant, but had resumed classes in June 2009. This information, in turn, contradicted the college attendance register that recorded the appellant as absent from the College in June 2009. The appellant’s explanation for this discrepancy, namely, that classes were not registered in June, which he followed by a new assertion that classes were recorded but only for the first class period – which he missed through fulfilling duties as a prefect – is both contradictory and implausible. His later explanation fails to give account for why, as a prefect, his attendance would not be recorded for June, but then suddenly be recorded for July and August 2009.

[50] These concerns raise doubts as to the authenticity of any report received from “B” College after the appellant’s father became involved. The Authority notes that the appellant’s father again produced a document purporting to alter the evidence elicited by INZ as to the appellant’s starting date at “B” College, submitting a letter from the Principal of “A” College claiming that the appellant attended primary school in Jaffna until 2002, however, this cannot be reconciled with the continued assertion from the office assistant that the appellant was enrolled in the “B” College since 1999. With respect to the date the appellant commenced classes at “B” College, the Authority prefers the evidence elicited by that of an independent third party. This finding is further reinforced by the inherent inconsistencies noted above between the appellant’s evidence before the Authority and his confirmation of claim as to the date of his arrival in Colombo, and furthermore, to the Authority’s later finding in this decision concerning the appellant’s travel from Jaffna to Colombo.

[51] The Authority places no weight on counsel’s submission that the second verification request obtained by INZ is inherently contradictory. The contradiction

asserted by counsel simply refers to the format of the second verification request, namely, that the RSB, in sending the second verification request to the third party, simply resent the first verification request, including the former questions and responses contained therein, modified to include additional questions related to the second verification request.

Return to “B” College after kidnapping

[52] The appellant’s evidence concerning whether he attended “B” College after the kidnapping was mobile and inconsistent. In his statement, at the RSB interview, and before the Authority, he asserted that from the day of the kidnapping he was too scared to leave the house and did not return to the College thereafter. When directed by the Authority to his college attendance register for 2009, signed by the Principal, which read that he had attended the College for three days in August 2009, he changed his evidence, stating that he had, in fact, attended the College, but only for the first period to get his “O” Level Certificate, some sports certificates, and to return some books. When the Authority pointed out to him that his “O” Level Certificate that he produced to the RSB had an issue date of 16 November 2009, he changed his evidence, stating that he meant that he had attended the College to obtain a letter about his “O” Level Certificate. When asked why he would want a letter he stated that he meant that when he was doing his “O” Levels he got some certificates, and it was these that he wanted to collect.

Identity of kidnappers

[53] At the Authority hearing, the appellant made several new assertions that he had not included previously in his confirmation of claim, statement, or at the RSB interview. The first assertion related to the identity of the persons who allegedly kidnapped him.

[54] The appellant claimed in his initial statement that he was kidnapped by “unknown persons,” and that he did not know who the kidnappers were. He added that they all looked like Sinhalese. At his RSB interview, the appellant stated that he assumed the persons who kidnapped him were Sinhalese, that they spoke Sinhala, and that one of them spoke in broken Tamil.

[55] Before the Authority, the appellant claimed for the first time that while he did not know who the persons were who kidnapped him at the time, he had come to

know that they were members of the EPDP. When asked how he knew this he stated that he was not 100 percent sure, but that EPDP members, together with the government, were kidnapping Tamils at the time he was kidnapped. He said that his father had told him this several days after the kidnapping.

[56] When asked by the Authority why he had described these persons as unknown to the RSB, and had never mentioned the EPDP to the RSB, he stated that he had, in fact, told this to the RSB. He then stated that he thought he had mentioned it in his statement as well. He directed attention to a sentence in his statement which reads: "They said that I was kidnapped because I am a Tamil and as well the kidnappers need money from Tamils to threaten them".

