



RPD File No. / N° de dossier de la SPR : TB2-07729

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	July 12, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	July 16, 2018	Date de la décision et des motifs
Panel	Anthony da Silva	Tribunal
Counsel for the Claimant(s)	Timothy Wichert Barrister and Solicitor	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)		Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

2018 CanLII 143497 (CA IRB)

REASONS FOR DECISION

INTRODUCTION

[1] The claimant, XXXX XXXX, claims to be a citizen of Sri Lanka. She seeks refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).¹

ALLEGATIONS

[2] The claimant alleges as follows:

[3] In 1993, members of the Sri Lankan police came to her home to look for her brother but, since he had already fled the country, she and her mother were arrested in his place. During her detention, the claimant was beaten, questioned about her brother, and accused of collaborating with the LTTE (the Liberation Tigers of Tamil Eelam). After two weeks, the claimant and her mother were conditionally released, but she was uncertain as to those conditions.

[4] In November 2000, the claimant was arrested as a part of Tamil roundup following an LTTE suicide attack in Colombo. The claimant was accused of assisting the LTTE, interrogated, and tortured. After twenty days in detention, the claimant was released on bail and ordered to attend at court on February 28, 2001. Upon her release, however, the claimant's lawyer advised her to leave the country for her own safety. In light of his advice, and fearing further arrest and mistreatment, the claimant left Sri Lanka on XXXX XXXX, 2001, and went to India where she stayed until 2003, at which time she went to the United Kingdom (UK) after a marriage had been arranged between the claimant and a Tamil man living in the UK.

[5] When the claimant arrived in the UK, she discovered that her husband was living with another woman and had married her only for the dowry. In 2004, without the claimant's knowledge, her husband filed for and received a divorce from India, where she had been married. The claimant subsequently lost her status in the UK because she was no longer being sponsored

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended, sections 96, 97(1)(a) and 97(1)(b).

by her husband, and applied for refugee status. The claimant's refugee claim application, and subsequent appeal, was refused and she was ordered removed by UK authorities in 2012.

[6] Fearing for her safety in Sri Lanka, and finding that her family were now residing either in the UK or in Canada, the claimant arranged with an agent to assist her in coming to Canada where she then made a claim for refugee protection.

DETERMINATION

[7] The panel finds that the claimant is neither a Convention refugee in accordance with section 96 nor a person in need of protection in accordance with section 97(1) (a) and (b) of the IRPA.

ANALYSIS

[8] The key issue in this hearing is whether the claimant has a well-founded fear of persecution.

Identity

[9] Several documents² were available in support of the claimant's identity. The panel is persuaded, on a balance of probabilities, that the claimant is who she claims to be and is a citizen of Sri Lanka.

Credibility

[10] The claimant's testimony was generally consistent with the narrative in her Personal Information Form (PIF). There were no material omissions, inconsistencies or discrepancies.

Well-foundedness

[11] The claimant testified that she fears returning to Sri Lanka because upon entry into the country she will be flagged for having failed to appear at her scheduled court date in February, 2001. She will also have a record of having been arrested twice on suspicion of having links to the

² Exhibit 1, Package of information from the referring CBSA/CIC; Exhibit 5, Claimant's disclosure, received June 29, 2018.

LTTE. The claimant further believes that she is at risk because she has been living for the past fifteen years in countries, namely Canada and the UK, where the Tamil diaspora is seen by Sri Lankan authorities as being pro-LTTE. The panel has, therefore, considered if and how the claimant would fit the first risk profile as identified in the UNHCR Guidelines of 2010:³ “persons suspected of having links with the Liberation Tigers of Tamil Eelam (LTTE).”

[12] The claimant’s counsel, in his oral submissions, has identified a number of elements in the claimant’s profile which he argues, cumulatively, indicate that the claimant will be at risk of persecution upon a return to Sri Lanka. Counsel has identified the following elements in the claimant’s risk profile:

- The claimant is a single Sri Lankan woman without family support in Sri Lanka.
- She has a history of prior arrests and was suspected of being an LTTE supporter.
- There is an outstanding charge against her which would make her a target for further interrogation and investigation.
- On returning to Sri Lanka from Canada, her travel documents would indicate that she has lived in Canada since 2012, a country where the Tamil diaspora has been viewed by the Sri Lankan government as supporters of the LTTE.
- As well, it would likely be uncovered that she resided in the UK for nearly nine years, also a country where the Tamil diaspora has been viewed by the Sri Lankan government as supporters of the LTTE.
- Her brother was wanted for having been a supporter of the LTTE.

