

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76273

AT CHRISTCHURCH

<u>Before:</u>	A R Mackey (Chairman)
<u>Counsel for the Appellant:</u>	S Laurent
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	28 August 2008
<u>Date of Decision:</u>	4 September 2008

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 of Tamil ethnicity.

INTRODUCTION

[2] The appellant arrived in New Zealand on a valid Sri Lankan passport with a valid New Zealand visitor's visa on 8 December 2007. She was issued with a visitor's permit valid to 8 June 2008. On 28 February 2008, she lodged a confirmation of claim for refugee status with the RSB. She was interviewed on 4 April 2008. On 26 May 2008, the appellant was advised by the RSB that a different case officer had been allocated to her case. On 30 June 2008, the RSB wrote to the appellant, declining her application and giving reasons for that decision. The appellant then appealed to this Authority on 10 July 2008. On the same date, the Authority was advised that Mr Laurent had been instructed to represent the appellant in relation to the appeal.

[3] The appellant's visitor's visa application was sponsored by her daughter, AA, a New Zealand citizen who has lived in Christchurch since approximately 2000. She is married to a New Zealand citizen and has two New Zealand citizen children. The appellant has three other adult children, all of whom have lived in Germany for many years, having obtained refugee status in that country in the 1980s. The appellant previously visited New Zealand to assist her daughter at the time she was having a child in 2004/2005. The appellant returned to Sri Lanka on 29 March 2005.

[4] The appellant now claims that should she return to Sri Lanka, she will be persecuted by the Sri Lankan army (SLA) and/or the Karuna faction which work in co-operation with the SLA, because of her Tamil ethnicity and because she is a widowed woman whose four children all live overseas and remit money to her.

[5] The essential issue to be determined is whether her prediction of being persecuted is well-founded.

DOCUMENTS RECEIVED

[6] In addition to the RSB file, the Authority was provided with a memorandum from counsel, dated 22 August 2008. Attached to that memorandum were three additional country information reports, two of these from the website of "Tamil Net" (tamilnet.com) and an extract from the UNHCR publication "REFWORLD" accessed 24 August 2008. The third report is an article published by the Immigration Refugee Board of Canada on 22 December 2006 entitled "Sri Lanka: location and profile of persons in Sri Lanka targeted for extortion by the Liberation Tigers of Tamil Eelam (LTTE)". All of the contents of the memorandum and of country information have been taken into account by the Authority.

[7] On the date of hearing, a medical report from Dr DA of Christchurch was provided. This refers to a consultation by the appellant with Dr DA in which he states that she is:

"... in deep depression at the prospect of returning to her home environment.

Depression assessment tonight scores her as very depressed and has expressed considering self-harm in the past. I have commenced anti-depressant medication and support her application for refugee status for residency. This will allow her to be with her daughter and in a safe environment."

[8] The Authority took into account this medical evidence in the interviewing of the appellant and the assessment of her evidence.

THE APPELLANT'S CASE

[9] What follows is a summary of the evidence given by the appellant at the hearing. All of this evidence, when set against country information and other materials submitted, has been assessed, along with her credibility, later in this decision.

[10] The appellant is a widow in her late 60s. She has four adult children, three daughters and a son. Her son and two elder daughters fled Sri Lanka in the mid-1980s for Germany where they obtained refugee status. They have remained there and not returned to Sri Lanka at any time. The appellant's youngest daughter, AA, remained with the appellant and her husband, initially in the north but later in Colombo, until following an arranged marriage, AA moved to New Zealand in November 2000.

[11] The appellant was born and educated, to the age of 16, in KK, Jaffna province. KK is located in the north of Sri Lanka, quite close to a major Sri Lankan army (SLA) camp, airport and harbour. In approximately 1960, she married another Tamil. Her husband was a store-keeper at the government agricultural department in KK until he retired in the late 1980s.

[12] In the early 1970s, the couple purchased land and built their own home in KK. They lived in that home until they were forced to leave in mid-1990. The appellant and her husband had lived well in their own home where they brought up their four children. Her husband, as a public servant, was reasonably paid and, after retirement, he received a pension. After he died of natural causes in 2002, the appellant received a widow's pension.