[57] When reminded by the Authority that he had stated in his confirmation of claim that the persons he feared were Sinhalese, police and the army in Sri Lanka, he responded that these were the main groups who kidnapped people. He added that the men who kidnapped him were speaking Sinhala and that was why he thought they were Sinhalese. When the Authority put to him that the EPDP was a Tamil group he agreed but said that it was linked with the government and that he had seen Sinhalese persons in this group. He stated that all three persons who kidnapped him could speak Tamil. When he was reminded that he had given prior evidence that one of them, only, had spoken broken Tamil, he agreed.

[58] The appellant's assertion that he later came to identify those who kidnapped him, as justification for this later introduction of evidence, contradicts his earlier evidence that his father advised him of the identity of these persons several days after the kidnapping. He never characterised these persons as EPDP members in his confirmation of claim, statement or at the RSB interview. Furthermore, when asked directly by the RSB who these persons were he did not identify them as EPDP. These contradictory claims cannot be reconciled.

Identity of persons who threatened kidnapping

[59] The appellant's evidence of the identity of the persons who threatened to kidnap him, two days after he was released upon payment of a ransom, was inconsistent and contradictory.

[60] In his statement, he claimed:

A few days later again the kidnappers called my father and tried to blackmail him to give them money again. They said that they will kidnap again me so my family was

scared. They said that I was kidnapped because I am a Tamil and as well the kidnapers need money from Tamils to threaten them.

At the RSB interview, when the appellant was giving an account of these threats of kidnapping, he was asked: "What did the kidnapers say?" to which he responded: "They called my father and said they need more money." When the RSB asked him how he knew it was the same people who had previously kidnapped him he responded: "They have told my father". Before the Authority, however, the appellant claimed that he did not know if the threats of kidnapping were conveyed by the same people who had, in fact, kidnapped him. When asked to comment on this discrepancy the appellant stated that his father had simply said that the voice on the telephone seemed the same. He said that the person on the telephone didn't talk to him so he didn't know if it was the same person. That, of course, does not explain why he had twice stated on earlier occasions, in unqualified terms, that the men had told his father who they were.

Conclusions on kidnapping account

[61] The Authority finds that the combined effect of these inconsistencies and contradictions in the appellant's account of having been kidnapped, and subjected to further threat of kidnapping, are not the product of genuine confusion or lack of maturity as submitted by counsel, but rather, are illustrative of the appellant's inability to maintain a consistent line in what is, overall, an untruthful sequence of events.

[62] The appellant gave detailed and unequivocal answers to the questions asked by the Authority concerning the core of his claim, with no indication that he was confused or uncertain about what had happened or in what order. Furthermore, at the outset of the hearing before the Authority, the appellant was cautioned that he should not provide responses to questions that he did not know the answer to, and if he didn't understand any particular questions to ask for the clarification of the Authority. The claim that the appellant was confused or lacking in maturity to assist a consistent account is not believable.

[63] Counsel also submitted that allowance should be made for certain inconsistencies on account of the appellant not being fluent in English and having no Tamil interpreter when completing his confirmation of claim and statement. While the appellant claimed to the Authority that he was not fluent in English, it is clear that he enjoys a reasonable standard of English. At the outset of the RSB

interview, the appellant was asked what languages he could read and write and he responded: "Tamil and English". It was under the guidance of experienced counsel that he was advised to complete his confirmation of claim and statement himself in English. When asked by the RSB if his English was good enough to answer the confirmation of claim he stated: "Yes". When asked if he could understand all the questions in the form he stated that he couldn't understand a few questions, but had asked counsel for clarification. When asked if everything in his confirmation of claim and statement were correct he stated: "Yes." At the RSB interview, he did not wish to change anything in these documents. He merely added that there had been a lot of grammatical errors in his statement. It was also observed by the Authority at the hearing itself that the appellant had a good command of English as he would on occasion affirm the Authority's questions before waiting for a translation from the interpreter.