[13] The panel has reviewed country documents with respect to problems facing Tamils in in particular, and notes some of the key findings. The US DOS Report on Sri Lanka, for 2016, for example, states:

The most significant human rights issues included unlawful killings; torture; sexual abuse; arbitrary arrest; lengthy detention; lack of property restitution by the military; and surveillance and harassment of civil society activists and journalists. Government discrimination toward and security forces harassment of Tamils and

³ Exhibit 4, National Documentation Package (NDP) of Sri Lanka (June 4, 2012), Item 2.4, at p. 6, s. III A. Potential Risk Profiles, ss. 1 Persons Suspected of Having Links with the Liberation Tigers of Tamil Eelam (LTTE).

nondenominational Christian groups persisted. Same-sex sexual conduct was prohibited by law, though rarely prosecuted.⁴

[14] The Amnesty International Annual Report 2016/17 on Sri Lanka found that Tamils suspected of links to the LTTE continued to be detained under the PTA [Prevention of Terrorism Act], which permits extended administrative detention and shifts the burden of proof onto the detainee alleging torture or other ill-treatment.⁵

[15] While it is clear from the various documents referenced that those suspected of links to the LTTE face a possibility of arrest and even torture at the hands of government security forces, there are also indications that the situation is improving. Not all Tamils are routinely screened. According to research, "...only those individuals for whom the government claims there are 'reasonable concerns' of having links with the LTTE are screened."⁶ As well, another expert on Sri Lanka has noted that "...while those accused of links with LTTE are still 'not treated well,' the situation has 'improved a lot' since the end of the civil war [in 2009], noting that allegations of torture and detentions have diminished.

[16] The Executive Director of the National Peace Council of Sri Lanka (NPC), has indicated that "[a]rrests and detentions are not common unless for some reasonable suspicion of criminal activities," and the President of the Council of (non-government organizations) NGOs in Sri Lanka has stated: "...arrest and detention of those with alleged links to the LTTE continue, but that they have been 'reduced' ".⁷ While these statements stand in contrast to some of the conclusions in other reports, the panel notes that these statements are made by individuals within the country and tend to be more recent assessments of the situation. Nonetheless, the situation in the country for Tamils, although it has improved under the current regime elected in 2015, it is far from perfect and the risk profile of an individual with suspected links to the LTTE, as identified in the UNHCR Guidelines of 2012, must be carefully considered. The panel must therefore determine whether the claimant faces more than a mere possibility that she will be harassed and harmed by Sri Lankan authorities upon a return to the country.

⁴ Exhibit 3, NDP for Sri Lanka (April 30, 2018), Item 2.1, at p. 1, s. Executive Summary, para. 2.

⁵ Ibid., Item 1.13, at p. 13, s. 3, Refugee Convention Claims, para. 3.8.

⁶ Ibid., Item 13.1, at p. 3, s. 1.1, para. 2.

⁷ Ibid., at p. 7, s. 2.1, para. 1.

[17] The claimant testified that she fears returning to Sri Lanka. She indicated that she will be viewed as an LTTE supporter by Sri Lankan authorities because she has lived in Canada and the UK – countries where the Tamil community is seen as being pro-LTTE. The claimant was asked if, while in Canada, she had been a supporter of or involved in any pro-LTTE activities or had contributed to any pro-LTTE activities. To all these questions, the claimant replied in the negative. The panel notes that, while her brother had contributed financially to a student protest movement that was seen by Sri Lankan authorities as being pro-LTTE, it was in the nineties during a period of heightened tension and conflict between the existing regime and the LTTE. The panel finds that there is insufficient evidence to conclude that the claimant's family would be perceived to be supporters of the LTTE.

[18] The panel recognizes that despite similar general profiles, claimants' individual situations must be considered before arriving at a decision regarding the possibility of harm. The claimant alleges to have been arrested on two occasions in Sri Lanka. According to the claimant, she was first arrested along with her mother in the place of her brother when the police were unable to apprehend her brother who had left the country. The claimant stated that she was questioned primarily about her brother and then accused of collaborating with the LTTE. After two weeks, the claimant and her mother were brought before a magistrate and released without charges.⁸

[19] The claimant was arrested a second time in October 2000, after she was caught up in a roundup of young Tamils following an LTTE suicide bomber attack during the swearing-in ceremony of the Sri Lankan cabinet. The panel finds, however, that during this critical time in the conflict between the LTTE and the Sri Lankan forces and following a suicide bomb attempt, all young Tamils were suspected of being pro-LTTE and were targeted.