[13] Troubles began for the family in 1983 when the SLA attacked the LTTE in the Jaffna province and, in particular, the area around the SLA/navy base near where the appellant and her family lived in KK. In July 1983, the police arrested the appellant's son and two elder daughters and took them into custody to check whether they were involved with the LTTE. The appellant and her husband managed to bail the children out with the help of a lawyer. Because of continuing safety risks, the son departed for Germany, where he obtained refugee status. A year later, the two elder daughters joined him and also obtained refugee status. The family had insufficient money at that time for the appellant, her husband and younger daughter to travel to Germany.

[14] In approximately mid-1990, further problems arose. The SLA attacked LTTE positions in KK and the area where the appellant lived. This attack led to the appellant's family, including an unmarried sister, MM, who lived with the family, being compelled to evacuate the area and initially move to Jaffna, which remained under LTTE control. The family home was situated in a high security zone and they were unable to return there. The area where they had lived became deserted, except for SLA soldiers.

[15] The appellant had one other sister who did not move at that time and, as a result of this, the appellant has lost contact with her.

[16] The family remained in Jaffna until late 1995 when, due to further military operations between the SLA and the LTTE, they were forced to evacuate in fear of bombing and shelling. They moved to ZZ. They were able to remain there for approximately one year. However, as ZZ was an insecure area, the schools were closed. The family wished to educate AA and so paid substantial ransom money to the LTTE so that they could obtain a pass for all of them, including MM, to move to Colombo. There, they were able to rent a house and AA was able to pursue her studies. In 1999, AA managed to obtain employment with the Colombo municipality. However, within a short time, this position became uncomfortable as she was the only Tamil and was discriminated against by many of her colleagues. This led her to a situation where she decided to resign. Soon after, however, an arranged marriage with a Sri Lankan national who lived in New Zealand took place and AA moved to New Zealand.

[17] In January 2000, the appellant was issued with a Sri Lankan identity (ID card) in Colombo but, even though the family wished to return to their home in KK, the Sri Lankan authorities would not allow this because of the security situation. Accordingly, they remained in Colombo, moving to the suburb of DD in 2002. At about that time, unfortunately, the appellant's husband died of natural causes. The younger sister, MM, looked after the appellant. MM, like the appellant's husband, spoke English and Sinhalese, and so was able to deal with the authorities in Sinhalese in Colombo. The appellant spoke only Tamil and a smattering of English.

[18] Over the period 2002 to 2004, peace talks between the Sri Lankan government and the LTTE meant that conditions were calm during the ceasefire. The appellant and her sister did not experience any problems living in Colombo. In May 2004, the appellant obtained a Sri Lankan passport for the first time which she

she then used in August 2004 to visit her daughter, AA, in New Zealand. She had no difficulties departing from Sri Lanka, nor returning in March 2005.

[19] In July 2005, MM died of cancer in Colombo. The appellant announced the death in Tamil newspapers distributed throughout the country. As a result, and because the road between Colombo and the north was then open, the village headman (Grama Officer) from KK and two or three friends came down to the funeral. The headman and the appellant's friends from the north discussed the situation in KK with her. She was advised that her former permanent home in KK was under occupation by security officials from the SLA. It was suggested to her, noting her predicament, that she should write to army headquarters requesting that she be paid a monthly rental for the property occupied by the army officials.

[20] The appellant agreed to this and the headman assisted her drafting a letter, in English. After signing that letter, the headman arranged for the original to be sent to the director of army quartering at army headquarters in Colombo, with copies to the brigadier commander in KK, a divisional secretary in TT and the Grama Officer, KK (that is, himself). The appellant retained copies of this letter, including one that was submitted in support of her application for refugee status. The letter sets out the appellant's full name and full address in DD, Colombo, and is dated 2005. It contains the full details of the property in KK and how she was compelled to evacuate it and leave behind her entire belongings when she fled due to unforeseen military operations in June 1990. The letter goes on to explain that she has been displaced in various places and was presently in Colombo where she had to pay a monthly rental of Rs6,000. Additionally, it states that she had lost her husband in March 2002 and was therefore in severe pecuniary embarrassment, depending only on her widow's pension.

