



RPD File No. / N° de dossier de la SPR : TB7-19520  
TB2-02155

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et Décision

<b>Claimant(s)</b>	XXXX XXXX XXXXXXXXXXXXXXX XXXX (a.k.a. XXXX XXXX)	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	June 6, 2018 April 18, 2018 March 7, 2018	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Date of Decision and reasons</b>	July 11, 2018	<b>Date de la décision et des motifs</b>
<b>Panel</b>	Ashley Shaffer	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Ian D Hamilton Barrister and Solicitor	<b>Conseil(s) du (de la/des) demandeur(e)(s) d'asile</b>
<b>Designated Representative(s)</b>	N/A	<b>Représentant(e)(s) désigné(e)(s)</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du (de la) ministre</b>

## REASONS FOR DECISION

### INTRODUCTION

[1] XXXX XXXX (the Principal Claimant) and XXXX XXXX (the Associate Claimant) (collectively, the Claimants) both allege to be citizens of Sri Lanka and both seek refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.<sup>1</sup>

### ALLEGATIONS

[2] The Claimants' allegations are more fully set out in their Basis of Claim forms<sup>2</sup> and in their testimonies. In sum, the Principal Claimant alleged that she fears gender-based persecution in Sri Lanka. She alleged that the army would come and harass her wherever she stayed, so no one would shelter her. She alleged that she had no place to go but her grandmother's house which was next to an army camp. She alleged that the army continued to harass her at her grandmother's house, so she hired a smuggler who gave her a Sri Lankan passport with a Canadian permanent resident card belonging to someone else. She used these documents to come to Canada.

[3] The Associate Claimant alleged that he was harassed and detained by the Sri Lankan state forces during the civil war in Sri Lanka. He alleged that his last, year-long detention continued until shortly after the war ended. He alleged that, after his release, he continued to be harassed by army intelligence, so he left Sri Lanka on XXXX 2010. He arrived in Canada in XXXX of 2012 and sought refugee protection at the Fort Erie port of entry.

### DETERMINATION

[4] I find that the Claimants are neither Convention refugees nor persons in need of protection.

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<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended, sections 96 and 97(1).

<sup>2</sup> Exhibits 2-3.

## DETERMINATIVE ISSUES

[5] The determinative issue for the Principal Claimant's claim is credibility. The determinative issues for the Associate Claimant's claim are credibility and a change in circumstances.

## ANALYSIS

### THE PRINCIPAL CLAIMANT

#### Exclusion based on 1E of the Convention

[6] The possibility of a 1E exclusion for the Principal Claimant was raised at the beginning of the hearing of her claim. Counsel submitted, and I agree, that there is insufficient evidence to establish, on a balance of probabilities, that the Principal Claimant is excluded pursuant to section 1E of the Convention.

#### Credibility

[7] I have assessed the Principal Claimant's credibility in consideration of the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution*<sup>3</sup>. I find that there are many significant credibility concerns that arise in the Principal Claimant's evidence. While not all of the credibility concerns relate to the very core of the Principal Claimant's claim for refugee protection, I find that there are sufficient credibility concerns such that doubt is cast on the entirety of the Principal Claimant's evidence. I find that the Principal Claimant has not provided sufficient reliable evidence to establish that she was persecuted in Sri Lanka, or that she would be if she returned there.

[8] I have outlined, below, some of the many credibility concerns that I have found in the Principal Claimant's evidence.

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<sup>3</sup> *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

*Unreliable Testimony about Birth Certificate*

[9] The Principal Claimant presented what she purported was her original birth certificate and an original translation of it. She alleged that this birth certificate was issued to her upon her birth and that she only had one birth certificate for her whole life. However, there were some unusual notations on the birth certificate which gave rise to credibility concerns about this document.

[10] Notably, there is a handwritten alphanumeric code and date on the top left hand corner of the Principal Claimant's birth certificate. The date is XXXX XXXX XXXX XXXX XXXX. As well, the date XXXX XXXX XXXX XXXX XXXX is printed in section 15 of the birth certificate, which is entitled "Date of insertion or substitution and District Registrar's or Registrar-General's signature." I do not find it credible that the Principal Claimant's birth certificate could have two notations dated in 2010 when she was allegedly born in 1991 and has had her birth certificate since her birth.

