

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

**REFUGEE APPEAL NO 75313**

**AT AUCKLAND**

<b><u>Before:</u></b>	A N Molloy (Chairperson) G Pearson (Member)
<b><u>Counsel for the Appellant:</u></b>	S Eyre
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Dates of Hearing:</u></b>	26 & 27 May 2005 and 10 & 11 August 2006
<b><u>Date of Decision:</u></b>	12 November 2007

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**DECISION DELIVERED BY G PEARSON**

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

[2] The claim concerns a man in his late 20s, who says he has a background of political activism in Sri Lanka, in the context of advancing the aspirations of the Muslim community, of which he is part. It is for that reason he claims to be at risk.

[3] The claim is determined by assessing the risk faced by the appellant in Sri Lanka at the present time, should he return there. To do so, it is of course necessary to consider the credibility of the account given by the appellant.

**INTRODUCTION**

[4] The appellant came to New Zealand in December 2003 and applied for refugee status the following month. The RSB interviewed him in April and May 2004 before issuing its decision declining his application for refugee status on 30 June 2004. The appellant appealed against that decision. He was first interviewed by the Authority in May 2005. The interview was then resumed in

August 2006 after the appellant's father joined him in New Zealand from Sri Lanka.

[5] The account that follows is a summary of the evidence given at the appeal interviews. It is assessed later in this decision.

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

[6] The appellant was born in Sri Lanka. He has five siblings. He and his family are Muslims of Tamil ethnicity.

[7] The appellant's father was a fisherman and his mother worked in the home. The family at that time lived in the northern part of Sri Lanka. In 1990, the appellant and his family were relocated to a refugee camp in the northwestern region. This followed armed conflict in the area where they lived; large numbers of Muslim people were relocated as a result of the danger at that time.

[8] The appellant's older brother became separated from the appellant and the remainder of the family at this time and came under pressure from the Liberation Tigers of Tamil Eelam (LTTE). In 1998, the older brother left Sri Lanka and came to New Zealand.

[9] Following his brother's departure, members of the LTTE visited the appellant's home seeking out the appellant's brother. While they were there, the appellant arrived home and the LTTE members abducted him, having failed to locate his brother. He was beaten then released and warned he would be killed if his brother did not surrender himself to the LTTE.

[10] Following that event, the appellant moved to another part of the northwestern region to avoid difficulties with the LTTE.

[11] The appellant obtained work in a business providing marine services in the area where he had relocated. He had no difficulties for the first few months of 1999 while he was living and working in this area. In mid-1999, the LTTE sank a Sri Lankan navy vessel using explosives. The police suspected the appellant of supplying marine equipment from his employer's business to facilitate the attack. The appellant had no role in the attack, but the LTTE had stolen equipment from his employer's business.

[12] The appellant was taken first to the local police station and then to a larger station where he was detained, beaten and interrogated over a period of five days.

[13] The appellant's uncle negotiated with the police and secured the appellant's release. He had some influence as he was an active Muslim Congress Party (MCP) member and respected business person. The appellant supported MCP policies at the time, but was not active in that organisation.

[14] The appellant was released on condition that he would inform the police of LTTE activities and report to the police station weekly. When released, he moved to an eastern part of the northwestern region. He did not report weekly as directed.

[15] The appellant's uncle attempted to have the appellant travel to New Zealand to join the appellant's brother who was already here. However, the agent who was engaged absconded with the appellant's passport. The appellant and his uncle began the process of obtaining a new passport and finding a new agent. This occurred in the latter part of 1999.

[16] The appellant remained in Sri Lanka. His uncle continued to be active in the MCP in late 2001, in the lead-up to the general election. A senior member of the party promised the appellant's uncle that the appellant would have the record of his police interrogation expunged from official records, in consideration of his support for the party.

[17] In April 2002, a new Muslim political party was formed. For the purposes of this decision it will be referred to as the "New Party" (NP). This occurred as the MCP was not adequately representing the views of Muslim people in the northern part of Sri Lanka. The NP wanted to form a Muslim autonomous region, similar to the LTTE's aspiration to have an autonomous geographic region under their control.