[21] The letter enclosed details that confirmed her ownership and the location of the property and stated that she would be glad if the necessary action was taken by the army officials to pay a monthly rental of Rs5,000, with arrears from the date of occupation of the house. Finally, the letter was confirmed by the Grama Officer.

[22] The headman and her friends from the north did not tell her of any details of other people in similar situations writing to the SLA requesting rental. They made the suggestion because of her predicament as a widow and having to pay rent for the home she occupied in Colombo. To the best of her knowledge, her friends who came to the funeral rented their properties and so they would not have been aware of whether or not other people were able to obtain rental from the SLA from

properties that they owned in KK. At the time, she did not think it was a strange thing to request the rental from the SLA, particularly when it had been suggested by the headman and, at that time, the peace talks were still proceeding. She received no official reply. However, approximately one year later in August 2006, after fighting recommenced between the SLA and the LTTE, she received a visit from six uniformed SLA officials. They showed her a copy of the letter and asked her if the LTTE had asked her to write it. She stated she had done it herself and did not tell them about the involvement of the headman. The army officers then undertook a full search of the house and questioned her as to why she was living alone, the whereabouts of her children and money sent to her by them. Finally they left, stating that if she ever wrote such a letter again, she would be taken to the head office and questioned rigorously.

[23] She explained that the letter had been written in English not Sinhala as English was the official language, particularly when Tamils were writing to Sinhalese officials. She further confirmed that one of the officers who came spoke to her in Tamil. During the search of the home, the officers were looking for weapons and accused her children of helping the LTTE from overseas.

[24] In late 2006, further visits from SLA uniformed officers took place. They started demanding money from her and asked to see her bank book. As this showed that at that time she did not have money, apart from her pension, they left after making threats. The appellant did not report these visits to the police as she was told she would be shot if she did so.

[25] In January 2007, two people arrived at her home dressed in civilian clothes. They came on a motorbike and arrived at about 8.30pm. These two men demanded Rs200,000 (2 lakhs) from her and frightened and menaced her for approximately one hour. Eventually, she gave them all of her jewellery, although they stated they wanted more. These people spoke Tamil and she presumed they might be part of the breakaway Karuna faction, although she could not be certain of that. She did not ask them who they were. She never saw these two possible Karuna supporters again.

[26] In March 2007, however, she received two more visits from the SLA. These men came in uniform at approximately 9pm. They demanded that she pay them Rs1m (10 lakhs) and that she was to obtain this money from her children overseas. They stated they would give her three months, from April to June 2007, to come up with the money. These men were armed and threatened her. In the third visit she

third visit she noticed that the men had arrived in a white van with blacked-out windows and no number plates. The appellant became terrified by these visits and, to avoid being confronted by these people, she adopted the practice of going to a Hindu temple every day, between approximately 6pm and midnight. This temple was situated across the road from where she lived. She had noted that the visits by the SLA in their white van were always in the late afternoon, early evening so decided to keep out of her house during that time. In addition to this, as there were many Sinhalese who lived in the area, she said they were obviously becoming suspicious of her having LTTE contacts because of the many visits from the SLA.

[27] The appellant kept up the practice of going to the temple every day for several months. During the time she was there, she never spoke to anyone, nor did she report the incidents of the visits to her home to the police or other authorities. She continued to keep visiting the temple until she ultimately left Colombo in December 2007.

[28] During the time of the SLA visits in March, the appellant contacted her children in Germany who said that they would send her money to leave and that she should try and get a visa to travel to Germany. In the period March to June 2007, she tried to get a visa from the German embassy. However, this was unsuccessful. The appellant then wanted to turn to her daughter in New Zealand for help. Unfortunately, at the time AA was on an extended overseas trip, with her husband and family, in the UK, Europe, Canada and the USA. (This was confirmed by the Authority being shown a copy of AA's passport.)