[20] The claimant indicated that she was released after twenty days in detention, which consisted of constant interrogation and maltreatment resulting in her hospitalization following her release on bail. The claimant was subsequently ordered to attend court on February 28, 2001. On the advice of her lawyer and fearing further arrest and mistreatment, the claimant left Sri Lanka for India on XXXX XXXX, 2001.

⁸ Exhibit 1, Package of information from the referring CBSA/CIC, Magistrate's Court of XXXX XXXX, p.2.

[21] The claimant has stated that she believes that she is on a wanted list and will be arrested as soon as she arrives in Sri Lanka because she failed to comply with the order to appear in court. The claimant further believes that she will be detained, interrogated regarding suspected links to the LTTE, and tortured during the interrogation. The claimant indicated that after she had left Sri Lanka, a close friend and neighbour informed her that the authorities were asking about her whereabouts and that of her brother. The claimant provided no information, however, as to the nature of their interest in both her and her brother. The panel also notes that there is no recent information as to any interest in her by the current regime.

[22] The panel notes that the claimant's sister has provided an affidavit dated June 28, 2018,⁹ stating that she believes the claimant "would still be at risk if she has to return to Sri Lanka." The letter, however, provides no explanation or evidence as to why the sister believes the claimant "would still be at risk." The panel also notes that the sister has been in Canada since 1995 and has no first-hand knowledge of the situation facing the claimant upon returning to Sri Lanka.

[23] The United Kingdom's (UK) Home Office Report: Country Information and Guidance. Sri Lanka: Tamil Separatism, August 2016, includes a number of significant conclusions established by the UK Tribunal in assessing recent, independent reports regarding returnees to Sri Lanka. One of the Tribunal's key findings is that:

The government's present objective is to identify Tamil activists in the Diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.¹⁰

[24] The panel notes that the claimant does not have any direct ties to the LTTE, nor does she have a history of having opposed the government - either in Sri Lanka or during her time in Canada. The UK Tribunal, in assessing recent, independent reports regarding returnees to Sri Lanka has compiled a list of current risk profiles:

(a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in

⁹ Exhibit 5, Claimant's disclosure, received June 29, 2018, at p. 7.

¹⁰ Exhibit 3, NDP for Sri Lanka (April 30, 2018), Item 1.4, at p. 6, s. 2.3, para. 2.3.3.

relation to post-conflict Tamil separatism within the Diaspora and/or a renewal of hostilities within Sri Lanka.¹¹

(b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.¹²

(c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.¹³

(d) A person whose name appears on a computerised “stop” list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a “stop” list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.¹⁴

[25] The claimant has not participated or been involved in any anti-regime or pro-LTTE activities, either in Sri Lanka or since her arrival in Canada, and there was no indication that she had involvement with the LTTE while in the UK. The panel finds that, while it is likely that there would be a record of the claimant having failed to appear at the 2001 court date, there was no evidence that an arrest warrant was ever issued or that now, seventeen years later, authorities would arrest the claimant for her relatively minor offense. The panel finds that while the claimant may face additional scrutiny upon her return to Sri Lanka as a result of her failure to attend the court date in 2001, her activities subsequent to her departure from Sri Lanka do not indicate any reason for any current interest in her by authorities.

[26] The panel has also considered the evidence regarding failed asylum-seekers, in light of the particular circumstances of this claimant and the risk profiles in the UNHCR guidelines. In light

¹¹ Exhibit 3, NDP for Sri Lanka (April 30, 2018), Item 1.4, at p. 7, s. 2.3 b. Former LTTE members/supporters, para. 2.3.9.

¹² Ibid., Item 1.4, at p. 9, s. 2.3 e. Journalists and human rights defenders, para. 2.3.26.

¹³ Ibid., at s. 2.3 f. Lessons Learned and Reconciliation Commission, para. 2.3.27.