[64] The Authority does not consider that the appellant's failure to have the assistance of an interpreter to complete his confirmation of claim and statement accounts for any of the identified flaws in his evidence. While the Authority is also cognisant that the appellant was imprisoned for five days upon arrival in New Zealand and that this would have been a stressful circumstance for him, particularly at his age, the Authority does not accept that this accounts for the significant inconsistencies and contradictions in his evidence, on matters of direct relevance to his claim. Rather, the combined effect of these discrepancies is indicative of his delivery of an untruthful account.

[65] The Authority is mindful, also, in making this finding, that lies can be told for manifold reasons, and that lies in relation to part of a claim do not necessarily impugn the whole of the claim; see *Refugee Appeal No 76204* (16 February 2009) at [54].

[66] The Authority's conclusions on this central part of the claim are further reinforced by other credibility findings that appear below.

OTHER CREDIBILITY CONCERNS

Travel to New Zealand

[67] The Authority found the appellant's evidence concerning his travel companions from Sri Lanka to New Zealand to be vague, mobile and inconsistent.

While not central to the appellant's claim, it paints a picture of the appellant's general credibility.

[68] The accepted facts are that the appellant travelled from Sri Lanka, through Singapore, Peru, Bolivia and Argentina, to New Zealand, together with a Sri Lankan woman and her two children who departed Sri Lanka at the same time as the appellant. The group also met another person in Peru who joined on the trip to New Zealand.

[69] When interviewed by an immigration officer at Auckland International Airport, the appellant claimed that he did not know the persons he travelled with to New Zealand, but that his father knew the husband of the woman he travelled with. He also gave contrasting information in this interview, stating that he knew these travel companions as family friends. In his statement, he claimed that he got to know three of the persons he travelled with in Sri Lanka, and met an additional travel companion in Peru. At the RSB interview, he claimed that he did not know the persons he travelled with. He stated that he only came to know these persons after their travel was arranged by a shared agent, adding that his father knew the woman's husband. Following the RSB interview, the RSB wrote to the appellant with additional questions, which sought clarity on this point. Counsel, responding on behalf of the appellant, stated that the appellant only got to know his travel companions when he met them through his shared agent. It was explained that his agent had instructed him to tell anyone who asked that these persons were family friends in order to avoid suspicion.

[70] Before the Authority, he claimed that he was personal friends with the son and daughter with whom he had travelled with to New Zealand. The son attended a nearby school and they would meet one another after school. He also stated that his father was a friend of the woman's husband. When asked to comment on the discrepancies in his account he stated that the agent had told him to explain to anyone who questioned him at the airport that he travelled with family friends. He then added that he had told the RSB that he knew the son.

[71] The Authority is sensitive to the fact that many refugees have encountered experiences in their country of origin that give them reason to distrust persons in authority and that they may be less than forthright with immigration officials, particularly soon after arrival in a new country; *Refugee Appeal No 265/92* (29 June 1994), citing Professor Hathaway, *The Law of Refugee Status* (1991) 84-85. The Authority considers that the agent in this case may well have told the

appellant, as alleged, that he should tell anyone he meets at the airport that he was travelling with family friends. This likelihood does not, however, explain the continued mobility of the appellant's evidence on this issue once he received the experienced advice of his counsel, and made the admission to the RSB and the Authority of having received instructions to maintain an untruthful account of his knowledge of his travel companions.

Travel from Jaffna to Colombo

[72] Credibility concerns arose concerning the date and manner of the appellant's travel from Jaffna to Colombo, where the alleged kidnapping took place. Before the Authority, the appellant described how he and his family had travelled in a van, by road, to Colombo on 2 February 2008, assisted by a friend of his father's. The appellant was unable to explain to the Authority the land route that they took to Colombo, nor was he able to name any of the roads they commuted upon. He could only remember that they passed through Chavakachcheri.