[18] In the early part of 2002, following the announcement of a cease-fire between the LTTE and the government, the LTTE and the MCP said it was safe for Muslim people to return to the appellant's home village, which he and his family had left in 1990. The statement was in the context of the LTTE and the MCP saying that Muslims in the north should live under LTTE rule, and Muslims in the east should govern themselves.

[19] The appellant travelled to his home village with a delegation of representatives, including the village Muslim leader and elders. The delegation found that it was not in fact safe to return. The LTTE was demanding payment of a substantial fee from each returning family; they had arms and demanded

obedience from everyone in the area, at the risk of being shot in the event of non-compliance.

[20] The appellant and others made official complaints about the LTTE's attitude to them returning, through a variety of channels.

[21] In particular, the appellant, with others, went to the home of a politician who held office in the district, where they understood the leader of the MCP would also be visiting. The delegation expressed their concerns to the two men. But the leader of the MCP indicated the politician was the appropriate person to address their concerns.

[22] The meeting degenerated and the politician physically attacked the leader of the delegation. Village representatives (apart from the appellant's delegation) were also in attendance and there was a significant physical altercation. The politician then called the police who attended. He instructed the police to shoot the appellant and his delegation, but they were taken to the police station and detained. While in detention, they were beaten with batons and kicked by the police. They were also deprived of food and water, having to use water from the toilet to sustain themselves.

[23] After three days, the appellant's uncle intervened and offered to pay a bribe to secure the appellant's release. The bribe was accepted, but the police advised that, as the politician was involved, it would be necessary to also arrange a large group of villagers to protest. Accordingly, a group of some 200 people gathered outside the police station and the appellant and his group were released.

[24] The following month, in 2002, the appellant was approached by members of the NP. They were dissatisfied with the lack of power being exercised by the MCP in advancing the interests of Muslim people. They sympathised with the appellant and the unjust treatment he had received.

[25] The appellant joined the NP, which had in excess of 5,000 supporters. However, it lacked people to go into the community and campaign for support. The appellant was willing to take part in that activity. The leader of the NP wanted to assemble all the supporters in mid-2002 and the appellant was given a list of supporters to contact and persuade to attend the meeting. The appellant was paid from party funds for this work. The task was regarded as dangerous because the NP had many enemies, in particular the LTTE.

[26] The appellant travelled with a small group of NP supporters and visited people in the refugee camps in the northwestern region. A key element in the objectives of the NP was to form a separate Muslim administrative region. It was a similar objective to that supported by some factions of the MCP (and that led to the attempt to return to the appellant's home village).

[27] While soliciting support for the NP, the appellant was travelling and stayed overnight at a friend's house. At about 4:00am one morning the home was forcibly entered by uniformed police officers. The police attacked the appellant and he was arrested on suspicion of working against the MCP and the government and of inciting disharmony in the community. The police interrogated him and accused him of being a terrorist. The accusation was linked with the incident involving the politician. The police knew the appellant was involved in a political movement, but appeared unclear as to which one.

[28] The appellant was then interrogated by representatives of the MCP and other officials. They knew he was involved in the NP and wanted information about it.

[29] The appellant refused to disclose information about the NP and the result was that his hair was pulled, his head banged against a wall and he was hit and kicked. The police also stood on his stomach.

[30] The questioners said the NP were a group of armed terrorists, but promised to release and protect the appellant if he would secretly provide information about them. They threatened him with continued detention until beaten to death, should he fail to co-operate. After a few days, the appellant was released, as the leader of the NP and a lawyer bribed the police and convinced them the appellant was not associated with terrorists.

[31] The appellant was promoted in the NP to being "Main Member" of a division. The promotion recognised the work he had undertaken for the NP.

[32] In mid-2002, the NP decided to relocate to the northeastern region and began campaigning there. The appellant was a participant. Armed police officers came to the office from which the appellant was operating and accused him of attempting to confuse residents in the area and undermine the MCP. The appellant and five other NP workers were hit with gun butts by the police. The appellant had his shoulder dislocated and his tooth was broken. Another member's leg was broken. They were then taken to the police station and

detained.