[29] As soon as AA returned from her overseas trip, she took steps to sponsor the appellant to travel to New Zealand again, as a visitor. Ultimately, in early November 2007, the appellant was issued with a visitor's visa by Immigration New Zealand from New Delhi. The appellant had by then obtained money from her children in Germany and, using an agent, purchased tickets that enabled her to travel to this country in early December 2007. On the advice of the ticketing agent, she left her home very early in the morning for the airport. She told no-one, including her landlord, that she was departing. On the way to the airport, the vehicle in which she was travelling was stopped three times and her bags and passport were checked. In one of those checks, although the appellant was not aware of it at the time, a sum of S\$50 was taken from her. She had no problems passing through the airport or boarding the plane.

[30] After she arrived in New Zealand, she informed the landlord (who is Sinhalese) that she would not be returning. She left what little furniture she had behind. Since she has been in New Zealand, she has not made contact with anyone in Sri Lanka. She said she had no family contacts that she could make.

[31] When asked what she predicted would happen to her if she returned to Sri Lanka on her valid passport at this time, the appellant stated that her life would be in danger because the authorities had demanded money from her, which she had not provided. She said because she had cheated them, the army people would kill her. She was also asked if there was anywhere else in Colombo or elsewhere she could live if she returned to Sri Lanka. She explained that she could not return to her home in the north as the road was cut by the current fighting and that her old home was still occupied by the army, as best she understood. She stated that she had not been in touch with the headman/Grama Officer again as mobile telephone use was prohibited in the north where he lived and so the only information she could obtain about the north was by radio or television news.

[32] The appellant considered that she could not move to any other parts of Colombo as she was not from Colombo originally and there was no-one who could help her. Wherever she stayed in Colombo, she considered that because of her ethnicity, she would be at risk every time she was stopped.

[33] The Authority asked the appellant whether her widow's pension was still being paid into her bank. She replied that she did not know. The pension had been paid into the Government People's Bank. She had not checked it as she had ceased thinking about her pension since she has been in New Zealand.

THE APPELLANT'S SUBMISSIONS

[34] Mr Laurent submitted the well-foundedness of the appellant's fears are established, both from past experiences and an assessment of the objective country material. The time period for considering this appeal should be focused on the time commencing from September 2005 when the appellant wrote to the SLA requesting rental for her family home in KK. The unfortunate coincidence of sending that letter, at a time that was immediately followed by a sharp deterioration in the relationship between the government and the LTTE, led to her being specifically targeted on five or six occasions between August 2006 and March 2007. In the ultimate, this had led to the SLA members demanding money with menaces and threatening to kill her if she did not comply or if she reported their

their extortion. In addition, she is at risk from the Karuna group, and possibly army personnel, whose demands she did not accede to as well.

[35] Mr Laurent referred the Authority to current country information, particularly the UK Home Office “Country of Origin Information - Sri Lanka” (13 June 2008) report and the three reports he attached to the written submissions noted above. This objective information reflected the general deterioration of conditions in Sri Lanka. The general situation was well summed up in the UK COI report for Sri Lanka which provided, at paragraph 3.37, quoting International Crisis Group:

“Peace is a long way off. The LTTE has demonstrated a clear lack of interest in a negotiated settlement. The government is beholden to and sympathetic with forces that conceive of Sri Lanka as an essentially Sinhala and Buddhist nation. Denying the existence of legitimate grievances specific to Tamils and the need to accommodate their concerns in a settlement, the politically dominant forms of contemporary Sinhala nationalism assert that the central problem is a terrorist threat that needs to be crushed. Despite claims to be committed to a political solution, the decision to rely on hardline Sinhala nationalist parties with an ideological commitment to the unitary state has left the government with little option other than to pursue the LTTE’s military defeat.”

[36] The Authority was also referred to the targeting of Tamils linked to the LTTE and the targeting of Tamils in the Colombo district. Mr Laurent acknowledged that most of the country material set the profile of suspects at risk as being male, Tamil, aged between 17 and 35 and residing in low budget, multiple occupancy housing. However, he noted that the UNHCR position paper, published in December 2006, set out that Tamils in Colombo were especially vulnerable to abductions, disappearances and killings and that such actions were allegedly carried out by paramilitary “white vans”, suspected to be associated with the security forces.