[11] When the Principal Claimant was asked about these notations, she said that she did not know why those notations would be there, and confirmed that this was the birth certificate that was issued upon her birth.

[12] I do not find that the Principal Claimant has reasonably explained how a birth certificate allegedly issued upon her birth in 1991 could have notations from 2010 on it. As the Principal Claimant was 19 years of age in 2010, I find it more likely than not that she would have known if any changes were made to her birth certificate in 2010, or if it was reissued. I find that her inability to explain why there would be two dates from 2010 on her birth certificate significantly undermines her credibility, both generally and with respect to her identity. Further, I find that identity is a central aspect of a refugee claim, and that unreliable evidence about identity creates significant concern about a claimant's overall credibility.

*Inconsistent Information about Residence Prior to Departure from Sri Lanka*

[13] The Principal Claimant's testimony about her residence prior to her departure from Canada was inconsistent. At the port of entry, the Principal Claimant stated that she did not live any particular place, that she moved around a lot, and that she only stayed at one address for one week or 15 days. She stated that she did not know any of the addresses at which she stayed except

for her grandmother's address. At the hearing, however, the Principal Claimant stated that she lived at her grandmother's house from 2015 onwards.

[14] When the Principal Claimant was asked why she told the port of entry officer that she never stayed in one place longer than one week or 15 days, she replied that she had meant that she frequently went to nearby villages. When she was asked to elaborate, she said that she would go to nearby villages when the need arose to help her grandmother. For example, if her grandmother needed new clothes or medicine, the Principal Claimant would travel to a nearby village to get it. The Principal Claimant was asked a second time why she told the port of entry officer that she never stayed in one place for more than one week or 15 days if she meant that she had gone to nearby villages to do chores. She replied that she meant to say that she went to different towns and came back [to do chores], but made a mistake.

[15] I do not find that this reasonably explains why the Principal Claimant would have told the port of entry officer that she never lived in one place for more than one week or 15 days. In reviewing the transcript of the port of entry interview, there is no way to interpret the Principal Claimant's statement such that it could mean that she did chores in nearby villages every week or two. She clearly meant to convey the message to the port of entry officer that she had no permanent residence because of her troubles she had with her family.

[16] I find, based on this inconsistency without reasonable explanation, that the Principal Claimant has failed to establish where she was living prior to leaving Sri Lanka. I find that she has failed to establish that she was required to move residences to avoid persecution by the army. I further find that she has failed to establish that she resided with her grandmother whose house was next to an army camp.

[17] I find that the Principal Claimant's evidence about her residence prior to leaving Sri Lanka is central to her claim for refugee protection. Her residence relates to how the army was able to locate her, and why she would have chosen to remain at her grandmother's house if she was being regularly harassed and sexually assaulted by the army, as alleged. In addition, her residence and whether she was able to live in different places relates to the availability of an internal flight alternative. I find that this evidence is not merely incidental to her allegations of persecution. Rather, I find that this is core to her claim.

*Not Credible Testimony about Fee Paid to Smuggler*

[18] At the port of entry, the Principal Claimant was intercepted using the Sri Lankan passport and Canadian permanent resident card of XXXX XXXX. She informed the port of entry officers that she had come to Canada intending to claim refugee status and underwent an interview. When the port of entry officer asked how much she paid for the documents that she used to travel to Canada, she replied, "I did not pay any money." The port of entry officer inquired as to what her smuggler wanted in return for the documents that she used to come to Canada. She replied that she gave the smuggler jewellery that had been given to her in order for her to get married. At the hearing, when the Principal Claimant was asked how much she paid the agent, she replied that it was 30,000 rupees, and that she had pawned jewellery. When the Principal Claimant was asked why she told the port of entry officer that she did not pay any money but instead gave the smuggler jewellery, she said that she gave the jewellery to her grandmother to pawn and then paid the smuggler money. When she was asked the same question a second time, she replied that when the port of entry officer asked the question, immediately what came to her mind was the jewellery and that she forgot to tell them that she gave the smuggler cash.