[33] The police questioned the appellant as to why he had come to the area and accused him of trying to form a terrorist group and disrupt the peace talks. The appellant said he had come to tell Muslims what the LTTE had done and to advise people that they should put pressure on the MCP to stop pressuring Muslims to return to northern areas.

[34] The appellant and the others were all beaten in the police cell.

[35] The politician visited the police station, kicked the appellant and accused him of undermining support for the government.

[36] A NP official secured the release of the appellant and the other members of the NP. The appellant was not privy to the basis on which their release was secured, but they were warned that if they did not leave the northeastern region immediately they would be shot. The party official warned the men the LTTE were a threat to them and they would have to exercise care in leaving. They were relocated to a house where they would not be known and left the area in an ambulance.

[37] In August 2002, the appellant continued his activities in support of the NP, including gathering signatures for a petition. He gathered over 500 signatures.

[38] At the end of August 2002, the appellant was visiting camps in the course of gathering support for the petition and he was seen by the politician who had been involved in the earlier altercation. The politician was travelling in a jeep and carrying a gun. The appellant was chased by the politician and shot at as he ran away. He escaped and made his way to his uncle's village. He remained in hiding, as he was advised the LTTE were searching for him.

[39] The appellant's parents warned him he should leave Sri Lanka, as politicians, the police, and the LTTE were all searching for him with the intent of harming him.

[40] In early September 2002, the police came to the appellant's parents' home. He was not there so they took his brother-in-law, who was questioned in custody and released. The appellant's father was detained by the police a few days after the appellant's brother-in-law; he was beaten and accused of being the father of a son who was a terrorist who had attempted to kill the politician. His father was released after about two days.

[41] The appellant's uncle obtained travel documents so the appellant could come to New Zealand.

[42] The police continued to visit the appellant's parents, as did the navy, MCP members and other unknown persons. They were all interested in the whereabouts of the appellant. In October 2002 the appellant's brother-in-law was detained and questioned by the police and the appellant's father was detained and beaten by the police. Both incidents were because of their connections with the appellant.

[43] The appellant remained in hiding, until leaving Sri Lanka in October 2002. His travel involved spending approximately a year outside Sri Lanka before getting to New Zealand in December 2003.

[44] Visits from the police, navy, LTTE and other unknown people continued to be made to the appellant's parents' home in search of the appellant. Due to concerns about that, they would stay at their daughter's home during the day and return home at night. The police delivered to his parents' home two summonses for the appellant requiring him to attend court. An arrest warrant followed. The timing is not clear as the summonses were undated although the arrest warrant that followed was dated in April 2004.

[45] The arrest warrant and the summonses were forwarded to the RSB under cover of the appellant's response to the RSB Interview Report. The report is dated 3 June 2004, and the appellant's response is dated 23 June 2004.

#### **WRITTEN STATEMENT PROVIDED BY THE APPELLANT'S OLDER BROTHER**

[46] The appellant's older brother came to New Zealand during the late 1990s and sought refugee status. His application was successful and the RSB granted him refugee status in 1999. The older brother now lives in Australia. He provided a written statement in support of the appellant's claim, however it is apparent that the brother's application for refugee status was made on grounds that were almost entirely discrete from the appellant's claim. His application for refugee status centred upon difficulties which he personally experienced during that period of estrangement from his family.

#### **EVIDENCE GIVEN BY THE FATHER**

[47] In 2006, after the first two days of the appeal hearing before the Authority,

the appellant's father arrived in New Zealand. The Authority reconvened in order to hear evidence from the appellant's father in connection with the appellant's appeal. The appellant's father gave evidence in person. He was not a participant in many of the events in respect of which the appellant gave evidence. He did, however, give evidence of background circumstances and of his knowledge of particular events, from his perspective.

[48] He also gave evidence of events that occurred after the appellant left Sri Lanka.

[49] In the early part of 2006, the appellant's family faced further difficulties. Six police officers came looking for the appellant at his parents' house. The officers attacked the family, hitting family members, including the appellant's mother. The appellant's father was taken away and was beaten by the police while being questioned regarding the whereabouts of the appellant and accusing the family of supporting the LTTE. The appellant's father was released and he moved to a different area with other family members.