[73] Subsequent to the hearing, the Authority wrote to the appellant disclosing several news articles for comment, which reported how the only land route out of Jaffna at the time of the appellant's purported travel was the A9 road, and that this was closed. The appellant responded by repeating his evidence at the Authority hearing, namely, that he was unable to state what roads he travelled upon to Colombo, knowing only that he travelled by van, assisted by a friend of his father's who spoke to the Sri Lankan Army when they were stopped at three checkpoints along the way.

[74] The news articles disclosed by the Authority to the appellant clearly state that the A9 road was the only land route available from Jaffna to Colombo at the time of the appellant's purported travel, being closed a further time in 2006 and not reopened again until 2009; see "Irate Civilians Smash Travel Office in Jaffna" *TamilNet* (30 January 2007); "LTTE Prevents Opening Up of A-9 Road" *Asian Tribune* (24 December 2007); "After 19 years, the A9 road opens for public transport" *The Sunday Times* (20 December 2009).

[75] The appellant stated that he could only remember that they passed through Chavakachcheri on their journey to Colombo. The Authority notes that this is the second largest town in the Jaffna Peninsula, of which the A9 highway passes through. While there are two main entrances to Jaffna by land route that have

linked the north with the rest of the country for centuries, namely the A9 and the A23 highway – which links the Jaffna Peninsula with a ferry service from Sangupiddy Jetty in Pooneryn – both were not accessible at the time of the appellant’s purported travel; see further, “A-32 Highway to Jaffna: A dream comes true” *Sunday Observer* (13 June 2010). The Authority rejects the appellant’s evidence of travel by road from Jaffna at this time.

The threat to kidnap AA’s son and daughter

[76] Prior to the hearing before the Authority, the appellant submitted an additional statement that presented new evidence of kidnapping threats received by a former partner of the appellant’s father, AA (See [18] above). It will be recalled that this information is said to have been received by the appellant’s father in February 2010.

[77] When asked by the Authority why this evidence relating to the first kidnapping threats in February/March 2009 had not been presented to the RSB, the appellant stated that his father had only learnt of this information after the death of AA, when AA’s wife told him. The Authority asked the appellant why AA would not have mentioned this matter to his father, for example, when he asked him for a contribution to the appellant’s ransom. The appellant responded that AA had simply not disclosed this information. When the Authority asserted that this seemed unlikely, he responded that the AA’s son had not been kidnapped. When questioned further he changed his evidence and stated that he did not know if his father had been told about this matter previously or not.

[78] Quite apart from the shifting nature of the appellant’s evidence, the Authority finds that it stretches the bounds of credulity that AA, as a close business partner of the appellant’s father, having faced similar threats concerning his son, and having been approached personally to make a contribution to the appellant’s ransom, would not have commented on his own situation to the appellant’s father. It is also concerning that the appellant’s father, a man clearly keen to see his son’s refugee claim succeed, would have failed to mention it to the appellant in time for the RSB interview had he been aware of such information at the time.

Conclusions on credibility

[79] The appellant has not adduced any credible evidence to support his claim. The Authority rejects his account. The Authority accepts, solely, that he is a

young, Tamil male, of Hindu faith, who originates from Jaffna in the north of Sri Lanka. His claim falls to be assessed on this basis.

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

[80] Persecution is defined in refugee law as the sustained or systemic violation of basic or core human rights such to be demonstrative of a failure of state protection; See J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1991) pp104-108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996) at [15].

[81] The well-founded fear requirement calls for an objective assessment of a forward-looking risk. While a remote or speculative possibility of being persecuted will be insufficient to establish the real chance standard, a low likelihood of harm will afford an appellant the benefit of the protection conferred by the Refugee Convention; see *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA); *Refugee Appeal No 75692* (3 March 2006).

[82] The question of whether the appellant's fear is well-founded must be assessed in the context of the current situation in Sri Lanka, taking into account his personal profile of being a young, Tamil male, of Hindu faith, who originates from Jaffna in the north of the country, and who has been living in Colombo since 1999 in the very least.

