



RPD File No. / N° de dossier de la SPR : TB7-22813
TB2-03384

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXXXXXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	October 16, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	November 6, 2018	Date de la décision et des motifs
Panel	Anthony da Silva	Tribunal
Counsel for the Claimant(s)	Ian D. Hamilton 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 149578 (CA IRB)

REASONS FOR DECISION

INTRODUCTION

[1] The principal claimant (PC), XXXX XXXX, and the co-claimant (CC) XXXX XXXX, claim to be citizens of Sri Lanka. They seek refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).¹

ALLEGATIONS

[2] The CC alleges as follows:

[3] In the late nineties, the CC's sister fled the country after having problems with the army and was accepted as a refugee in the United Kingdom. In 2010, the CC's brother was arrested by army intelligence. After his release, he fled to Denmark where he too was accepted as a refugee.

[4] On March 15, 2011, armed men from army intelligence and the Eelam People's Democratic Party (EPDP) came to the claimant's house and demanded 20 Lakhs. After the CC told them that he did not have that kind of money, they informed him that they would return and shoot him if he did not have the money at that time.

[5] Believing that the armed men would carry out their threat, the CC's family arranged to have him leave the country. On XXXX XXXX, 2011, the CC left Sri Lanka and travelled to the United States (US). Upon arrival in the US, the claimant was detained and subsequently released on a bond. Once released, the claimant travelled to Canada, where he had family living, and initiated a claim for refugee protection.

[6] The PC alleges as follows:

[7] A few days after her husband, the CC, left for Canada, members of army intelligence and the EPDP came looking for him at the CC's family home where the PC was living. The PC told army intelligence and the EPDP that the CC had left, but that she did not know where he was.

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

Army intelligence and the EPDP informed her that they would arrest the CC when he returned to Sri Lanka. The PC then left and went to live with her grandmother.

[8] On May 22, 2015, army intelligence came to the PC's home and questioned her regarding her husband's activities in Canada and his previous activities in Sri Lanka. They also asked about the PC's family in Canada and why she had remained in Sri Lanka. Army intelligence came again in June and December of 2016, and asked similar questions.

[9] On June 15, 2017, two men from army intelligence came to the PC's home and informed her that the CC and his family were implicated in LTTE activities, both in Sri Lanka and in Canada. They also told the PC that they would protect her. During their visit, one of the men touched her breast and both men tried to pull the PC into their van. The PC then screamed and the neighbours came, prompting the two men from army intelligence to leave. The PC's family subsequently arranged for her to leave Sri Lanka on XXXX XXXX XXXX 2017, and travel to Canada.

DETERMINATION

[10] The panel finds that the claimants are neither Convention refugees in accordance with section 96 nor persons in need of protection in accordance with section 97(1) (a) and (b) of the IRPA.

ANALYSIS

[11] The key issues in this case are credibility and whether the claimants have a well-founded fear of persecution.

Identity

[12] The claimants provided a number of documents² in support of their identity. The panel is persuaded, on a balance of probabilities, that the claimants are who they claim to be and are citizens of Sri Lanka.

² Exhibit 8, Claimants' supporting documents, received October 8, 2018; Exhibit 9, Claimants' supporting documents, received October 8, 2018.

Credibility

[13] The panel found key elements of the claimants' testimony to be inconsistent, undermining their credibility.

[14] The CC entered the US illegally on XXXX XXXX XXXX 2011, and was detained. During an asylum interview³ on November 1, 2012, he was asked why he had left Sri Lanka. The CC replied: "They asked for money if not they will kill me they will shoot me they said." When asked who it was that had asked for money, the CC replied: "...they told me they are EPDP." The CC was also asked if the people who had asked him for money had given him a reason for their demand. The CC replied: "They didn't give a reason they said you guys have money you can give it."

[15] In the CC's refugee claim application, completed on March 9, 2012, question 42 asks the CC: "Who are you afraid of if you were to return to your country?" The claimant answered: "The armed groups." In question 43, the CC is asked why he is seeking Canada's protection, to which he has answered: "The armed groups wanted money from me. They threatened to shoot me if I did not come up with the money. If I were to return to my country they would definitely shoot me so I cannot return to my country."⁴

[16] In his Personal Information Form (PIF) narrative, in referring to an incident of March 15, 2011, when armed men had come to his home and demanded money, the CC has stated: "I thought they would be either EPDP or military intelligence. I asked and they told me they were EPDP."⁵

[17] During his testimony at his refugee hearing, the CC indicated that he had come to Canada because he had been falsely accused by the army of being a supporter of the Liberation Tigers of Tamil Eelam (LTTE). It was pointed to the claimant that in his US asylum interview he had not made any mention of being accused of being an LTTE supporter. The CC replied: "I told them everything." The CC went on to testify that of the three armed men who had come to his home to ask for money, two were army intelligence and the third was EPDP.