[50] The appellant's brother-in-law was detained by the Sri Lankan navy later in 2006. The appellant's father thinks his nephew has been taken by the police as a result of the police thinking he was, in fact, the appellant. According to correspondence which the appellant has received from his sister, his brother-in-law has now left Sri Lanka and escaped to Dubai. According to correspondence which he has received from his mother, the mother has moved to Colombo, where she continues to be harassed and questioned by the police in connection with the appellant's whereabouts.

## **MATERIAL RECEIVED**

[51] The appellant has produced documentary evidence in support of his claim, in addition to his oral testimony. This includes letters (and accompanying material) from counsel as follows:

- i. 1 February 2005, enclosing submissions and supporting documents and country information;
- ii. 17 May 2005, enclosing various documents, including letters purporting to confirm the appellant's political activities, a letter from an alternative medical practitioner in connection with treatment for



injuries sustained by the appellant at the hands of the police, a ration card, and various photographs;

- iii. 20 May 2005, enclosing articles and partial translations into English;
- iv. 23 May 2005, enclosing further translation of articles forwarded on 20 May 2005;
- v. 13 June 2005, enclosing various items of country information;
- vi. 27 June 2005, enclosing various items of country information and documents relating to a Muslim suspected of being associated with the LTTE;
- vii. 18 July 2005, enclosing letter;
- viii. 9 August 2005, referring to *Refugee Appeal No 74071*;
- ix. 15 September 2005, enclosing additional submissions and country information;
- x. 21 February 2006, enclosing additional submissions;
- xi. 3 May 2006, enclosing a newspaper article, a letter from the appellant's mother dated 27 March 2006, referring to efforts made by the navy to find the appellant, interrogations carried out by the navy in respect of the appellant's father and approaches by "strangers" seeking information in connection with past attacks; an undated letter from the appellant's mother and father referring to the father's detention by the navy and further attempts by the local police to find the appellant;
- xii. 25 May 2006, enclosing a letter dated 28 April 2006 (not translated), newspaper article and two prescriptions;
- xiii. 31 May 2006, enclosing newspaper articles and translation of letter filed 25 May 2006;
- xiv. 6 June 2006, with translation of article filed on 31 May 2006;
- xv. 21 June 2006, enclosing newspaper articles;
- xvi. 12 July 2006, enclosing letters from the appellant and his father;

- xvii. 8 August 2006, enclosing country information;
- xviii. 9 August 2006, enclosing additional statement from the appellant;
- xix. 25 August 2006, enclosing additional submissions;
- xx. 7 March 2007, enclosing letter from the appellant's mother dated 13 January 2007;
- xxi. 22 March 2007, enclosing letter from appellant's sister, dated 20 February 2007; and
- xxii. 21 June 2007, forwarding country information (including UNHCR report) and comments in letter.

[52] Interspersed among these documents were several written requests from counsel on various dates, seeking leave to file additional material or alternatively seeking an extension of time within which to provide it.

[53] All of this material has been taken into account.

## **THE ISSUES**

[54] 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."

[55] 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**

[56] We find that the appellant is not a credible witness. His account relied heavily upon his claim to have been a politically significant person, yet his evidence in that regard was vague, inconsistent and, in parts, implausible. We find he has fabricated his account for the purposes of bolstering a claim for refugee status which is without merit. Our reasons follow.

### **THE NEW PARTY (NP) DOES NOT EXIST**

[57] At the very core of the appellant's claim is an assertion he was a political activist in the NP. He advanced this claim before the RSB. The RSB, after conducting its own research, concluded there was no evidence the NP has ever existed.

[58] The appellant must therefore have been in no doubt that the question of whether the NP exists might arise for the purposes of determining his appeal. Despite this, the appellant has not provided any credible evidence or country information to support his claim that the NP exists, and the Authority has been unable to find any such information itself, in spite of extensive research.

[59] The Authority rejects the appellant's claim that such a party existed and that he played a significant role within it.

