

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

**REFUGEE APPEAL NO 76231**

**AT AUCKLAND**

**Before:** A N Molloy (Member)

**Counsel for the Appellant:** J Hindman

**Appearing for the Department of Labour:** No appearance

**Date of Hearing:** 7 July 2008

**Date of Decision:** 18 November 2008

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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 of Tamil ethnicity.

[2] The appellant claims that he will be persecuted if he returns to Sri Lanka because he is a Tamil and because he is suspected of being involved with the Liberation Tigers of Tamil Eelam (LTTE).

[3] This appeal turns upon the appellant's credibility which is assessed following the summary of his account that appears below.

## **THE APPELLANT'S CASE**

[4] The appellant is the youngest of four siblings. He was born in a small village near Jaffna during the early 1980s. His family was forced from their home during the late 1980s when their house was severely damaged in fighting between the Indian Peacekeeping Force (IPKF) and the LTTE. The family relocated to the nearby village of G where they lived with the appellant's grandmother before finally moving to Puttalam at the beginning of 1996.

[5] Most of the appellant's family left Sri Lanka in the years which followed.

[6] During the late 1990s, the appellant's father developed grave concerns for the well-being of his oldest daughter, AB, after the Sri Lankan police questioned her about an apparent connection with the LTTE. He arranged for AB to travel to the United States in 1998, where she married a relative who had left Sri Lanka when the fighting first began during the early 1980s.

[7] The police continued to harass the appellant's family from time to time during the years that followed.

[8] Another sister, MN, travelled to India to study at around the same time, and a third, YZ, left for Canada in about 2000. She also married a distant relative.

[9] In 2001, the appellant's parents were sponsored to enter the United States by AB who was by that time a US citizen. The appellant was not eligible to gain entry into the United States at that time, so before they left Sri Lanka, the appellant's parents moved him from Puttalam to Colombo, where he remained until his departure for New Zealand in June 2007. During the interim, he completed courses at various educational institutes.

[10] By 2003, MN had completed her degree in India. She returned to Sri Lanka after the signing of a ceasefire agreement between the LTTE and the Sri Lankan government. MN shared a flat with the appellant. She obtained work with a construction company and helped the appellant to obtain temporary work with the same company from around 2006.

[11] Throughout his time in Colombo, the appellant endured difficulties commonly experienced by many Tamils. These included problems obtaining

accommodation and having to endure general harassment. However, the period during the ceasefire was relatively quiet.

[12] His particular predicament arose after an explosion near the army hospital in Colombo in early 2006. Two CIB officers and several soldiers arrived at the appellant's flat without warning. His accommodation was searched and the appellant was taken to a local police station where he was detained for three days. He was beaten and interrogated about two Tamil acquaintances whom he had met while studying part-time, and who had stayed at his flat for a short period earlier that month.

[13] On the third day, his uncle secured the appellant's release by paying a substantial bribe. The following day, the police returned to the appellant's flat and demanded that he return to the police station, where he was questioned again and told that he had to return and sign in every day. This continued for about a week before the appellant's uncle paid money to one of the officers to ensure the appellant's attendance was no longer required on a daily basis. The police maintained an interest in his activities after his release, and CID officers returned to the appellant's house every two or three weeks.

[14] Faced with this continued attention, the appellant approached an agent to explore the possibility of leaving Sri Lanka. In early 2007, the agent submitted an application for the appellant to study in New Zealand, and began to prepare for his eventual departure. His sister moved to a female-only hostel and the appellant moved to a separate hostel in a different suburb of Colombo.

[15] In early June 2007, the army and the police came to the lodge where the appellant was staying and rounded up all the Tamils living there. They were taken to a camp in the north of the country, where they were left. The Red Cross noticed their plight and provided food for the two nights that they were there, before international pressure was placed upon the government and all of the Tamils who had been taken out of Colombo were returned by bus.

[16] The appellant was apprehensive throughout both journeys. He and many of the other people onboard the buses believed that the buses were going to be subjected to a stage-managed incident of some description. In the event, the appellant was returned to the same hostel from which he had been taken and,

three or four days later, he learned that his permit to study in New Zealand had been granted. The appellant left Sri Lanka in mid-June 2007.