[19] I find that this testimony is inconsistent. At first, in response to the port of entry officer's question, the Principal Claimant clearly stated "I did not pay money" to her smuggler. This is the opposite of her testimony at the hearing, where she stated that she paid 30,000 rupees to her smuggler. When this inconsistency was put to the Principal Claimant, at first, she simply repeated that she had given jewellery to her grandmother to pawn. Later, she stated that she "forgot" to tell the port of entry officer about the cash. However, this does not explain why she would have made the clear statement to the port of entry officer, "I did not pay money." I find that the Principal Claimant's inconsistent testimony about how she paid her smuggler, and her unreasonable explanation for this inconsistency further undermines her credibility.

*Other Inconsistent Evidence about Smuggler*

[20] The Principal Claimant, at times, alleged that she never met her smuggler in person. At other times, she said that she did meet her smuggler in person. Notably, at the beginning of her hearing, the Principal Claimant was asked whether she had ever met her smuggler in person. She clearly replied, "I never met the agent, but I met the uncle who introduced me to him." At other

points during the hearing, she said that she had met her smuggler in person. When the Principal Claimant was asked why she had said that she never met her smuggler in person, she replied, “I told you I met him twice.” When the Principal Claimant was asked why she would have previously said that she had not met her smuggler in person, but was now saying that she had, she replied, “I don’t know.”

[21] I find that the Principal Claimant’s statements about whether or not she met her smuggler in person are inconsistent. Her response to this question the first time it was asked was clear that she had not met her smuggler in person. Later, she was clear that she had. She did not have an explanation for this inconsistency when it was put to her, she simply replied that she did not know. I find that this inconsistency is significant and central to the Principal Claimant’s claim. There is ample case law which indicates that claimants are expected to be truthful about the way in which they arrived in Canada, and that, if they are not, a negative credibility inference can be made. I find that this inconsistency about a central aspect of her claim without reasonable explanation further undermines her credibility.

*Not Credible Testimony about Why the Principal Claimant Tried to Enter Canada Using False Identification*

[22] The Principal Claimant alleged that she hired a smuggler to help get her to Canada. She alleged that the smuggler provided her with two passports belonging to a woman named XXXX XXXX along with her Canadian permanent resident card and her Ontario driver’s licence. The Principal Claimant attempted to enter Canada using these documents.

[23] The Principal Claimant was asked why she attempted to enter Canada using these documents rather than informing the port of entry officers, immediately, that she had used false documents to come to Canada in order to flee persecution, and that she was seeking refugee protection. She stated that she was frightened to seek refugee protection at the port of entry because she was afraid that “this might create some problem.” However, I do not find this explanation reasonable. Her father, the Associate Claimant, sought refugee protection at the port of entry when he arrived in 2012. I find it more likely than not that she would have known that seeking refugee protection at the port of entry was an option. I find that her attempt to mislead the

port of entry officers about her identity and her reason for coming to Canada significantly undermines her credibility.

*Evasive Testimony about Documents on Phone at Port of Entry*

[24] The port of entry officer that examined the Principal Claimant looked through her phone and found an email from XXXX XXXX XXXX XXXX XXXX that said “Hi”, and photographs and documents about XXXX XXXX, whom she alleged was her boyfriend or fiancé. The documents about XXXX appeared to relate to his claim for refugee protection. The Principal Claimant did not file these documents as evidence for the first sitting of her hearing.

[25] In response to the credibility concerns about XXXX, what the nature of the Principal Claimant’s relationship with him was, and about why she did not file those documents as evidence for her refugee claim, the Principal Claimant filed some photographs of XXXX, but none of the other documents to which the port of entry officer referred to. I find that the Principal Claimant’s failure to file all of the documents she possessed related to XXXX gives rise to credibility concerns.

[26] When the Principal Claimant was asked whether she had thought about bringing the documents and photographs referred to by the port of entry officer to show at her hearing, she said that she did not bring her phone with her. I do not find that this reasonably explains why she would have not filed the documents relating to XXXX claim for refugee protection. Whether she brought her phone to the hearing or not does not relate to whether she could have filed those documents as evidence in support of her claim. Further, no explanation was offered about why she did not file those documents even after their absence was raised as a credibility concern.