[60] Its finding to that extent is assisted by the inconsistency of the appellant's evidence. For example, when challenged about the lack of evidence of its existence, the appellant then claimed the NP was a secret organisation. However, the Authority pointed out the claim the NP was a secret organisation was inconsistent with the appellant's testimony that the party was seeking registration and actively campaigning for support. In response, the appellant then claimed the NP has existed since 1990 and had some 5,000 members, but that it had effectively suspended its functions from 1990 to 2002.

[61] The shifting accounts leave the Authority in no doubt that the appellant advanced an account that was implausible and then simply adapted it without satisfactory explanation as inconsistencies were revealed.

[62] The appellant's father did not alter the impression we gained, as he could not identify the NP by name or identify its leaders. His evidence on the point was vague.

[63] The Authority has not overlooked that the appellant has provided correspondence which purports to corroborate his claim to have been involved with the New Party; for example, a letter dated 4 January 2005, forwarded under cover of a letter from counsel dated 17 May 2005. However, in light of the significant shortcomings in the testimony of both the appellant and his father in this respect, as already noted, and also given the Authority's finding that the appellant has produced fabricated documents in support of his claim, we place no weight on documents such as the letter dated 4 January 2005.

### **IMPLAUSIBILITY OF THE APPELLANT'S CLAIMED POLITICAL PROFILE**

[64] The appellant has presented himself as having been such a significant political figure that a prominent politician had attempted to shoot him. He claims that for years, the authorities have taken such interest in him that they continue to seek him out, long after he has left Sri Lanka.

[65] The Authority does not accept the appellant has the political profile he claims. A significant element of that claim is, of course, his supposed role in the NP. For the reasons given above, however, the Authority is satisfied that the NP does not exist.

[66] The Authority also notes that his brother, who now lives in Australia, was able to return to Sri Lanka without difficulty in 2002 for three to four months and again for several months in 2005, even though the appellant claims he was of interest to the Sri Lankan authorities during that very period. Furthermore, his father has come to New Zealand, leaving Sri Lanka lawfully, and using his own passport in 2006. He had previously left Sri Lanka in 2005 to go to Saudi Arabia for the Haj. He was then able to return lawfully to Sri Lanka, without any difficulties. The ability of family members to travel to and from Sri Lanka without close scrutiny would be surprising if the Sri Lankan authorities had the intense and enduring interest the appellant claims they have in him.

### **THE SRI LANKAN POLICE**

[67] The Authority does not accept that the appellant is of any interest to the Sri Lankan police.

[68] He claimed to have been implicated in an act of terrorism perpetrated by the LTTE while he was an employee at a marine services shop. His account in this respect was, however, vague and contradictory. He claimed, for example, that he

was interrogated and mistreated by police investigating the bombing of a naval vessel, yet said that the Tamil man who employed him in the marine services business was not. It is implausible that the police would focus their interest upon a junior employee while ignoring the Tamil employer.

[69] He also claimed that his release from police detention was secured by his uncle. The uncle was a man of some influence who convinced the police that the appellant would report to them every week and would provide them with intelligence on any further approaches from the LTTE.

[70] The appellant then went to live with the uncle in the uncle's residence, more than 100 kilometres away. Despite the uncle's assurance that the appellant would report weekly, the appellant did not report to the police at any stage during the next three years. Surprisingly, this led to no recriminations, either for the appellant or for his uncle. Asked to explain this to the Authority, the appellant prevaricated and said at first that the uncle had told the police that the appellant was living with him. He then recanted and said that the uncle had not told the police where he was living. He could not explain, however, why the police did not visit any repercussions upon the uncle, and his testimony in connection with these events is not believed.

[71] The Authority draws further support for these findings from the fact that the appellant has tendered documentary evidence which is clearly not reliable. Two summonses were presented. Both purport to be a "Summons to an Accused". Both are undated. One relates to an alleged offence in late 2003. The second relates to an alleged offence in early 2004, and purports to have been issued under the Prevention of Terrorism Act (PTA). The appellant said he did not know when they were delivered to his family in Sri Lanka, as he had left Sri Lanka by that time. In addition, the appellant produced a document identified as a "Warrant of Arrest", dated in April 2004.

[72] The appellant told the RSB that an arrest warrant was issued following his failure to appear in response to the two summonses. The arrest warrant is dated shortly prior to the RSB interviews, the first of which took place on 26 April 2004, and the second on 6 May 2004. Clearly the summonses would have to have been issued earlier.

