

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76565**

**AT AUCKLAND**

<b><u>Before:</u></b>	D L Henare (Member)
<b><u>Counsel for the Appellant:</u></b>	J Hindman
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	1 September 2010
<b><u>Date of Decision:</u></b>	18 October 2010

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**DECISION**

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[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 arrived in New Zealand on 15 March 2009 on a visitor's permit. On 12 March 2010 the appellant made a claim for refugee status, by which time she had been granted four extensions to her permit by Immigration New Zealand (INZ). She was interviewed by the RSB on 16 April 2010. Her claim for refugee status was declined in a decision dated 30 June 2010 against which she appeals to this Authority.

[3] The appellant predicts being persecuted on return to Sri Lanka by the Criminal Investigation Department (CID) because she believes the CID accuses her of being a suspect in a crime and being a supporter of the Liberation Tigers of Tamil Eelam (LTTE). Another issue to be determined is whether the appellant's Christian faith gives rise to a real chance that she will be persecuted on return to

Sri Lanka.

[4] The essential issues to be determined are those in relation to the appellant's credibility, then, on the facts as found, the well-foundedness of her claim.

[5] At the outset of the hearing, the appellant submitted a medical certificate dated 20 August 2010 from the East Tamaki Health Care. Her doctor prescribed an antidepressant and sleeping medication. The Authority took account of the appellant's health condition by granting her a number of breaks throughout the hearing and adjourning early on the first day. The appellant appeared competent in giving her evidence throughout the hearing.

[6] What follows is an outline of the evidence the appellant gave in support of her appeal and the evidence given by a witness, AA. The relevant issues are then identified and an assessment based on the facts as found, follows.

### **THE APPELLANT'S CASE**

[7] The appellant is a single woman, aged in her early 50s. She is of Sinhalese ethnicity. She was born in Chilaw and has lived most of her life in her family home in Z, Kandy. She has five siblings who remain in Sri Lanka, two of whom live only a few kilometres from the family home. The appellant was a school teacher for 28 years until her retirement in April 2008. After her retirement, she joined a private company as a human resources administrator.

[8] The appellant was raised as a devout Christian. Over the years her family held prayer meetings at their house. Sometimes their prayer sessions were heard by the Buddhists in the temple opposite them, who told the family to cease their prayers. The appellant's family declined to do so, but took precautions by closing the windows and doors, to ensure their prayer meetings were not heard.

[9] The appellant's family supplemented their income by taking boarders into their home. These boarders comprised men and women from mixed ethnic groups, mainly students from the university which was located close to the family home.

[10] The appellant cared for her parents until they died in 2006 and 2007 respectively. The appellant's father bequeathed the family home to all his children who agreed that since the appellant was single, she should remain there and continue to operate it as a boarding house. The appellant improved the property

and soon had 10 boarders living there.

[11] The appellant explained that all residents in the Kandy district are required to register their details with the police, who distribute the relevant forms for this purpose. For the appellant this registration process entailed her recording at the beginning of each year, the names of all her boarders and alongside each name noting their relationship to her as 'boarder or boarding student'. She provided this list and copies of the boarder's identity cards to the village official who approved the list, and then lodged it with the police. The appellant explained that the identity cards showed a person's photograph, full name and identity number, and contained details of date and place of birth, and ethnic group. If the appellant took in a new boarder during the year, she followed this registration procedure. She was not required to report a boarder's departure. The appellant recorded herself as the landlady. The village official also maintained a residents' register.

[12] In early August 2008, the appellant was asked by one of her boarders BB, whether her husband CC, a Tamil from Jaffna, could join her at the boarding house for three months, since he was planning to travel abroad. The appellant agreed because BB had boarded there a year and she also agreed to pay an additional boarding fee for her husband. The appellant notified the village official of CC's name, supplied a copy of his identity card, and was given immediate approval for his residence.

[13] The appellant saw CC from time to time when she served the meals, but had little communication with him. CC and BB usually went out in the mornings and returned home at night. On 10 September, they did not return at all. The appellant never saw or heard from them again. She subsequently re-let their room.