[27] I find that the possession of documents relating to another claimant’s allegations of persecution are relevant the Principal Claimant’s claim for refugee protection. I make this finding in consideration of the fact that the nature of the Principal Claimant’s relationship with XXXX was not established. Moreover, I find that the Principal Claimant’s failure to present these documents even after it was raised as a credibility concern, indicates evasiveness. I find that this further undermines her credibility.



*Further Unreliable Evidence about XXXX*

[28] The remainder of the Principal Claimant's evidence about XXXX also gave rise to significant credibility concerns. The Principal Claimant described her relationship with him in several inconsistent ways. She described XXXX as: someone that she was in love with many years ago with whom she spoke to from time to time; as her boyfriend that she spoke to several times a week; and as her fiancé. I find that these are three different versions of her relationship with XXXX. I find that her failure to provide straightforward and consistent testimony about her relationship with XXXX significantly undermines her credibility.

[29] The Principal Claimant also alleged that she went to live with him and his family at the age of 16, even though they were not married or planning a marriage at the time. I have significant credibility concerns about the plausibility of a 16-year-old girl going to live with her boyfriend's family given the highly conservative nature of Sri Lankan society. I find that, on a balance of probabilities, the Principal Claimant is concealing the nature of her relationship with XXXX.

[30] Further, the Principal Claimant did eventually provide some European immigration documents from XXXX. She alleged that he mailed them to her just prior to the last sitting of her hearing. There were two documents from Switzerland and one document from Germany. The documents from Switzerland are in French and seem to indicate that XXXX was subject to a deportation order effective XXXX XXXX, 2017. The German document is not translated. There is a date on the German document, XXXX XXXX, 2018. This date indicates that the document was either recently expired or recently issued. Given that the date is right next to a signature, I find it more likely than not that this date is a date of issue. Most significantly, the cover page of the document is not included in the copy provided with the rest of the document. Accordingly, it is not possible to know what the nature of the document is. What is known is that XXXX has a recently issued identity document from Germany. I find that filing this document without translation, and without a cover page is further indication that the Principal Claimant is concealing information about the status of her relationship with XXXX, and being evasive.

*Varying Evidence about Grandmother's Capacity to Assist the Principal Claimant*

[31] The Principal Claimant's testimony about her grandmother's capacity to assist her varied throughout the hearing. At times, her grandmother was capable of undertaking tasks that involved high degrees of responsibility and activity. Notably, her grandmother allegedly pawned the jewellery to get the money that she needed to pay her smuggler. Her grandmother allegedly attended a Justice of the Peace's office to notarize a letter corroborating the Principal Claimant's allegation. She also received and forwarded the Principal Claimant's identity documents.

[32] At other times, her grandmother was too frail and old to help her or to send her documents. For example, when the Principal Claimant was asked why she did not get a letter from the Grama Officer of her village, she replied that her grandmother was very old and that it was difficult for her to meet the Grama Officer to obtain a letter.

[33] When the Principal Claimant was asked how she was able to obtain the notarized letter from her grandmother, she replied that her grandmother sent it, approximately three or four months prior to the first sitting of the hearing. The Principal Claimant was asked to explain what she meant by her grandmother sending the letter, given that she had previously stated that her grandmother was too frail to mail her document. She stated that she thought some relatives went to the Justice of the Peace and obtained the letter.

[34] I do not find it credible that the Principal Claimant's relatives went to the Justice of the Peace to have the letter notarized for the Principal Claimant. I note that the Principal Claimant's grandmother's fingerprint is on the document. Accordingly, if this document is a genuine document, then the Principal Claimant's grandmother would have had to meet in person with the Justice of the Peace to put her fingerprint on the document.

[35] I find that her grandmother's capabilities are central to the Principal Claimant's claim for refugee protection. Her grandmother's ability to assist her in sending documents is directly related to whether it is reasonable to expect that she would be in possession of particular documents. I find that her vague, evolving and inconsistent testimony about her grandmother's capabilities further undermines her credibility.