[73] The RSB did not accept the documents were genuine and pointed out the summonses purported to relate to alleged offences occurring after the appellant had left Sri Lanka (his evidence was that he left in October 2002).

[74] The RSB noted that neither the summons nor the arrest warrant were referred to by the appellant at either interview conducted by the RSB, and did not come to light until the appellant's response to the interview report dated 23 June 2004. It noted further that the entire subject of police interest in the appellant warranted no more than passing mention in correspondence presented to it from the appellant's parents.

[75] The Authority also notes that the warrant and summons were purportedly issued in 2004. That is at a time when the events in connection with which the authorities apparently sought the appellant were somewhat historical. This was during a period of time when, according to country information, the Sri Lankan authorities had placed an effective moratorium on the use of the PTA.

[76] In this context counsel cited the following extract from *Refugee Appeal No 74071* (23 June 2005):

"Nevertheless, country information suggests that the state security forces continue to arbitrarily detain people suspected of LTTE activity and to use torture during interrogations notwithstanding that there has been a significant reduction in such activity. The Organisation Suisse d'Aide aux Refugies February 2004 report "The Situation in Sri Lanka" comments at page 9 on the continuing use of the Prevention of Terrorism Act to arrest suspects without the right of bail, in breach of the moratorium on such arrests in the ceasefire agreement."

[77] While that is an accurate quote from a previous decision of this Authority, an examination of the extract referred to indicates that the analysis is not borne out by the content of the report cited. What the report actually states, at page 9, is that the PTA remained legally enforceable, not that it was in continuing use at that time. The problems faced by the appellants in *Refugee Appeal No 74071* (23 June 2005) were entirely different in that, in their cases, the PTA was invoked prior to the cease-fire.

[78] Other country information confirms the existence of the moratorium which is referred to in the Swiss report. For example, the *United States Department of State Sri Lanka: Country Reports on Human Rights Practices* (February 25, 2004) (as referred to by counsel at paragraph 12.5.3 of her submissions dated 1 February 2005), states that there were no arrests made by the Sri Lankan government under the PTA in 2002 or 2003 (section 1b), and that the government released more than 750 Tamils held under that Act in 2002 (Introduction). There was no reference to whether any Muslims were held under the Act, but the report continued that "only 65 Tamils held under the PTA remained in custody" (Introduction). The corresponding report by the Department of State for the following year (February 28, 2005) confirmed that no new arrests were made

under the PTA during 2004, and stated that the number of Tamils held under that Act had dropped to 38 (Introduction).

[79] The short point in the context of the appellant's claim is that, bearing in mind the historic nature of the events in respect of which the documents were supposedly issued, and bearing in mind the broad moratorium placed on the reliance of the PTA, the appellant's claim that the arrest warrant and subsequent summons issued in respect of him are legitimate documents, is not credible.

[80] When the issue was explored with the appellant by the Authority, he could not explain these discrepancies. He could only say he had left the country prior to the documents being delivered. Accordingly, they were sent to New Zealand and submitted, and he could provide no further information.

[81] The Authority finds that the summonses are not genuine. They do not appear genuine, given that they have provision for a date, but are undated. They relate to a time when the appellant had left the country. They were supposedly issued under provisions in an Act which was at that time not being invoked, and reference to their existence was, in context, implausibly belated.

[82] The Authority attaches no weight to the documents and concludes they have been manufactured to bolster the appellant's false claim for refugee status.

[83] The Authority is satisfied that the appellant has fabricated an account of ongoing interest in him on the part of the Sri Lankan authorities. He has been unable to present credible evidence that would account for such interest. In reaching that conclusion we have not overlooked the existence of a report on the NZIS file, lodged by a medical practitioner in New Zealand. The report, dated 11 June 2004, states that the appellant has a shoulder injury which may be consistent with his claim about police mistreatment. It is clear, however, that the doctor is unable to give evidence about the manner in which the injury was sustained. In all the circumstances of this appeal, this medical certificate does not outweigh the overwhelming credibility concerns noted by the Authority.