[14] In October 2008 the appellant's friend AA, who lives in New Zealand, invited her to attend her daughter's wedding in January 2009. In November 2008, the appellant applied for a visitor's permit for a period of 14 days. After providing INZ with a visitor's bond and other documentation, including a certificate of good character, the appellant's application was approved but it was too late for her to attend the wedding. However, she decided to proceed with the visit. She enlisted the help of her church pastor to arrange a housekeeper, DD, to look after the boarding house in her absence.

[15] The appellant arrived in New Zealand in March 2009 and stayed with her friend AA. Her eldest sister EE contacted her two weeks later. EE was in a distressed state on the telephone. She said she had been contacted by DD who

reported that the CID had visited the boarding house looking for the appellant. EE told the appellant that the CID were making enquiries about a person called CC who was a suspect in a suicide bombing on 2 January 2009. EE did not provide any other details.

[16] The appellant recalled that CC had been her boarder. The link between CC and a suicide bombing caused the appellant to believe that CC must have been a member of the LTTE because the LTTE were involved in suicide bombings. The appellant had never had any connections with the LTTE but “now, because of CC, that connection occurs”.

[17] EE told the appellant to stay in New Zealand and let the matter settle, because her life was in danger. The appellant explained that EE had suffered severe depression when her husband had been killed by the CID some years earlier because he had assisted a particular group. EE feared the CID might harm the appellant and that she would be put through the same trauma again. The appellant hoped that the CID might have been conducting ‘a random investigation’ and the matter might settle. She therefore agreed with EE not to return to Sri Lanka. On 27 March, the appellant applied for and was granted a three months’ extension to her permit.

[18] In May 2009, EE contacted the appellant to advise that DD had informed her that the CID had arrived at the boarding house again and had taken two Tamil female boarders for questioning and released them later that day. These women had been living at the boarding house at the same time that CC was staying there. The appellant was distressed to hear this news. Since the CID had made a second visit to her home, the appellant feared that the CID investigation “had become more intense” and that they suspected that she, as CC’s former landlady, was implicated in his crime. Her fear was exacerbated by EE’s continued advice that her life was in danger and she should remain in New Zealand. The appellant subsequently applied for and was granted a five months extension to her permit.

[19] In October 2009, EE telephoned the appellant and reported a call from DD of a third visit by CID officers to the boarding house. They had gone into the appellant’s study and broken into a locked cupboard. They took a black file and other documents from the cupboard away with them. The CID gave no reasons for their actions. The appellant explained that the black file contained copies of her passport and other personal documents. EE impressed upon the appellant ‘the severity of the situation’. Upon hearing about this visit, the appellant became sick with fear. In November 2009, the appellant was granted a three months extension

to her permit.

[20] In December 2009, EE telephoned the appellant to inform her of a fourth CID visit to the boarding house. DD advised EE that the CID had asked her when the appellant would be returning from New Zealand. The appellant assumed that the CID learned of her whereabouts in New Zealand from her documents which they had taken in October. EE also told the appellant that all the boarders had been gradually leaving the boarding house since early November because they were anxious about the CID visits. EE also informed the appellant that DD too, had departed the boarding house and she had no idea where she had gone.

[21] The appellant's youngest sister had called her and had agreed with EE that the appellant should stay put. In February 2010, INZ granted a month's extension to her permit.

[22] The appellant made her claim for refugee status in March 2010 on the advice of a Tamil acquaintance in New Zealand. Prior to completing the statement in support of her claim, she went onto the internet and found some internet articles which referred to a suicide bombing on 2 January 2009 at Slave Island, Colombo. The articles did not mention the names of anyone involved in the bomb blast. One of the articles did link the LTTE to the bombing.

[23] On 27 April 2010, the appellant telephoned EE and was informed that the CID had visited EE's house enquiring when the appellant would be returning from New Zealand.

[24] On 7 August 2010, the appellant contacted EE and was told that the CID had visited EE's house again and enquired when she would be returning to Sri Lanka. The CID also obtained the personal details of the appellant's siblings from EE, including their names, addresses and employment details.