*Psychological Report for XXXX*

[36] The Principal Claimant filed a psychological report from Dr. XXXX. The assessment was conducted during one approximately sixty-minute long meeting. All of the information contained in the psychological report about the Principal Claimant's experiences emanated from the Principal Claimant, herself. There is no evidence that Dr. XXXX engaged in any kind of credibility assessment. Rather, Dr. XXXX simply recounted the information that the Principal Claimant told him and recorded it in his report. Accordingly, I give the report little evidentiary weight and find that it is not sufficient to establish the Principal Claimant's allegations, on a balance of probabilities.

[37] I have considered whether this psychological report may resolve any of the credibility concerns that arose in the Principal Claimant's testimony and evidence. The report states that the Principal Claimant will be nervous and intimidated by authority. It recommended that I question in a sensitive and courteous manner. It advised that the Principal Claimant be allowed to take breaks during her testimony. To this end, the Principal Claimant was told at the beginning of her hearing that she could request a break and any time and that one would be taken. Questions were asked in a sensitive and courteous manner. The Principal Claimant had the benefit of counsel when preparing her evidence and during the hearing. There is no evidence that the Principal Claimant continues to receive medical treatment, or that she continues to see Dr. XXXX. Considering the efforts made during the hearing to accommodate the Principal Claimant in conjunction with the guidance of counsel, I find that all of the credibility concerns that arise cannot be explained by a single, sixty-minute session with Dr. XXXX.

[38] The higher courts have noted that the Board may reject a psychological report when the doctor has merely recounted what the claimant has told him/her, and then formed a medical opinion without independent clinical studies.<sup>4</sup> The Federal Court has held that a psychiatric report cannot possibly serve as a cure-all for any and all deficiencies in a claimant's testimony".<sup>5</sup> Furthermore, as stated in *Danailov*, with respect to the assessment of a physician's evidence and the question of the assessment of credibility, "that opinion evidence is only as valid as the truth of

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<sup>4</sup> *Saha, Gobinda Chandra v. Canada (Minister of Citizenship and Immigration)*, (F.C., no. IMM-5193-08), Phelan, March 23, 2009; 2009 FC 304.

<sup>5</sup> *Rokni, Mohamed Mehdi v. M.C.I.* (F.C.T.D., no. IMM-6068-93), Muldoon, January 27, 1995, at 10-11

the facts on which it is based.”<sup>6</sup> Given that I have found the claimant not to be credible in key areas of her claim and there is no evidence before me that Dr. XXXX did not base his conclusions on anything more than what the Principal Claimant recounted without conducting any further independent clinical studies, I assign little evidentiary weight to the psychological report and do not find that it is sufficient to resolve the significant credibility concerns raised by the Principal Claimant’s evidence.

*Conclusion on XXXX Credibility*

[39] I note that the Principal Claimant presented four versions of her story. When she arrived in Canada she alleged she was a Canadian permanent resident named XXXX XXXX who was returning home from a trip to Sri Lanka. When she was caught, she stated that she was, in fact, XXXX XXXX fleeing mistreatment by her relatives which consisted of being grabbed by the back of the head once and not letting her into their homes. She also stated that she did not have any permanent address, and moved around every week or two. During her second port of entry interview she stated that she feared the army who had come to her house to harass and assault her. At the hearing she stated that she was harassed by the army and molested by her relatives many times and that she lived with her grandmother from 2015 until she left Sri Lanka.

[40] I find that all of the credibility concerns as outlined in the sections above, and others which I have not outlined here for the sake of efficiency, are sufficient to rebut the presumption of truthfulness of the Principal Claimant’s testimony. I find that her statements are not sufficiently reliable to establish that she experienced gender-based persecution, as alleged.

[41] I find that the documents that the Principal Claimant filed to corroborate her allegations of persecution are not sufficiently reliable to overcome the credibility concerns, as outlined above, or to establish that she experienced gender-based persecution, as alleged. Notably, the Principal Claimant filed a copy of a notarized letter from her grandmother. I find that this document is not sufficiently reliable to establish that the Principal Claimant experienced persecution in Sri Lanka. I make this finding because the Principal Claimant could not provide consistent testimony about whether her grandmother was capable of leaving the house to obtain this letter or whether she was

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<sup>6</sup> Danailov (Danailoff), Vasco (Vassil) Valdiminov v. M.E.I. (F.C.T.D., no. t-273-93, Reed, October 6, 1993 at 2.

too frail to leave the house. The Principal Claimant also provided a copy of a statement from her step-mother (the Associate Claimant's wife). I find that this document is also not sufficiently reliable to overcome the credibility concerns that have arisen with the Principal Claimant's evidence or to establish that she experienced gender-based persecution. All of the information contained in it about the Principal Claimant is second-hand, and the letter is not original. Accordingly, it is of low probative and evidentiary value.