[17] After the appellant left, the police continued to approach MN for information as to his whereabouts. She has now left Sri Lanka herself. She travelled to Canada in early 2008.

[18] The appellant arrived in New Zealand on 20 June 2007, and applied for refugee status in late August 2007. After interviewing the appellant over three days in September and October 2007, a refugee status officer of the DOL issued a decision declining his application for refugee status dated 15 May 2008.

[19] The appellant believes that if he were to return to Sri Lanka, he would be apprehended by the police and mistreated because of his ethnicity.

#### Material received

[20] Counsel forwarded a memorandum of submissions to the Authority on 1 July 2008 with various items of country information attached. A further memorandum of submissions, with additional items of country information, was forwarded under cover of a letter from counsel dated 18 July 2008.

#### THE ISSUES

[21] 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."

[22] 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**

[23] Before addressing the particular issues identified, it is necessary to determine whether the appellant is a credible witness. The Authority finds that he is. The appellant's evidence was understated, plausible and broadly consistent with accounts which he had previously outlined. It was also consistent with country information and marked by a considerable amount of spontaneous detail.

[24] Accordingly, the Authority must assess the appellant's claim on the basis that he is a young, single Tamil male from the north of Sri Lanka. He has been detained and questioned about his link to two suspected LTTE operatives, and the police have shown a continued level of interest in his whereabouts.

[25] It is on this basis that the Authority will address first the country information with respect to Sri Lanka, and then the principal issues identified.

### **COUNTRY INFORMATION: GENERAL CIRCUMSTANCES IN SRI LANKA**

[26] The conflict in Sri Lanka is summarised in the report of the International Crisis Group (ICG) *Sri Lanka: The failure of the peace process* (28 November 2006) ("the 2006 ICG Report"), (1-5). That report refers to the ceasefire agreement (CFA) reached between the Sri Lankan government and the LTTE in February 2002, and outlines the subsequent implosion of the peace process. By the end of 2006, the ICG referred to the CFA as being "intact on paper", but stated that it is "flouted on the ground with increasing regularity and frequent brutality" (the ICG Report, executive summary).

[27] In a more recent report, ICG describe a deepening humanitarian crisis and state that abuses of human rights are increasing on both sides; *Sri Lanka's Return to War: Limiting the Damage* (20 February 2008) (the 2008 ICG Report) (executive summary). It implicates the Sri Lankan government in the perpetration of ongoing human rights violations and accuses the Sri Lankan security forces of routinely ignoring or covering up abuses (the 2008 ICG Report, p 21). It also outlines

arbitrary measures aimed at the Tamil people such as the eviction of Tamils from Colombo described by the appellant:

“The decision in June 2007 to evict some 375 Tamils from hotels and boarding houses in Colombo and bus them “home” to the north and east and to the central hill country was a major blow to confidence. This was followed by mass round-ups of more than 2,500 in Colombo in early December after a series of bomb attacks blamed on the Tigers. The arrests were disorganised and indiscriminate, affecting many long-established residents of the capital with proper identification. More than 400 were sent to detention centres in the south. Most were released within a week, but the experience was a shock. Many felt such “security measures” were meant to send a message that all Tamils pose a security threat and are unwelcome in Colombo or Sinhalese areas. Tamils from the north and east are particularly vulnerable.” (p 10).

[28] The potential consequences of being subjected to this arbitrary detention are identified by various sources. The United States Department of State *Country Reports on Human Rights Practices for 2007; Sri Lanka* (the DOS Report) refers to an “endemic” use of police torture as a means of extracting admissions or confessions (para 1c).

[29] This is mirrored by Amnesty International, which recorded “numerous” reports of torture in police custody in its annual Report for 2007. It is also consistent with a statement issued on 29 October 2007 by the UN Special Rapporteur on Torture, Manfred Nowak, after his visit to Sri Lanka earlier that month. He concluded that torture is “widely practiced” in Sri Lanka and continued:

“... this practice is prone to become routine in the context of counter-terrorism operations, in particular by the TID [Terrorist Investigation Department]. Over the course of my visits to police stations and prisons, I received numerous consistent and credible allegations from detainees who reported that they were ill-treated by the police during inquiries in order to extract confessions, or to obtain information in relation to other criminal offences. Similar allegations were received with respect to the army.”