[83] The security and human rights climate in Sri Lanka is an evolving one. It reflects the progression and final cessation of hostilities between the SLA and the Liberation Tigers of Tamil Eelam ("LTTE"), and the ethnic and territorial breakdown of its population. Hostilities between the SLA and LTTE ended in May 2009 when Government forces captured the last territories controlled by the LTTE. Notwithstanding the end of hostilities, the humanitarian and protection environment has remained of serious concern. A significant proportion of the population from the northern territory – formerly held by the LTTE, and estimated by the UNHCR to be some 285,000 Tamils – were confined in militarised camps in the northern region on claims that they posed a national security risk and needed to be screened before being released. While those detained have been slowly released over the past year, there are still, to date, some 49,000 internally displaced persons ("IDPs") held in confinement; see "Only 49,000 IDPs Left in

Welfare Camps” *The Island* (17 June 2010); and UNHCR, *UNHCR welcomes resumption of return movements in northern Sri Lanka* (27 April 2010).

[84] The Tamil population – in particular those from the North and East of Sri Lanka, by virtue of history, conflict, and geography – have been subject to widespread displacement, suspicion of LTTE involvement or sympathies, and confinement in the northern region. Commenting during the final stages of the conflict, the Centre for Policy Alternatives explained:

As a result of the ongoing LTTE attacks on Government and civilian targets in the country, Tamils, in particular those originating from the North and East have been under suspicion. Wide scale arrests and detention of Tamils have been reported throughout the country. As in the North and the East, they are frequently associated with cordon and search operations and frequently follow bombings or other attacks by the LTTE. Tamils who are without proper identity documents are more likely to be arrested and detained in these operations; Centre for Policy Alternatives, *A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya* (March 2009), p. 60

[85] In a similar vein, the UNHCR wrote:

Because of the heavy reliance of the LTTE on support and assistance of Tamils in areas which they have administered or controlled, which has included mandatory military training and recruitment of men and women and children, the use of civilians, including women in suicide attacks, and the requirement that civilians provide financial and other support for LTTE activities, few Tamils from these regions are without ties to the LTTE. Those who are vulnerable to suspicion of having LTTE ties are, therefore, not limited to individuals who are presently actively engage in LTTE activities and/or carrying out acts related to the armed conflict; UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka* (April 2009).

[86] Tamils from the North and East, suspected of associations or involvement with the LTTE, have been subject to extensive human rights violations. According to Human Rights Watch, following the defeat of the LTTE:

The government detained more than 10,000 displaced persons at checkpoints and from the camps on suspicion of LTTE involvement, in many cases citing vague and overbroad emergency laws still in force after the end of the war. Many arrests were carried out in violation of domestic and international law. The authorities failed to inform families of their relatives’ fate and whereabouts [...] The authorities also specifically targeted key witnesses to the final stages of the war; *Human Rights Watch World Report 2010: Sri Lanka*, p. 350.

[87] The International Crisis Group in January 2010 reported that: “[m]ore than 12,000 Tamils [were] held in irregular detention centres on suspicion of ties to the LTTE”; International Crisis Group *Update Briefing: Sri Lanka: A bitter Peace* (11 January 2010), see also Human Rights Watch *Sri Lanka: Avoid a Postwar Witch Hunt* (3 June 2009).

[88] Human rights violations in Sri Lanka are frequently associated with government security and counter-terrorism measures, assisted in great deal by the Emergency Regulations currently in force in the country. These provisions provide broad powers and discretion for both police and military, and effectively supersede relevant constitutional human rights guarantees. While the government relaxed the Emergency Regulations somewhat in May 2010, these changes have been minimal; see *Emergency (Miscellaneous Provisions and Powers) Regulation, No 1 of 2005, 13 August 2005*; and *Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No 07 of 2006, 6 December 2006*; UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 5 July 2010. The regulations are frequently used to detain individuals upon limited evidence, without charge, and for prolonged periods of security detention; see Commission of the European Communities *Report on the findings of the investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka* (19 October 2009).