[42] For the reasons outlined above, I find that the Principal Claimant has not established that she was subject to gender-based persecution, or that she would be subject to it were she required to return to Sri Lanka. As there is insufficient credible evidence to establish that she will face a serious possibility of persecution, I find that there is also insufficient credible evidence to establish that she will face a risk of harm, on a balance of probabilities, if she were returned to Sri Lanka.

### **THE ASSOCIATE CLAIMANT**

#### **Change of Circumstances**

[43] I find that there is insufficient persuasive evidence to establish that the Associate Claimant will be subject to a serious possibility of persecution or a risk of harm, on a balance of probabilities, if he were to return to Sri Lanka today, almost 8 years after he left.

#### *Objective Evidence*

[44] The evidence in the National Documentation Packages regarding the treatment of Tamils in Sri Lanka is, at times, mixed. I find that the most persuasive evidence comes from the United Nations High Commission on Refugees (UNHCR) because it is an international organization responsible for supporting and protecting refugees. The UNHCR has also been assisting the Sri Lankan and Indian governments in a program to resettle Tamil refugees in Sri Lanka. It monitors returning Tamil resettlement into Sri Lanka, and conducts studies on the reintegration of Tamils

into Sri Lanka.<sup>7</sup> The information from UNHCR indicates that the conditions in Sri Lanka for Tamils and returning Tamils are improving and safe.

[45] Specifically, the UNHCR notes that peace and stability have been increasing in Sri Lanka. In recent years, the number of Tamils returning to Sri Lanka has increased. A significant number of Tamils are returning spontaneously.<sup>8</sup> The reason for their return is the improving peace and stability in the country. Notably, a report prepared by the UNHCR from August 2015 cited that 100% of Tamil returnees cited the peace and stability of their country as the reason for the reason for their return. Another report by the UNHCR that covered the period from August 2015 to December 2015 noted that none of the returnees have cited any fear for their personal safety.<sup>9</sup> The Sri Lankan government is cooperating with the UNHCR and other humanitarian organizations in providing protection and assistance to returning refugees and internally displaced people.<sup>10</sup>

[46] As mentioned above, the UNHCR also has a program of monitoring and resettling Tamil returnees in Sri Lanka.<sup>11</sup> This program is highly structured and supportive of Tamil returnees. The UNHCR meets with each Tamil returnee at the airport and ensures his or her safe arrival. Those that have been deported back receive the following assistance from UNHCR: a bank account is opened and a reintegration grant is deposited for each household. Modest transportation allowance is provided in cash so the returnee can get from the airport to his or her hometown. Upon arriving in his or her hometown, the returnees receive one non-food item assistance or a cash grant, and counselling on reintegration, including information on how to obtain civil status documents and referrals to other organizations for support.<sup>12</sup> The UNHCR visits the households of those who were forcibly returned to Sri Lanka to collect qualitative and quantitative data on their return and reintegration procedures.<sup>13</sup>

[47] The outcome of UNHCR's monitoring, as of November 2015, shows that 90% of returnees are satisfied with their current place of residence and do not want to move, and that almost all of them have registered with the local government. 95% of the returnees said that they

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<sup>7</sup> Exhibit 4, National Documentation Package (NDP) for Sri Lanka (31 March 2017), items 1.4, 1.5 and 14.3.

<sup>8</sup> Exhibit 4, NDP for Sri Lanka (31 March 2017), item 14.3, page 5.

<sup>9</sup> Exhibit 4, NDP for Sri Lanka (31 March 2017), item 1.4, page 42.

<sup>10</sup> Exhibit 4, NDP for Sri Lanka (31 March 2017), item 2.1, page 13; item 14.3, page 5.