[30] According to Human Rights Watch (HRW), “hundreds” of people have been detained under Emergency Regulations giving the government broad powers of arrest and detention without charge: *World Report 2008 Sri Lanka* (January 2008). In an earlier report, HRW stated that the main target of these round-ups are young Tamil men, between the ages of 18 and 40, who are suspected of being LTTE members or supporters: *Return to War, Human Rights under Siege* (HRW) (6 August 2007).

[31] The United Kingdom Home Office *Country report: Sri Lanka* (June 2008) para 32.17 refers to a report published in October 2006 by Hotham Mission's

Asylum Seeker Project (ASP), an Australian non-governmental organization (NGO) that works with asylum seekers. According to the report, persons who have been detained or questioned in Sri Lanka in the past are more likely to be arrested again and, because of the state of emergency and ongoing conflict in the country, “may face further human rights violations, such as torture” (Hotham Mission Oct. 2006, 47).

[32] The 2006 ICG Report identifies the failure of domestic institutions to address or prevent the abuses of human rights, which are said to be administered with impunity. Official inquiries have been perceived as shams, having led to neither prosecutions nor convictions in respect of such abuses.

[33] The appellant’s claim must be assessed against that general background.

**OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO SRI LANKA?**

[34] For the purposes of refugee determination, “being persecuted” has been described as the sustained or systemic violation of basic or core human rights, such as to be demonstrative of a failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996). Put another way, it may be expressed as comprising serious harm, plus the failure of state protection; *Refugee Appeal No 71427* (16 August 2000).

[35] In determining the threshold the Authority has consistently adopted the approach set out in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that even a low likelihood of harm can be enough to afford an appellant the benefit of the protection conferred by the Refugee Convention. A well-founded fear of being persecuted is established when there is a real, as opposed to a remote or speculative, chance of such persecution occurring.

[36] For the reasons set out below, the Authority finds that there is a real chance that this appellant would be subjected to serious harm tantamount to being persecuted if he were to return to Sri Lanka. Given that the state is the anticipated agent of persecution, it follows that there is also an absence of state protection.

[37] The Authority finds that there is a real chance of the appellant being persecuted if he returns to the north of Sri Lanka. His home village is near Jaffna town and close to the front line in the current conflict between the SLA and the LTTE. He has not lived in the area for seven years and his family have no property there. He will be vulnerable to detention and investigation by the SLA.

[38] It is also necessary to consider whether the appellant can return to Colombo, where he has lived for some years.

[39] The Authority has already found that the appellant is a young, single Tamil male from the north of Sri Lanka. He was detained by the Sri Lankan police in early-mid 2006 and questioned about his link to two suspected LTTE operatives. While he was released from detention after the payment of a bribe, the police continued to take an interest in his whereabouts.

[40] He is immediately identifiable as coming from the north, because of the particulars stated on his identity card, which he will be required to produce at any check point or inspection.

[41] In this respect the Authority notes that the chance of the appellant's identity and his past coming to light may have increased due to the recently imposed requirement that Tamils living in Colombo must register with police; Ravi Nessman "Sri Lanka orders Tamils in Colombo to Register" *Associated Press* (18 September 2008).

[42] The Authority also takes into account the fact that the appellant no longer has family in Colombo or anywhere else in Sri Lanka. He will have no employment and will not necessarily have any prospect of securing employment, nor would he have any family or support mechanisms further north, where he has not lived for some years.

[43] On the basis of current country information, it is apparent that the appellant's age, sex, ethnicity, place of origin, lack of family in Colombo and the fact that he has previously come to the attention of the police all contribute to a real chance of him being detained and questioned by government authorities. It is also apparent that Sri Lankan government authorities act arbitrarily with respect to such detainees. They are accused by reliable human rights monitors of torturing and seriously mistreating suspects in order to obtain information, and it appears



that they do so with impunity.

[44] The Authority finds that there is a real chance that the appellant would be seriously harmed if he were to return to Sri Lanka.

### **CONVENTION REASON**

[45] The persecution in question is for reason of his ethnicity and/or for reason of an imputed political opinion. It is not necessary to be more precise, either reason sufficing.

### **CONCLUSION**

[46] For these reasons 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.

"A N Molloy"  
A N Molloy  
Member