[37] In this appellant’s case, while she did not meet the profile of a young man, she was, in his submission, vulnerable as an elderly Tamil woman living alone in Colombo and whose children had gone overseas and were thus suspected of assisting the LTTE. That profile, combined with the specific attention she has inadvertently drawn to herself by writing to the SLA “quartering” authorities, indicated well-foundedness to her claim.

[38] Mr Laurent submitted that two recent decisions of the Authority in *Refugee Appeal No 76193* (22 May 2008) and *Refugee Appeal No 76000* (26 June 2007), which related to elderly, frail women appellants, should be distinguished because this appellant’s profile is not simply that of an elderly woman living alone, but a person who has come to the specific attention of the SLA and has been targeted

for a combination of reasons including her ethnicity. In this situation, the ethnicity is a contributing factor to her risks, combined with her being a woman alone in Colombo with a family offshore, and the attempt to obtain rent from the SLA for the occupation of her family home.

[39] He submitted that risks from the Karuna group should be seen as emanating from her Tamil ethnicity, being a woman alone in Colombo whose family are offshore and who support her.

[40] Finally, he submitted that relocation was not a viable option for this appellant as firstly it would not be possible for her to travel to Jaffna in the north in the current resumed civil war situation and she would not be able to access meaningful protection in any other site of relocation.

THE ISSUES

[41] 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."

[42] 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

[43] Prior to determining the issues set out above, it is necessary to make an assessment of the appellant's credibility. The Authority found the appellant to be a credible witness. Her evidence was consistent with the objective country information. In this situation, the appellant's claim as set out above is accepted by

the Authority, including that she sent the letter, with the assistance of the headman from her former home district of KK, to the directorate of army quartering at army headquarters.

[44] Although it is not usual for the Authority to comment on the correctness or otherwise of the RSB decision, because an appeal is a hearing *de novo*, it is necessary here to state that the interview evidence recorded by the RSB officer was unfortunately inconsistent with its decision. The interview records set out in the file were, on several occasions, inconsistent with the reasoning set out in the decision of the RSB. It is noted that, unfortunately, the RSB decision was compiled, including the rejection of credibility, by an officer other than the one who had interviewed the appellant. The Authority found the record of the appellant's actual interview with the RSB was consistent with the evidence she gave to this Authority, particularly as regards the visits to her home by the SLA and the supposed Karuna group.

[45] The appellant does not wish to return to any part of Sri Lanka because of the breakdown in the relatively peaceful situation that existed between 2002 and 2005. The question for the Authority in this case is whether the maltreatment she predicts on return is indeed well-founded or, as otherwise expressed, there is a real chance of her being persecuted on return to Colombo.

[46] The treatment the appellant is reasonably likely to face, should she return to Sri Lanka, either to Colombo where she spent 12 years of her life prior to coming to New Zealand, or her original home district of KK, where she spent the first 50 years of her life, can be assessed based on the accepted evidence of her past experiences, current profile and the objective country information. The assessment is a prospective one, taking into account the past experience as an indicator of what can be expected to occur in the future.

THE CURRENT SITUATION IN SRI LANKA

[47] A good analysis of the current situation in Sri Lanka is set out conveniently between [26] and [30] of the Authority decision in *Refugee Appeal No 76193* (22 May 2008). Of particular note in that assessment is that, after months of deterioration, the ceasefire formally ended on 16 January 2008 and also that the UNHCR position paper published at the end of 2006 did not call for recognition of all Tamils from the north as refugees. Rather, it distinguishes between persons

being specifically targeted, by the state or non-state agents, and those who face only levels of generalised violence.

[48] Also from the decision in 76193, the Authority notes reference to the issue of “gender-based violence”, set out between [31] and [33]. The specific risks of gender-based violence, particularly for an elderly woman alone, have been taken into account in this determination.