<sup>11</sup> Exhibit 4, NDP for Sri Lanka (31 March 2017), item 14.3, page 5.

<sup>12</sup> Exhibit 4, NDP for Sri Lanka (31 March 2017), item 14.3, page 5.

<sup>13</sup> Exhibit 4, NDP for Sri Lanka (31 March 2017), item 14.3, page 6.

felt secure in their current location and that they had not been treated differently by the community upon their return.

[48] Other evidence in the National Documentation Packages also point to an improving situation for Tamils. Sri Lanka's Human Rights Commission has been restored to independence and legitimacy.<sup>14</sup> Detainees held under the Prevention of Terrorism Act have been released.<sup>15</sup> The Sri Lankan government is becoming more transparent and accountable, and executive power has been curtailed.<sup>16</sup> The most recently elected government has begun formulating a new constitution which would recognize Tamil as an official language, devolve power to Tamils and protect democracy.<sup>17</sup> The President recently confirmed that more civilian lands will be freed of military control.<sup>18</sup> The government has also committed to examining atrocities that occurred in the last part of the civil war.<sup>19</sup>

[49] The Associate Claimant also stated that he would be arrested and mistreated if he returned to Sri Lanka because he has been abroad for so long. He alleged that he would be identified and arrested immediately upon arrival at the airport. However, the UNHCR in Colombo indicates that, as of 2015, the re-admission process for Tamil returnees that used to be long and onerous, was now almost always completed within one hour.<sup>20</sup> Even returnees with a past connection to the LTTE are able to return to their communities without suffering ill treatment.<sup>21</sup> It appears that the only individuals who are at risk of detention are those who are perceived to play a significant role in post-war Tamil separatism.<sup>22</sup> The Associate Claimant is not one of these individuals. As a

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<sup>14</sup> Exhibit 15, NDP for Sri Lanka (30 April 2018), item 1.4: *Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 5.0*, United Kingdom Home Office, June 2017, page 6.

<sup>15</sup> Exhibit 15, NDP for Sri Lanka (30 April 2018), item 1.4: *Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 5.0*, United Kingdom Home Office, June 2017, page 6.

<sup>16</sup> Exhibit 15, NDP for Sri Lanka (30 April 2018), item 1.4: *Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 5.0*, United Kingdom Home Office, June 2017, page 6.

<sup>17</sup> Exhibit 15, NDP for Sri Lanka (30 April 2018), item 1.4: *Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 5.0*, United Kingdom Home Office, June 2017, page 7.

<sup>18</sup> Exhibit 15, NDP for Sri Lanka (30 April 2018), item 1.4: *Country Policy and Information Note. Sri Lanka: Tamil separatism Version 5.0*, United Kingdom Home Office, June 2017, page 7.

<sup>19</sup> Exhibit 15, NDP for Sri Lanka (30 April 2018), item 1.4: *Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 5.0*, United Kingdom Home Office, June 2017, page 9.

<sup>20</sup> Exhibit 4, NDP for Sri Lanka (31 March 2017), item 1.4, *Country Information and Guidance. Sri Lanka: Tamil separatism. Version 3.0*, United Kingdom Home Office, August 2016, page 43.

<sup>21</sup> Exhibit 15, NDP for Sri Lanka (30 April 2018), item 1.4: *Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 5.0*, United Kingdom Home Office, June 2017, page 7.

<sup>22</sup> Exhibit 15, NDP for Sri Lanka (30 April 2018), item 1.4: *Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 5.0*, United Kingdom Home Office, June 2017, page 7.

result, I do not find that his mere return to Sri Lanka after a long stay abroad would create a serious possibility of persecution to him.

[50] I find that this evidence establishes that there has been a change of circumstance in Sri Lanka for people in the Claimant's position since the end of the war in May 2009. I find that this change in circumstance has been durable, effective and substantial given that the conditions have, overall, continued to improve from May 2009 until the present and given the data from the UNHCR's monitoring of returning Tamils. I find that the country conditions evidence indicate that someone in the Claimant's situation will no longer face a serious possibility of persecution upon return to Sri Lanka.

*Personal Evidence and Objective Basis*

[51] Further, the Associate Claimant's personal evidence about his forward-facing risk of persecution was not persuasive. The Associate Claimant's evidence about his forward-facing risk constituted his daughter's (the Principal Claimant) testimony, a letter from his wife, and his own allegations.