[89] It is fair to state that the overall climate in Sri Lanka at this current point in time is one characterised by widespread human rights violations, lacking in the rule of law and the fair and equitable administration of justice. Incidents of arbitrary arrest and detention, abductions and disappearances, restrictions on freedom of movement, freedom of expression, torture, and other cruel, inhumane and degrading treatment, have been widely reported; see Commission of the European Communities *Report on the findings of the investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka* (19 October 2009); International Crisis Group *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*, Asia Report No. 172 (30 June 2009); United States Report of State, *2009 Human Rights Report: Sri Lanka* (11 March 2010). As counsel refers in submissions, disappearances in Sri Lanka continue to be a significant problem; see UNHCR *CORI Country Report Sri Lanka, April 2010*, pp100-101.

[90] It is reported that Tamils are disproportionately represented in these incidents, a fact recognised by the UNHCR which has, over the course of the conflict, and upon its cessation, provided guidelines to assist the assessment of international protection needs of asylum-seekers; See most recent UNHCR Guidelines – UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 5 July 2010; see also UNHCR *CORI Country Report Sri Lanka* (April 2010). In these Guidelines the

UNHCR reports that since the end of the armed conflict security conditions throughout the country have significantly improved and that all claims by asylum-seekers from Sri Lanka should be considered on their individual merits. The changing nature of the security environment since the cessation of armed conflict in Sri Lanka has been commented upon by this Authority, which is called upon to assess the particular circumstances of each appellant against the available country information at the time a decision on refugee status is made; see *Refugee Appeal Nos 76294 and 76295* (30 June 2009); *Refugee Appeal Nos 76352, 76353 and 76354* (26 January 2010).

[91] In addition to a strong Tamil presence in the North and East of the country, there is also a sizable population of Tamils who have been living in Colombo for generations, who form a majority in certain areas in Colombo. Estimates suggest that they number between 300,000 to 500,000, and constitute up to 20 percent of the population in Colombo District; see United Kingdom Home Office *Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009* (August 2009) (“United Kingdom Home Office Report”).

[92] The government security and counter-terrorism measures extend throughout Sri Lanka, and Tamils who originate from Colombo have, like those originating from the North and East, been subject to greater scrutiny, suspicion, and risk of human rights violations. Checkpoints, security checks and searches are common, and Tamils are more likely to be questioned than other groups. According to the United Kingdom Home Office Report – prepared following a site visit to Colombo that entailed interviews with a variety of non-government and international sources – young male Tamils originating from the north and east of the country are most at risk of detention following cordon and search operations. Furthermore, increased risk factors include: persons without identification; non-residents or those unemployed in Colombo; and persons recently returned from the west. Most sources consulted by the United Kingdom Home Office, however, reported that while there had not been any significant reduction in the number of checkpoints since the conflict, there had been fewer large-scale operations than in previous years, and arrests at checkpoints were very rare, with none having been reported since June 2009.

[93] There are also reports that Tamils who arrive at the international airport in Colombo are subjected to increased scrutiny; United Kingdom Home Office Home Office Report. Factors that increase the chances of encountering difficulties with

the authorities upon arrival at the airport include: an outstanding arrest warrant, criminal record, connections with LTTE, illegal departure from Sri Lanka, involvement with media or NGOs, and lack of an identity card or other documentation; United Kingdom Home Office Report.