¹⁴ Ibid., at p. 10, s. 2.3 h. Stop and watch lists, para. 2.3.36.

of this information, the panel finds that the claimant is not, on a balance of probabilities, a person who would be perceived to be linked to any pro-LTTE factions by the current Sri Lankan government, and determines that she does not have good grounds to fear persecution as a failed asylum-seeker were she to be returned to Sri Lanka. The panel further finds that there is no evidence to suggest that since the claimant fled Sri Lanka, the Sri Lankan government has any reason to believe that she is a member or supporter of the LTTE. As already referenced, the Report from the United Kingdom Border Agency states that:

The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.

The government's present objective is to identify Tamil activists in the Diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the violation of territorial integrity¹⁵ of Sri Lanka.

[27] The panel finds that with respect to reform and addressing the human rights abuses of the past, there is progress, albeit slow. At the same time, the panel acknowledges that problems with government security forces continue to exist. As highlighted in the UK Home Office Report:

Since the country guidance case of GJ & Others was handed down in 2013, a new government, led by President Maithripala Sirisena came to office in January 2015.¹⁶

The 'white van' abductions that operated outside all norms of law and order... are now very seldom reported. The number of torture complaints has reduced but new cases [of Tamil victims] continue to emerge... and police all too often continue to resort to violence and excessive force.¹⁷

Internal Flight Alternative (IFA)

[28] The panel has also considered the claimant's personal situation and safety were she to return to Sri Lanka and re-establish her life there as a single woman without family in Sri Lanka. While her situation is not a question of an IFA *per se*, the panel has nonetheless turned its mind to the circumstances and personal situation facing the claimant upon a return to Sri Lanka.

¹⁵ Exhibit 3, NDP for Sri Lanka (April 30, 2018), Item 1.4, at p. 6, s. 2.3 a. General points, para. 2.3.3.

¹⁶ Ibid., at para. 2.3.4.

¹⁷ Ibid., at p. 46, s. 9.5 "White van" abductions, para. 9.5.8.

[29] In her narrative update, the claimant has stated: “I do not have any family members to provide any protection for me, or help me re-establish my life.”¹⁸ The panel also notes the various observations made by experts in the 2015 Response for Information Request (RIR) regarding the ability of single Tamil woman to relocate in Colombo.¹⁹

[30] According to one expert, while it is “not common” for single women to live alone in Colombo, it is nonetheless “an increasing phenomenon”.²⁰ Another expert, however, opined that it is “still very rare for a single woman to live alone in Sri Lanka,” and that it is “even rarer among Tamil women”.²¹ Experts also indicate that Tamil women have faced discrimination in terms of housing and employment. The panel notes, however, that the experts’ observations are made generally about Tamil women with little education from a lower socio-economic class who relocate to Colombo, primarily from more rural and predominantly Tamil areas. The panel further notes that the claimant lived in Colombo for many years prior to her exit from the country, and worked for at least two different companies while there. The claimant is an educated woman who speaks English and, in addition to her training and experience in XXXX in Sri Lanka and the UK, she has obtained an Ontario Secondary School Diploma and completed an XXXX XXXX XXXX XXXX while in Canada.

[31] The panel acknowledges that the claimant will certainly face challenges in re-settling in Colombo as a single woman whose immediate family is now either in Canada or the UK. Nonetheless, her profile is significantly different from other Tamil women who have re-located to Colombo. Moreover, while she does not have her close family living with her in Colombo, they will nonetheless be able to provide support, especially financial, while she re-establishes herself in Colombo.

¹⁸ Exhibit 5, Claimant’s disclosure, received June 29, 2018, at pp. 1-2.

¹⁹ Exhibit 3, NDP for Sri Lanka (April 30, 2018), Item 5.4.

²⁰ Ibid., at p. 1, s. 1, para. 1.

²¹ Ibid.

CONCLUSION

[32] After careful consideration of all of the evidence, including the claimant's testimony, as well as submissions by the claimant's counsel, the panel determines that the claimant has not satisfied the burden of establishing a serious possibility of persecution on Convention grounds, or that, on a balance of probabilities, she would be subject personally to a danger of torture, or face a risk of cruel and unusual treatment or punishment, if she were returned to Sri Lanka.

[33] The panel therefore concludes that the claimant is not a Convention refugee or a person in need of protection and rejects her claim.

(signed)

“Anthony da Silva”

Anthony da Silva

July 16, 2018

Date