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Heard at Field House

TK (Ceasefire-Negotiations_) Sri
Lanka CG [2003] UKIAT 00026

Date: 1 July 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

11.07.03

Before:

Mr G Warr (Chairman)
Mr M L James

Between

Secretary of State for the Home Department

APPELLANT

and

RESPONDENT

DETERMINATION AND REASONS

1. The Secretary of State appeals the determination of an Adjudicator (Mrs J L Weinberg) who allowed the appeal of a citizen of Sri Lanka, hereinafter for convenience referred to as the appellant, from the decision of the Secretary of State on 12 November 2001 to refuse her application for asylum.
2. Mr G Phillips appeared for the Secretary of State while Mr A Burrett of Counsel instructed by S Satha & Co represented the appellant.

3. The appellant had a school friend who had joined the LTTE. She stayed with the appellant and her mother in Colombo. The appellant's father had died in 1979. The police arrested the appellant's friend in November 1994. The police took the appellant too. They were detained for three days and released on a condition to sign on.
4. On 24 March 1995 the appellant's friend did not comply with the condition and did not reappear until February 1996 when she visited the appellant's home unexpectedly. It had been a tense time in Colombo since an explosion at the Central Bank on 31 January 1996.
5. The police raided the appellant's home on 20 February 1996 and detained the appellant, her mother and her friend. The appellant's mother was released on the same night. However, the appellant was ill-treated for ten days until 1 March 1996 when she was released on a reporting condition.
6. The appellant said that she learned from her mother that a bribe had been paid in order to secure her release although the appellant stated that she was sure that the police officer who had been bribed and had facilitated her escape would see that it was recorded that she had escaped.
7. An agent arranged for the appellant to travel to Australia where her sister was getting married. The appellant and her mother obtained Australian visas and arrived in Australia on 7 May 1996. The appellant made an unsuccessful application for asylum in Australia. A marriage was arranged for the appellant to a UK citizen of Sri Lankan origin who visited Australia for the marriage on 9 February 2000. The appellant was granted a years visa to join her husband and arrived in this country on 14 October 2000. She applied for asylum on 9 October 2001.
8. The appellant's marriage has broken down. She says that her husband behaved badly towards her. Divorce proceedings are apparently pending.
9. The appellant is living with her brother in the United Kingdom. There are also cousins of the family in this country. However, her mother and her other brother and sister are living in Australia. Her brother and sister are Australian citizens and her mother has also been given Australian citizenship apparently.
10. The Adjudicator found that there was "a ring of truth" about the appellant being suspected by the authorities in Colombo of being involved with the LTTE because of her friend. The family

had been ill advised to harbour this friend and it had got them into trouble.

11. The Adjudicator referred to Jeyachandran [2002] UKIAT 01869. Although it was now six years since the appellant had left Sri Lanka the Adjudicator considered that she had been identified as an LTTE supporter:

"It is true that the appellant had been released on bail but the fact is that she had not complied with the bail conditions when she went to Australia for the wedding of her sister. Were she to be returned she would find herself entirely alone in Colombo with no family. Not only is it exceedingly difficult for a young woman to live in Sri Lanka with no family, and no family support, but in this case I find that she would almost certainly be detained for further questioning on arrival at the airport and there is still a danger in those circumstances that during the period of detention for further questioning she would be persecuted."

12. The Adjudicator also found there was likely to be a breach of Article 8 as the appellant had no family and no one to return to in Sri Lanka. Her sister was married in Australia and her mother and brother were there also all as Australian citizens. The appellant had come to the United Kingdom as a married woman but that marriage had not worked out. The appellant had a brother in this country as well as various cousins who were living close by and with whom the appellant had a good relationship. The appellant had lived in the United Kingdom for the previous two years and the Adjudicator records that it would be disproportionate for the appellant to be removed.
13. The Secretary of State appealed on the grounds that the Adjudicator had erred in allowing the appeal in the light of the current objective situation in Sri Lanka and the appellant would no longer have any well-founded fear of persecution. The Adjudicator had failed adequately to explain how Article 8 would be breached.
14. The objective material before the Tribunal included the April 2003 Country Assessment with accompanying authorities and Mr Phillips indicated he would not be placing reliance on the recent Internet reports that had been lodged on behalf of the appellant. While the ceasefire was continuing, the LTTE had suspended involvement in the peace process.
15. Mr Phillips relied on the grounds of appeal and referred us to paragraph 4.84 of the Home Office Country Assessment. The

LTTE were still committed to the ceasefire and had not breached it. The appellant's circumstances were not exceptional. Reliance was placed on Jeyachandran and Brinston [2002] UKIAT 01547. Under Article 8, reliance was placed on Mahmood [2001] Imm AR 229. There were no insurmountable obstacles preventing the appellant's return to Sri Lanka.