³ Exhibit 1, Package of information from the referring CBSA/CIC, Asylum interview for TB2-03384, at p. 3.

⁴ Ibid., Claim for Refugee Protection in Canada at p.10, q. 42, 43.

⁵ Exhibit 2, Personal Information Form (PIF), TB2-03384, at p. 11, ll.54-55.

[18] The panel finds the CC's evolving and inconsistent version of the central event in his claim, to be indicative of a lack of credibility. The panel notes that neither in his asylum interview in the US, nor in his application for refugee protection in Canada, did the CC make mention of the presence of army intelligence during what appeared to be an extortion attempt. The CC mentioned the EPDP and "the armed groups," which the panel has concluded was a reference to the paramilitary groups active in Sri Lanka involved in extortion, of which the EPDP was a prominent actor. The panel finds the CC's introduction of army intelligence and their alleged accusations as to the CC's involvement with the LTTE, to be embellishments to his claim.

[19] The CC also testified that the armed men had told him to give them 20 lakhs or be arrested. The CC's testimony in this regard is inconsistent with previous statements where he stated that the armed men had threatened to shoot him if he did not give them the money. The panel finds that the CC likely faced an extortion attempt from members of a paramilitary group, most likely the EPDP. Given the fact the CC's siblings were living abroad, it is plausible that the CC faced an extortion attempt in 2011. In light of the large Tamil diaspora living abroad in countries such as Canada, it is likely that most Tamils from the north have at least one relative living abroad. It is not unusual that individuals such as the CC, with relatives living abroad, would come to the attention of a criminal element. The panel finds that that if the CC were to return to Sri Lanka, any problems he may face would be ones characterized as a generalized risk facing much, if not most, of the Tamil population in the north of Sri Lanka.

[20] The PC stated in her Basis of Claim (BOC) that a few days after her husband, the CC, had left Sri Lanka, army intelligence and the EPDP, came to her husband's home and questioned her. The PC stated that she told them that he had left, but that she did not know where he was. The PC indicated that army intelligence and the EPDP had then left, but not before informing her that they were going to arrest the CC when he returned to Sri. Lanka. The PC indicated that, following the visit by army intelligence and the EPDP, she left and went to live with her grandmother.

[21] The PC's BOC goes on to state that army intelligence then came to her home, where she was living with her grandmother, in May 2015, and questioned her about her husband and about her family in Canada. The PC further stated that army intelligence informed her that they knew that her husband was in Canada. The PC also indicated that army intelligence returned on two more occasions in 2016, and asked her similar questions.

[22] When questioned by her counsel, the PC testified that the army and EPDP had come several times during the period of approximately a month to a month and a half, when she was living at the home of the husband's family. The PC went on to describe, during her testimony, what had taken place during each of the visits. When challenged by the panel that she had indicated in her BOC that army intelligence and the EPDP had come only once, she changed her testimony and stated that she now thought that they came only once. The panel finds the PC's testimony with respect to the visits by the army or army intelligence and the EPDP to have been embellished and, therefore, unreliable.

[23] The PC has stated, both in her BOC and during her testimony, that in June 2017, two men from army intelligence came to her home and after asking her some questions, attempted to sexually assault her. According to the PC, the men left only after her neighbours came when she screamed. It was this last incident that prompted her family to make arrangements to get her out of the country. The panel accepts that the PC was sexually abused by two individuals who came to her home. Given concerns with other aspects of her evidence, however, the panel cannot be assured that the men who attempted to sexually assault her were actually with the army or with army intelligence.

[24] The claimants' counsel has submitted that one must consider the totality of the evidence when determining credibility. The panel concurs, and has considered the claimants' credibility in light of the totality of the evidence. The panel finds that both of the claimants have embellished their claim, which undermines their credibility. Nonetheless, the panel must carefully consider their profile in determining whether their fear of persecution is well-founded.

Well-foundedness

[25] The CC testified that he fears returning to Sri Lanka because he believes that army intelligence and members of the EPDP will interrogate and torture him. The CC believes that he will be targeted because his wife, the PC, has informed him that army intelligence and members of the EPDP came to the house and told her that they will arrest the CC when he returns to Sri Lanka. As previously mentioned, the panel finds that the PC's testimony in this regard to be embellished and gives it little weight.