[94] Considering the above country information, it is evident to the Authority that following the formal end of hostilities in Sri Lanka the government is still maintaining high vigilance and security throughout the country, including Colombo. Furthermore, the government continues to be suspicious of Tamils in general, fearing that they may have links to the LTTE. This level of vigilance and suspicion is further evident from a daily purview of local newspapers in Sri Lanka, and has even extended in recent times to some Sinhalese. For example, the Tamil Daily reported on 18 June 2010 that a Sinhalese person was taken into custody in Puttalam have being found carrying the picture of the LTTE leader, Prabhakaran, on his person. An investigation was launched into the matter, the detainee providing the explanation that he wanted this picture for his children and future generations to know their country's history. The day earlier, it was reported in the Daily Edition that a young man had been arrested for holding video clips of Prabhakaran in his mobile telephone. There are also regular news reports of LTTE members and their activities abroad that contribute to the ongoing sensitivity of the Sri Lankan government to the potential re-emergence of Tamil resistance; see "Information that tigers are hiding in Venezuela as well" *Daily Edition* (21 June 2010); "Three Sri Lankans Arrested in Tamil Nadu on suspicion of holding connection with tigers" *Tamil Daily* (21 June 2010); "Numerous NGOs in Malaysia supports LTTE leaders" *Sunday Divamina* (20 June 2010).

[95] While the country information indicates that some Tamil civilians in Sri Lanka originating from the north have been unlawfully confined in detention camps, and others throughout the country that are suspected of LTTE links subject to arbitrary arrest, detention and mistreatment, amongst other abuses, it does not establish that every Tamil citizen is at risk of serious harm to the level of a real chance.

[96] The Authority finds that the appellant was not resident in the north during the closing phase of the conflict and, not as such, one of a vast group of Tamils confined in detention camps. Nor is there a real chance that he will be so confined in the future. He no longer lives in the north, and he has not expressed any desire to the Authority to return there. Rather, the appellant is a resident of Colombo,

and has attended school and lived at a fixed address there, in the very least, since 1999. He has a father with a long-standing and stable business in the area, and other family members in employment in Colombo. Furthermore, the appellant possesses a National Identity Card, confirming a residential address in Colombo, which records through the numerical “1” on the top corner of the card demonstrating that it was obtained from the Western Province; see Immigration and Refugee Board of Canada *Sri Lanka: The National Identity Card*, 8 April 2008. While the appellant claims he has left his original NIC in Sri Lanka, he carries a photocopy on his person. The appellant also possesses copies of documentation relating to his schooling in Colombo. He has no criminal record, no connection with the LTTE, and departed from Sri Lanka legally. He does not exhibit any of the heightened risk factors identified, for example, by the Home Office, other than being a Tamil male originating from Jaffna, who has returned from abroad that might raise his fear of persecution to the level of a real chance. While the appellant might be subject to questioning upon return to Colombo, either as a returnee or deportee, given his absence of risk factors, there is no evidence that he would be subject to any further restrictions. The fact that he destroyed his passport, and may need to acquire a new one, or otherwise travel, will similarly, not raise his fear of persecution to the level of a real chance.

[97] While the appellant has claimed to have been bullied by other students on account of his Hindu faith, this does not amount to a real chance of persecution. He has not experienced a sustained or systemic violation of his human rights. The Authority notes that the Constitution of Sri Lanka provides for freedom of religion and association to manifest religion or belief; Constitution of the Democratic Socialist Republic of Sri Lanka, 7 September 1978, Articles 10 and 14. According to the United States Department of State Reports for Sri Lanka 2009, the government generally respected this right in practice. Freedom House has similarly reported that “Religious freedom is respected, and members of all faiths are generally allowed to worship freely.” However, “[t]here is some discrimination and occasional violence against religious minorities”; Freedom House *Freedom in the World 2009: Sri Lanka* (16 July 2009).

[98] In all of the circumstances of this appeal, taking into consideration the particular characteristics of the appellant, the Authority finds that the risk of him being seriously harmed upon return to Sri Lanka is no more than speculative and random. It does not meet the threshold of a real chance.

Is there a Convention reason for that persecution?

[99] The Authority notes counsel's submission that the appellant holds a well-founded fear for the following Convention reasons, namely, his race, ethnicity, imputed political opinion, and membership of a particular social group of "Young Tamils whose parents are Tamil merchant owners that have attended exclusive Tamil schools". However, the first framed issue answered in the negative, the second issue does not fall for consideration.

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.

"S A Aitchison"

S A Aitchison
Member