[25] Since the hearing, the appellant filed a statement with the Authority dated 13 September 2010 which provides:

On 10 September 2010 early morning around 4.00am my younger sister FF rang me. She was terrified because two CID officers had come to her house in X, Kandy on the 9<sup>th</sup> September 2010 around 4pm Sri Lankan time, inquiring about me. The CID asked FF:

Is [the appellant] your sister; when is your sister expected; and do you have any contact with her?

FF told me that she told the CID officers that she denied having any contact with me. FF advised me not to come to Sri Lanka.

[26] The appellant's statement also referred to the political situation in Sri Lanka as 'more unstable' and that 'they have not stopped searching for my whereabouts, my life will be in grave danger'.

[27] The appellant fears being persecuted should she return to Sri Lanka because she believes the CID suspects her of having connections to the LTTE since she accommodated a boarder who was involved in the suicide bombing on 2 January 2009 at Slave Island, Colombo.

#### Evidence of witness AA

[28] AA was born in Sri Lanka and is now a citizen of New Zealand. AA told the Authority that she entered New Zealand in 2000 as a skilled migrant having been a science graduate and science teacher. AA's friends are also Sinhalese and came to New Zealand as skilled migrants. In consequence, neither AA nor her Sinhalese friends had any reason to learn about the procedure to claim refugee status. AA only learned of this process in early March 2010 from an acquaintance who is Tamil.

[29] AA stated that she had known the appellant since 1993. AA described her relationship with the appellant as a close friendship since they are practising Christians and they were both teachers at a girls' high school. AA described the appellant as an honest friend. Both the appellant and AA had visited each other's homes over the years and AA had known the appellant's parents and her siblings, particularly EE and FF. AA stated that the appellant had told her of the circumstances of the death of EE's husband and that EE had suffered great stress as a result.

[30] AA told the Authority that she had invited the appellant to attend her daughter's wedding in January 2009. AA was informed by the appellant that she had applied for a New Zealand visa for only 14 days because of her commitments to her boarders and to her new employer. However, the late approval of the appellant's visa meant she had missed the wedding. Since INZ had granted the appellant a visa for one month, AA invited the appellant to proceed with the visit. AA has sponsored the appellant's accommodation in New Zealand.

[31] The appellant told AA about the telephone calls from her sister EE regarding the CID visits to the appellant's boarding house. AA recalled the first call from EE to the appellant in March 2009 because the appellant burst into tears on the telephone. AA spoke to EE who was terrified and who begged AA not to send the

appellant back to Sri Lanka because her life was in danger. EE then told AA to get the details from the appellant. The appellant told AA that “she was in big trouble because without her knowledge, she has allowed a person at her house, who has been recognised by the government as a suicide bomber”. Thereafter, AA stated that the appellant started to worry a lot, she was tearful and had developed a stress disorder affecting her desire to eat and sleep.

[32] AA stated that she discussed with the appellant how to handle the problem. They agreed with EE that it was only safe to return to Sri Lanka if the authorities stopped looking for her. AA confirmed to the Authority that the appellant had received various calls from EE about “the housekeeper’s reports of the continuing CID enquiries about her return”.

[33] AA commented that the appellant had expressed her desire every day to return to Sri Lanka but felt that she could not do so because of the threat to her life. AA told the Authority that in her opinion when the CID “takes people into custody, no-one knows what happens to them”. AA described the appellant as being in a constant state of panic, whose fear had been compounded by the reports of the continued CID interest in her.

[34] AA also told the Authority that she had been informed of the problems that the appellant and her family had experienced from the Buddhists in the temple opposite her home, in pursuing her Christian faith. She stated these problems were generally experienced by Christians in Sri Lanka and she believed they were ongoing.

#### Documents filed

[35] Prior to the hearing, the Authority received the following documents:

- (i) Submissions of counsel dated 24 August 2010;
- (ii) Statement from the appellant dated 13 August 2010;
- (iii) Affidavit from AA dated 13 August 2010; and
- (iv) UNHCR *RefWorld-2009 Country reports on terrorism*.

[36] Following the hearing, the Authority received the following documents:

- (i) Letter from counsel dated 8 September 2010 providing items of country Information; and
- (ii) Statement from the appellant dated 13 September 2010.

## **THE ISSUES**

[37] 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.