16. Mr Burrett submitted that the Adjudicator had taken into account the objective situation and the relevant authorities together with the approach of the UNHCR. The appellant's case was exceptional and she would be wanted on return. There was not a deficiency of analysis in the determination. The situation had grown more precarious since the Adjudicator's hearing and the LTTE had withdrawn from the negotiating table. The Adjudicator had found that the appellant had been released on payment of a bribe and had been bailed. Counsel accepted that it would be odd if the appellant was recorded as an escapee as well as being on bail.
17. Under Article 8, the Adjudicator had concern about the appellant's case and had taken into account the medical report showing that the appellant was depressed. Her family were not in Sri Lanka. She had gone through a divorce and was distressed. She had a close relationship with her brother in the United Kingdom. There was emotional attachment to her sibling in this country. It would be unduly harsh to remove the appellant. No members of her family were in Sri Lanka. Her brother was a settled UK citizen and was unlikely to return to Sri Lanka with the appellant.
18. We reserved our determination. The sixth round of peace talks in March 2003 were overshadowed by the sinking of an LTTE vessel earlier in the month – see paragraph 4.82 of the Country Assessment. The LTTE had threatened to boycott the talks but had eventually gone ahead with them. On 21 April 2003 the LTTE suspended participation in the peace talks in protest at the handling of what were termed "critical issues". There was concern about the unequal peace dividend and there was bitterness about the exclusion of the LTTE from the April 2003 reconstruction talks in Washington due to the ban on the LTTE travelling to the USA. However, in paragraph 4.84 of the Country Assessment it is also recorded that on 23 April 2003 the LTTE had said that they had no intention of breaking the ceasefire but wanted the government to implement decisions agreed at earlier meetings.
19. While the progress made in the ceasefire negotiations and talks have not been maintained in recent months it does not appear that the process has broken down.

20. The appellant has been out of Sri Lanka for a very long time. She was released on payment of a bribe although she claims it would be recorded as an escape. However, if it was recorded as an escape, it is odd that she was released on reporting conditions.
21. The appellant had herself no political involvement at all. She and her family made the mistake of harbouring an LTTE member despite warnings from the authorities in the mid-1990s. There had been a very tense atmosphere following the incident at the central bank.
22. The Adjudicator in our view erred in finding that the appellant would be of interest to the authorities on return to Sri Lanka having regard to the passage of time, the circumstances of her release from custody, and the fact that she was not herself involved in the LTTE at all.
23. This is not a case in which the absence of the appellant from Sri Lanka would be at all remarkable. She left Sri Lanka to attend a wedding in Australia where her family still resides. In Australia she married a British citizen and followed him to the United Kingdom. That marriage has apparently no life in it. The authorities in Sri Lanka would be unlikely to draw any adverse inferences from the appellant's return home.
24. We are unable to accept that the appellant's circumstances are in any way exceptional nor that she would be in the least degree wanted by the authorities. The Tribunal in Jeyachandran stated that it was still too early to be satisfied that the situation in Sri Lanka had changed to such an extent that there would now be no risk to anyone. However, it was always necessary to consider the circumstances of each individual case. The appellant in Jeyachandran was found to be wanted and was someone who was wanted in a relatively serious fashion. In our view, the Adjudicator erred in concluding that the appellant would be of any interest on her return. She simply is not an exceptional case and she is not wanted.
25. The Adjudicator made no reference to Article 3 in her determination. In our view, the Adjudicator did not weigh up the competing issues properly in this case when considering Article 8.
26. In Mahmood the Court of Appeal set out conclusions as to the approach of the Commission and the European Court of Human Rights on the balance to be drawn between the respect for family life and the enforcement of immigration controls. We note that a state has a right under international law to control the entry of non-nationals into its territory subject always to its treaty

obligations. That case was concerned with spouses. We are here concerned with siblings and more distant relatives. Two of the appellant's siblings and her mother reside in Australia. They have Australian citizenship.

27. The appellant has not been in the United Kingdom for very long although we will assume in her favour that she has established family life with her brother following the collapse of her marriage. We appreciate that the collapse of her marriage would have been distressing and led to her feeling depressed. We acknowledge that there was medical evidence before the Adjudicator although that has not been placed before us.
28. The appellant is adult. We have no doubt that the appellant has a good relationship with her brother and other family members in the United Kingdom. In Kugathas [2003] INLR 170 at 177, paragraph 25, Arden LJ observed:

"Because there is no presumption of family life, in my judgment a family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties: see S v United Kingdom [1984] 40 DR196 and Abdul Aziz, Cabales and Balkandali v United Kingdom [1985] 7EHRR 471. Such ties might exist if the appellant were dependent on his family or vice versa".

An extract from the case of S v United Kingdom is quoted at paragraph 14 of the judgment of Sedley LJ:

"Generally, the protection of family life under Article 8 involves cohabiting dependants, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults, a mother and her 33 year old son in the present case would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties."

29. This was accepted as a proper approach by Sedley LJ.
30. The Adjudicator found that the appellant had a good relationship with her family who lived close by. We note that the Adjudicator reviewed the medical evidence in paragraph 20 of her determination although she does not refer to that in the concluding paragraph where she sets out her reason for finding that return of the appellant would be disproportionate. We note

that the appellant suffered an episode of depression in May 2001 and she had required anti-depressants. She had again experienced stress related symptoms and low mood and remained vulnerable to developing depression in view of her previous history. She felt lonely and isolated and was anxious about returning to Sri Lanka.

31. The Adjudicator made no findings under Article 3 in this case. We find that for the reasons set out earlier in this determination the Adjudicator was wrong to conclude that the appellant would be persecuted on her return. Assuming in the appellant's favour that she enjoys family life with her brother and other relatives in the United Kingdom, we find that removal would be in pursuance of a legitimate aim (immigration control) and that her removal would not be disproportionate. We do not find that the factors relied on by the Adjudicator were sufficient for the appellant to make good her case under Article 8.
32. For the reasons we have given the appeal of the Secretary of State is allowed and the decision of the Adjudicator is reversed.

G Warr
Vice President