### **INCONSISTENT CLAIMS OF THREATS**

[84] The appellant claims he is at risk from the LTTE, the Sri Lankan government agencies, the MCP and the politician who attacked him.

[85] To a significant extent, the appellant has claimed his political objectives are

close to the MCP, which is a well-recognised political organisation. He specifically referred to former policies of that party when articulating the objectives of the NP. But he has invented another political body to avoid the problem that he would be aligned with a mainstream party and not be likely to be at risk of persecution from that. The Authority can discern nothing that is capable of belief that distinguishes the appellant's political aspirations from conventional Muslim perspectives.

[86] The Authority finds no basis for concluding the appellant is a political activist who has challenged diverse interest groups in the manner he claims. We find the appellant is an ordinary man with no history of significant political activity.

### **CONCLUSION ON CREDIBILITY**

[87] Taking into account all the above matters, the Authority finds the appellant has not given a credible account of his past life in Sri Lanka. In particular, it rejects his claim to have been a political activist; and the ongoing interest diverse people are claimed to have in harming him. This being so, there is no credible evidence on which the Authority can base a finding the appellant faces a real chance of being persecuted in Sri Lanka for reasons of political opinion.

[88] In reaching that conclusion, we have not overlooked the testimony of the appellant's father and brother or the content of the various letters forwarded by the appellant's mother and sister.

[89] Evidence given by the appellant's father, in connection with the appellant's political background was vague and did nothing to displace the implausibility and contradictions of the appellant's evidence. The grounds already discussed that cause us to conclude the appellant has fabricated an account of political activism also lead us to conclude the appellant's father's evidence of such activism is also false.

[90] The evidence given by the appellant's father in relation to the appellant's political activism was not an account that purported to be from the father as a direct participant. The account was consistent with the appellant's father being aware of some key events in the appellant's claim, and asserting they were true though he had no other knowledge of the matters. When questioned, the appellant's father could provide very little in terms of detail. Had the appellant's account been truthful, we have no doubt that his father would have been far more knowledgeable of such events as they occurred, even though he was not a direct participant.



[91] The Authority also rejects the appellant's father's claim that he and the family were attacked in early 2006 due to links with the appellant. As these claimed events took place a significant time after the appellant left Sri Lanka, it would be surprising for the police not to have taken action sooner, particularly such dramatic action as is claimed. The passage of time cannot be explained by the issue of the summonses, given that the veracity of those documents is also rejected. The Authority finds that the father's testimony in this respect is simply a further attempt to bolster the appellant's fabricated claim to be of interest to the Sri Lankan authorities.

[92] Furthermore, in relation to the claim that another family member was confused with the appellant, it would be surprising for the police to confuse two people, at least after having an opportunity to make inquiries. If the appellant was in fact a relatively high profile political figure it would be even less likely for confusion of identity to persist, particularly when one of the people (the nephew) lived in the community and the other (the appellant) had been absent for an extended period of time. We find this evidence that the authorities have a current interest in the appellant, and have pursued him, is false. It is a conclusion that is consistent with our determination that the appellant's claim to be a political activist is false.

[93] Even if interest had been expressed in the appellant following the difficulties his brother experienced during the early 1990s by the LTTE, the Authority is satisfied that there is no evidence to suggest that the appellant would remain of interest to the LTTE in 2007 or beyond. Even on his own account, he was able to avoid further difficulties with the LTTE simply by moving from the far north to the northwestern region. In addition, the Authority notes that the appellant's evidence was that his brother had returned to Sri Lanka some years later without experiencing any ongoing difficulties.

[94] The Authority finds that the appellant is a Muslim who has spent much of his life in a refugee camp in the Northwestern region. It is on that basis that the appellant's claim is assessed.

#### **WHETHER HE IS AT RISK BECAUSE HE IS MUSLIM**

[95] For completeness, the Authority notes that counsel has taken the position that even if we only accepted the appellant's account that he is a Muslim man from the north of Sri Lanka, that is sufficient to establish a well-founded fear of being

persecuted.