[38] 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**

[39] The Authority accepts that the appellant and AA were both credible witnesses. The appellant was open and frank in all her evidence. Such inconsistencies as there may be are not of real significance and do not detract from the overall credibility of the evidence.

[40] Counsel submitted that delay by the appellant in filing her claim to refugee status should not affect her credibility. The RSB had raised the issue of delay as affecting her credibility because she had failed to file a claim when she began to fear for her life after the calls from EE in 2009.

[41] The Authority accepts that she came to New Zealand in March 2009 for the purpose of visiting her friend AA and with the intention of returning to Sri Lanka. The Authority also accepts that she filed her claim in March 2010 when she first became aware that such option was available to her. The appellant has subsequently pursued her claim diligently and in accordance with all the timelines set down in the process.

[42] For the purpose of the assessment that follows, the Authority accepts that



the appellant is a Sinhalese, single woman in her 50s who is a devout Christian. Both she, and her family before her, operated a boarding house in Kandy, Sri Lanka. It is accepted that she had boarders of mixed ethnic groups and that she boarded a Tamil couple, CC and DD who left her home in September 2008. It is also accepted that she has received reports from her sister EE that the CID embarked upon an investigation of CC in connection with a suicide bombing on 2 January 2009. It is further accepted that the CID want to question the appellant in relation to their investigation and have also visited both of her siblings in the course of their enquiries.

[43] The continued enquiries by the CID about the appellant have caused her to believe that she is perceived by the authorities as a LTTE sympathiser. The appellant reasons that the CID are already aware of her relationship to CC from the residents' registration record which was lodged with the police. Counsel submitted that the CID are not interested in the appellant because of her role as landlady but because she gave protection to LTTE supporters, in turn, she is considered to be a LTTE supporter.

[44] The Authority accepts that the appellant genuinely fears that she is perceived as a LTTE sympathiser. The issue is whether her fear is well-founded for a Convention reason.

[45] Counsel has submitted that:

The relevant Convention grounds are imputed political opinion, religion and particular social group due to the Sri Lankan authorities perceiving the appellant as a LTTE sympathiser or anti the Sri Lanka government.

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

[46] "Being persecuted" comprises two elements – serious harm and the failure of state protection; see *Refugee Appeal No 71427/99* (16 August 2000) at [67]. Further, the appropriate standard is a sustained or systemic violation of core human rights; see *The Law of Refugee Status*, J C Hathaway (Butterworths, Toronto, 1993) at p108 and *Refugee Appeal No 2039/93* (12 February 1996).

#### Country Information

[47] The Authority has before it news articles relating to the suicide bombing on 2 January 2009 at an Air Force Base, Slave Island, Colombo which both killed and injured people. Articles have attributed the suicide bombing attack to the LTTE;

see *TamilNet* “Bomb blast in front of Sri Lankan Air Force Headquarters in Colombo, airman, civilian killed” (2 January 2009); United States Department of State *2009 Country Reports on Terrorism: Sri Lanka* (5 August 2010).

[48] Counsel referred to a great deal of information relating to the human rights situation in Sri Lanka, especially of abuses by the authorities of those who may be members, supporters or sympathisers of the LTTE. Counsel referred, in particular, to UNHCR *Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka* (5 July 2010) which identifies potential risk profiles for decision makers to consider, which includes persons suspected of having links with the LTTE. This report states:

In the wake of the conflict, almost 11,000 persons suspected of LTTE links were arrested and detained in high security camps....

In the immediate post-conflict period, there have been allegations of enforced disappearances of persons suspected of LTTE links.

Furthermore, the broad powers of arrest and detention under the Prevention of Terrorism Act (PTA) and the Emergency Regulations have reportedly generated considerable controversy around issues such as the arrest and detention of persons suspected of LTTE links, in a number of cases allegedly on limited evidence and often for extended periods.

Amongst issues relevant to the determination of eligibility for refugee protection are allegations by a number of sources regarding: torture of persons suspected of LTTE links in detention; death of LTTE suspects whilst in custody, as well as poor prison conditions... (Ibid, pp 3-5)

[49] The lack of respect for human rights by Sri Lankan government authorities, including the CID, has also been referred to by the United States Department of State *2009 Country Reports on Human Rights Practices- Sri Lanka* (March 11, 2010):

The government’s respect for human rights declined as armed conflict reached its conclusion....