[26] The CC has also provided a letter from his father wherein the father has referenced the various visits by army intelligence and the EPDP. It is unclear whether the CC's father, like the CC's wife, has actually witnessed any of the incidents or is merely providing second hand information. With respect to the alleged incident of March 15, 2011, where three armed men came and demanded 20 Lakhs, which prompted the CC to leave the country, the panel notes that the PC initially indicated that she had witnessed the extortion demand, but later admitted: "I only know what my husband told me." The father makes no mention in the letter that he was present during the incident. The father's other references to alleged visits to the PC's house are clearly second hand accounts, since the father was not there. In the letter, the father also references the attempted sexual assault of the PC: "When they visited last time, army intelligence tried to sexually abuse her."⁶ The letter makes reference to three visits by army intelligence and the EPDP: May 22, 2015, and June and December, 2016. According to the father's letter, therefore, the last visit, when the attempted sexual assault occurred, would have been in December 2016. The PC, however, has indicated that the incident took place on June 15, 2017.⁷ The letter's information is clearly unreliable and, therefore, no weight is assigned to the letter. As Justice Annis has cautioned in *El Bouni*, regarding documentary evidence emanating from family members and friends:

... I find that confirmatory evidence of family members and friends, which is not subject to cross-examination, is not highly probative or credible evidence. Highly probative evidence is intrinsically well-presented evidence from independent sources confirming a material fact in the matter.⁸

[27] The claimants' counsel has submitted that the CC's profile puts him at risk upon his return to Sri Lanka. Counsel has highlighted that the CC is a young, Tamil male from the north whose sister and brother were both accused of connections to the LTTE and both have been granted refugee status abroad. Counsel further submits that the CC testified that he was forced by the LTTE to attend a pro-LTTE demonstrations which he noted were being videotaped. Counsel points out that documentary evidence indicates that Tamil males with ties to the LTTE will experience problems entering the country and face a possibility of abuse under the Prevention of Terrorism Act.

⁶ Exhibit 7, Claimants' supporting documents, letter from the father of the co-claimant, at p. 2.

⁷ Exhibit 2, Basis of Claim (BOC) for TB7-22813, at p. 13, para. 16.

⁸ *El Bouni, Haidar v. M.C.I.* (F.C., no. IMM-7627-14), Annis, June 2, 2015, 2015 FC 700.

[28] The panel finds that the CC has embellished his claim with respect to ongoing and current negative interest in him by Sri Lankan authorities. While it acknowledges that, like many young Tamils, the claimant has suffered in the past at the hands of authorities, the panel finds that the claimant does not possess the profile that will attract adverse attention upon his return to Sri Lanka. While the panel finds it plausible that the CC was extorted, likely by the EPDP who have a history of extortion of Tamils with family in the diaspora,⁹ the panel also finds that the CC faced a generalized risk, faced by most Tamils with family in the diaspora.

[29] The CC was asked if during his past six years in Canada he has been a member of, contributed to, or participated in any pro-LTTE or anti-government organizations or activities. The CC replied in the negative to all questions. The CC's evidence, therefore, that army intelligence was aware of the CC's activities in Canada and that he was involved in LTTE activities, indicates that either this evidence is not credible or that the CC has not been forthcoming with respect to his activities in Canada. The panel finds, therefore, that the credibility of this claim has been compromised. The panel finds that the claimants have provided no trustworthy or reliable evidence that Sri Lankan authorities have any interest in them or would have any interest, were they to return to Sri Lanka.

[30] The panel has also reviewed country documentation with respect to returnees – especially those with perceived or suspected links to the LTTE. In an August 2015 report, the International Crisis Group noted that, “Tamils returning from abroad continue to be arrested under the PTA [Prevention of Terrorism Act] on suspicion of old LTTE involvement.”¹⁰

[31] The Amnesty International Annual Report 2017/18 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.¹¹

[32] While it is clear from various country documents that certain individuals suspected of links to the LTTE face a possibility of arrest, and even torture, at the hands of government

⁹ Exhibit 4, National Documentation Package (NDP) for Sri Lanka (April 30, 2018), Item 13.11.

¹⁰ Ibid., Item 13.7, at p. 6, para 1.

¹¹ Exhibit 4, NDP for Sri Lanka (April 30, 2018), Item 2.2, at p. 1, s. Arbitrary arrests and detentions, para. 1.

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."¹² 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."¹³

[33] 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' ".¹⁴ 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 must be carefully considered. The panel must therefore determine whether the claimant faces more than a mere possibility that he will be harassed and harmed by Sri Lankan authorities upon a return to the country.