WELL-FOUNDED FEAR

[49] At the outset, the Authority does not consider there is a real chance of the appellant being persecuted by the Karuna faction. The appellant was uncertain whether the two men in civilian clothes who visited her in January 2007 were, in fact, from the Karuna group. They never returned over the next 10 months, to the best of her knowledge. The Authority is thus satisfied this was a random act of extortion by unknown criminals. While such risks clearly exist for elderly women living alone in Colombo, they do not indicate a well-founded fear of being persecuted for a Convention reason.

[50] The risk from the SLA to the appellant, if the district near her former home of KK is assumed to be her home district, can be readily disposed of. The evidence from the appellant, as reported to her by the headman from that district and her friends, some two/three years ago, was that a substantial part of that district is occupied by the SLA, including of course her own home. The ability for her to return to her home and the district surrounding it, where there is a large army camp and presence, would give rise to a real chance of her being persecuted, particularly because of the approach she made to the army quartering directorate, seeking rental for her property. She has been warned off taking any follow-up action in respect of the property on several occasions and has, effectively, cheated the members of the SLA in their attempt to extort money from her, calling on her several times in Colombo. In the unique circumstances of this appellant, her own family home is at the core of any risk to her because of the action she has taken and the unfortunate sequence of events that followed. Thus, while it may technically be possible for the appellant to fly from Colombo to Jaffna, even if the A9 road between Colombo and the north is closed, the appellant’s ability to access her own home or to find any meaningful protection in that district are not options that are realistically available to her at this time.

[51] The risks for the appellant must also be assessed on the basis that she would return to Colombo. Risks of maltreatment to her, at the airport on return, are not assessed to be at the level of a real chance. The appellant would be returning on a valid Sri Lankan passport after legally entering and returning from New Zealand. The risk profiles, set out in the leading country guidance determination from the UK in *LP* (LTTE area - Tamils - Colombo - risk?) Sri Lanka CG [2007] UK AIT 00076, where the risk elements, particularly at Colombo airport, were addressed in depth, do not show the appellant's profile as being a person who would be at a real risk on return at the airport. (In this regard, the recent European Court of Human Rights decision in the case of *NA v United Kingdom* (Application No 25904/2007) (24 Jun 2008) notes, with evident approval, at paragraph 30, the guidance given in the determination in *LP* (Sri Lanka).)

[52] The appellant would then be returning to Colombo, where she has no home or relatives who can provide any form of support to her. She would be forced to obtain for herself both short and long-term rental accommodation. She would also be forced to try and re-establish her life using her bank account and obtain her pension at the government-owned People's Bank. In carrying out all of these activities, based on the country information, she would be at a real risk of being detained, at least temporarily, in road blocks or search and cordon activities carried out by the SLA and/or the police in Colombo. She would be seen as an elderly Tamil woman alone. Whilst that itself may not put her at a real risk of gender-based violence or other persecution, there is real risk from the unavoidable interaction she would have with the Sri Lankan authorities that her profile with the SLA, and all of the unfortunate interaction that followed from her attempt to obtain rental for her property in KK, would resurface. This combination of circumstances, in the view of the Authority, perhaps somewhat marginally, places the appellant in a situation where she would again be at a real chance of being confronted by the SLA, or agents of the SLA in their "white van" activities. Having escaped and, in their minds, cheated that group in the past, the risk to her of serious maltreatment, disappearance or death then becomes well-founded.

[53] The decisions in *76000* and *76193* can be clearly distinguished from this case. This appellant has, through the letter to the authorities and SLA reaction to it, established a unique and specific profile. In addition, while her original home was in the north, it was not in Jaffna itself (as in *76193*), or an area now occupied by the LTTE, but near an SLA base which is occupied by SLA forces.

[54] Accordingly, after finding that the appellant does have a well-founded fear of being persecuted on return to Colombo, the issue of a potential internal protection alternative in Colombo does not arise. The first issue for consideration is therefore answered in the positive. Turning to the second issue, the Authority considers that the appellant's Tamil ethnicity is a significant contributing factor to the risks of being persecuted. The relevant nexus to one or more of the five Convention reason (race) is thus established.

CONCLUSION

[55] For the forgoing 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 R Mackey"
A R Mackey
Chairman