[96] It would be exceptional to find a situation where circumstances are such that the whole of a numerically large minority group (religious, ethnic, political, or otherwise) could claim a well-founded fear of being persecuted, simply by virtue of membership of that minority. We certainly do not reject the possibility of such situations arising, but the evidence simply does not disclose this in respect of Sri Lanka and its Muslim population.

[97] There is no evidence on which we could reach the conclusion Muslim people as a whole, or generally have a well-founded fear of being persecuted in Sri Lanka or in a region of Sri Lanka. To demonstrate the point, it is sufficient to refer to the appellant's case. The case involved substantial evidence pertaining to the MCP. The appellant identified the MCP as an official participant in Sri Lankan politics and government, and he regarded its officials as influential people in the Sri Lankan community. There was also extensive evidence of other Muslim people who live normal lives and exert influence in the community. For example, the appellant gave evidence of his uncle being able to secure his release from custody after the incident involving a LTTE attack on a Sri Lanka Navy vessel. The appellant agreed his uncle had influence as he was a member of the MCP, and a respected business man. That is inconsistent with the Muslim community having a well-founded fear of persecution simply because they are Muslim.

[98] The most recent country information supplied by the appellant's counsel was under cover of a letter dated 21 June 2007. The material included a statement issued by the UNHCR in December 2006, titled *UNHCR Position on the International Protection Needs of Asylum-Seekers from Sri Lanka* (the UNHCR report). Counsel drew attention to the following passage from the report:

"Muslims are particularly vulnerable to human rights abuses from parties to the conflict. For example, certain Muslims are targeted by the LTTE, such as those suspected of being government informers and those who are perceived as opposed to the LTTE. Furthermore, Muslims residing near LTTE-controlled areas, or areas contested by the LTTE, in Eastern Sri Lanka are at risk of forced displacement, threats and killings due, in particular, to being caught in the cross-fire during armed hostilities. Those who flee generalized violence in LTTE-controlled areas have the possibility to move to government-controlled areas, however, there may be difficulties encountered in finding means of transport and safe routes."

[99] Counsel went on to draw attention to the following paragraph (among others) in the report:

"(c) *Muslims*

(i) If subjected to targeted violations of human rights by the LTTE, the authorities, or paramilitary groups, individuals of the Muslim faith should be recognized as refugees

based on the criteria of the 1951 Convention, unless the individual comes within the exclusion criteria of the 1951 Convention.”

[100] We have considered the whole of the report, and all of the country information put before us. We have approached this appeal in the way indicated in the quotes cited in [98] and [99]. That statement is not consistent with all Muslim people having a well-founded fear of persecution. Nor did the UNHCR report call for all Tamils from the north to be recognised as refugees. The appellant has not been subjected to “targeted” violations of human rights; he is not an informer, nor is he seen as opposed to the LTTE and there is no requirement that he live in LTTE-controlled areas. There is no well-founded fear of him being persecuted for a Convention reason in the future.

[101] While a minority group, there are significant numbers of Muslim people in Sri Lanka. Neither the material provided, nor the Authority’s own research, establishes that a Tamil Muslim male from the northwestern region, for that reason alone, is currently at risk to the extent that he has a well-founded fear of being persecuted. Muslims are a vulnerable group, but that does not meet the threshold for recognition as a refugee under the Convention.

[102] In reaching its conclusions, the Authority has borne in mind the decision of Winkelmann J in the High Court in New Zealand. In her decision in *A v Chief Executive of Department of Labour* (CIV 2004-404-6314 19 October 2005), Her Honour found that when conducting its forward-looking assessment of whether an appellant faces a real chance of being persecuted, the Authority must consider “whether an individual, having all of [the appellant’s] characteristics” would face a real chance of serious harm for a Convention reason (para 38). The Authority has carefully considered the claim of this appellant. It has taken into account all of his characteristics, including the fact that he is Tamil and Muslim, and those of his family members. The Authority finds that objectively, on the facts as found, the appellant does not have a well-founded fear of being persecuted in Sri Lanka for a Convention reason.

[103] The first principal issue having been determined in the negative, the second issue relating to Convention reason need not be addressed.

## **CONCLUSION**

[104] The Authority accordingly finds that 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.

"G Pearson"  
G Pearson  
Member