Civil society groups and former prisoners reported on several torture cases...

In the east and conflict-affected north, military intelligence and other security personnel, sometimes working with armed paramilitaries, carried out documented and undocumented detentions of civilians suspected of LTTE connections. The detentions reportedly were followed by interrogations that frequently included torture....

Human rights groups estimated that approximately 2,400 LTTE suspects were in regular detention centers. An unknown additional number of unidentified detainees were thought to be held in police stations, the CID, the TID, army or paramilitary camps, or other informal detention facilities...Because of limited access to these detainees, few details were available about their treatment and whether such treatment met international standards. There were concerns that LTTE detainees could be abused in a manner similar to suspected LTTE sympathisers.(Ibid, pp 1-3)

[50] The Authority’s recent jurisprudence also supports the proposition that persons associated with the LTTE may hold a *prima facie* claim to refugee status;

see *Refugee Appeal No 76340* (8 October 2009) and *Refugee Appeal No 76322* (17 March 2010). The latter decision notes “that the end of the LTTE will not prevent the authorities from arbitrarily detaining and mistreating LTTE suspects”. [Ibid, para 97].

[51] In *Refugee Appeal No 76466* (11 June 2010), the Authority observed in relation to the LTTE:

The Authority accepts that the Sri Lankan authorities currently maintain a high level of vigilance as to individuals who may be members or active supporters of the LTTE. Country information indicates that there is tight security throughout the country, including in Colombo where there are frequent checkpoints....

Throughout Sri Lanka, individuals who are suspected of LTTE membership or active support may be subject to brutal and arbitrary treatment in violation of core human rights. Many have been detained indefinitely, tortured or beaten and some are reported to have been killed: “The tragedy of refugees in Sri Lanka, hidden from the eyes of the world” Asia News (19 June 2009). (Ibid, para 76)

#### Application to the appellant’s case

[52] Having regard to the country information, the Authority finds the appellant’s fear is well-founded. There has been longstanding and continuing CID interest in the appellant. This interest has not been satisfied by CID knowledge of the appellant’s role of landlord, based on the resident registration documentation for CC, and filed with the police in 2008. Nor has the CID interest waned following their questioning of two of the appellant’s boarders in May 2009, which would have confirmed that CC had been living at the boarding house in 2008. Nor has the CID interest abated following their seizure of the appellant’s personal documents from her locked cupboard in October 2009. The recent CID visit to FF in early September 2010 strongly suggests that she remains of real interest to them.

[53] Even if she is not detained on arrival, upon return to Sri Lanka, the appellant is likely to be traced by the CID when she accesses her government pension or when she re-establishes her boarding house or by any of her neighbours alerting the authorities to her presence. It will be recalled that the appellant had suffered harassment from her Buddhist neighbours for practising her Christian faith.

[54] The country information cited above indicates that the appellant faces a real chance of detention and interrogation which carries with it an attendant risk of serious physical mistreatment. By any measure, this amounts to a well-founded fear of being persecuted.

[55] For these reasons, the Authority finds that the appellant has a well-founded

fear of being persecuted if returned to Sri Lanka. The first principal issue is answered in the affirmative.

Is there a nexus to a Convention ground?

[56] Having found that the appellant has a well-founded fear of being persecuted in Sri Lanka, it is necessary to consider the second framed issue which is whether there is a Convention reason for her persecution.

[57] The CID interest in the appellant arises as a result of their criminal investigation concerning CC and the suicide bombing at an air force base on Slave Island, Colombo, on 2 January 2009. This attack on a Sri Lankan military force, combined with CID belief that she gave protection to LTTE members or supporters (CC and Vanni), places the appellant within the category of being a suspected LTTE sympathiser. This means that the regime will in all probability impute an adverse political opinion to the appellant as a political dissident.

[58] This is sufficient to engage the protection of the Refugee Convention. The second principal issue is also answered in the affirmative.

**CONCLUSION**

[59] The Authority finds that the appellant is a refugee within the meaning of Article 1A (2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"D L Henare"

D L Henare  
Member