[34] 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 CC has stated that he believes that he will be arrested as soon as he arrives in Sri Lanka because authorities there have demonstrated an ongoing interest in him. As previously stated, the panel finds the claimant's allegations of ongoing interest in him to be an embellishment of his situation. The panel also finds the letter from his father, supporting the CC's allegations, to be unreliable. At worst, the panel finds that the claimants may face extortion from criminal elements, given that they are returning from a western country after years abroad. The panel finds, however, that the risk they may face would be a generalized one, faced by many Tamils, either returning from

¹² Ibid., Item 13.1, at p. 3, s. 1.1, para. 2.

¹³ Ibid., at p. 5, s. 2, para. 2.

¹⁴ Ibid., at p. 7, s. 2.1, para. 1.

abroad or with family abroad. The panel also finds that the CC has provided no trustworthy evidence as to why the current regime would be interested in him.

[35] 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.¹⁵ [footnotes omitted]

[36] The panel notes that the CC does not have any direct ties to the LTTE, nor does he have a history of having opposed the government - either in Sri Lanka or during his time in Canada. The UK Tribunal, in assessing recent, independent reports regarding returnees to Sri Lanka identified a key risk profile as:

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 relation to post-conflict Tamil separatism within the Diaspora and/or a renewal of hostilities within Sri Lanka.¹⁶

[37] The CC has not participated or been involved in any anti-regime or pro-LTTE activities, either in Sri Lanka or since his arrival in Canada. The CC's activities subsequent, to his departure from Sri Lanka, do not indicate any reason for any particular interest in him by authorities. Even if one were to accept the PC's evidence as credible, the panel also notes that the last interaction the CC had with authorities was in March 2011, when, as the CC alleged at his hearing, members of army intelligence and the EPDP tried to extort him. The panel finds the March 2011, incident to be more an act of extortion, rather than an indication of any concerns by authorities of the CC's association with the LTTE.

¹⁵ Exhibit 4, NDP for Sri Lanka (April 30, 2018), Item 1.4, at p. 6, s. 2.3, para. 2.3.3.

¹⁶ Ibid., at p. 7, s. 2.3, para. 2.3.9.

[38] The panel has also considered the evidence regarding failed asylum-seekers, given the particular circumstances of the CC. In light of this information, the panel finds that the CC 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 he does not have good grounds to fear persecution as a failed asylum-seeker were he to be returned to Sri Lanka. The panel further finds that there is no evidence to suggest that, since the CC left Sri Lanka in 2011, the Sri Lankan government has any reason to believe that he 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 integrity' of Sri Lanka.¹⁷

[39] The panel finds that the CC has provided insufficient evidence to support his stated belief that he will be arrested by the EPDP and the army. Given that the CC has not had any political involvement while in Canada with any pro-separatist or anti-government organizations, Sri Lankan authorities would have no reason to detain him or subject him to any more than a cursory questioning upon his return.

[40] With respect to the PC's allegation that two men from army intelligence tried to sexually assault her in June 2017, the panel finds the incident to be plausible. A 2015 country report on the situation of Tamil women in the north indicated that they continued to face "the risk of rape and harassment by security forces present throughout the region."¹⁸ The panel, notes that the PC was living alone with her grandmother who was bedridden and, therefore, more vulnerable than most women. The panel finds, however, that given her past experience, the PC would likely now seek to live with family, such as her uncles who are, according to the PC, only two kilometres away. Should her husband, the CC, also return to Sri Lanka, she would now be living with him and have

¹⁷ Exhibit 4, NDP for Sri Lanka (April 30, 2018), Item 1.4, at p. 6, s. 2.3, para. 2.3.3.

¹⁸ Exhibit 4, NDP for Sri Lanka (April 30, 2018), Item 13.10, at p. 2, s. Abstract, para. 1.

his additional protection. The US 2017 Department of State Report¹⁹ further indicates that the military has “publicly committed to prosecuting personnel who committed criminal acts during and after the conflict.” The panel finds that the PC’s risk would be significantly reduced upon a return to present day Sri Lanka, and any risk she would face would not be personalized.

CONCLUSION

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

[42] The panel therefore concludes that the claimants are not Convention refugees or persons in need of protection and rejects their claim.

(signed)

“Anthony da Silva”

Anthony da Silva

November 6, 2018

Date

¹⁹ Ibid., Item 2.1, at p. 19, s. National/Racial/Ethnic Minorities, para. 2.