[52] As I have found that the Principal Claimant is not credible, I do not find that this is sufficient to establish that the Associate Claimant will face a serious possibility of persecution upon return to Sri Lanka. In any case, even if all of the Principal Claimant's allegations are true, I am not persuaded that the army men who harassed her were, in fact, seeking out the Associate Claimant. The Principal Claimant testified that the army never mentioned her father by name. I find it more likely than not that, if the army made statements to the Principal Claimant about "her father" as alleged, they were pointing out the absence of her father and accusing her father of LTTE ties as a method of harassing her, and as a way of pointing out her vulnerability. I do not find that these statements would be evidence that the army continues to seek out the Associate Claimant, on a balance of probabilities.

[53] Prior to the first sitting, the Associate Claimant did not provide a statement from his wife corroborating his allegation that the army continued to search for him. I inquired about why he did not do this as she was a first-hand witness to the forward-facing risk that the Associate Claimant faced. He replied that he did not think his wife's statement would be important. For a subsequent sitting, the Associate Claimant filed a copy of a letter from his wife. However, she



states that the last incident of the army seeking out the Associate Claimant occurred in XXXX 2010. I am not persuaded, based on this evidence, that the army has continued to search for the Associate Claimant in recent years.

[54] The Associate Claimant's testimony about the army's interest in him since he was allegedly released from detention in 2009 was vague. He stated that the army came to inquire about him in XXXX of 2011, and approximately two times between 2012 and XXXX 2017. He alleged that they had not come to inquire about him since. I do not find that this establishes that the Sri Lankan state has a continued interest in arresting and detaining the Associate Claimant. Even if the allegations are true, of which I am not persuaded on a balance of probabilities, I note that, occasionally, when there are security concerns, the Sri Lankan army does go door to door questioning people. However, I do not find that this is *prima facie* evidence of persecution of the Associate Claimant, or Tamils in general.

[55] With respect to the Associate Claimant's final detention, if this detention occurred as alleged, I do not find that it is evidence of him being wanted by the state or suspected of LTTE ties. The Associate Claimant alleged that he was illegally fishing in the middle of the night when an army vessel approached his boat. He alleged that he and the two other men that were in the boat jumped out and tried to swim away, but he got caught. He alleged that he was kept in detention at an army base, where he was made to do chores on the army base, such as cleaning. He alleged that he was released several months after the end of the civil war. The Associate Claimant stated that there was no record of this detention. He stated that none of his family members knew where he was being held.

[56] I find it more likely than not that the Associate Claimant was not held in formal detention. I find it more likely than not that the Associate Claimant's detention was opportunistic. The Associate Claimant was not wanted by the state or arrested based on a warrant. He was caught and captured doing illegal fishing in the middle of the night. I find it more likely than not that his detention was not formal, or authorized by the state. I find that in all likelihood he was taken into detention for the purpose of having someone to do work on the army base. I make this finding based on the fact that there is no record of this detention, and based on the fact that the Associate Claimant was kept in detention despite the fact that the war had been over for several months. I find that this detention is not indicative of the state's interest in the Associate Claimant, that he

has a history of being suspected of LTTE involvement, or that he currently would be suspected of LTTE involvement. I find that this evidence indicates that the state has not had any interest in the Associate Claimant since his detention in 2000.

[57] I find, based on the Associate Claimant's personal evidence and based on the objective evidence, that it is very unlikely that the Sri Lankan state has any current or continued interest in the Associate Claimant. I find, based on the country conditions, based on the UNHCR's data on Tamil returnees, and based on the Associate Claimant's personal evidence, that in mid-2018 any interest the state may have had in the Associate Claimant has most likely diminished to nothing. As a result, I find that there is no serious possibility of persecution of the Associate Claimant because of a perceived connection to the LTTE, because of his Tamil ethnicity, or because he is returning as a failed refugee claimant.

[58] I find, based on the evidence outlined above, and based on the change in circumstances in Sri Lanka, that there is not sufficient credible evidence to establish that the Associate Claimant will face a serious possibility of persecution if he returns to Sri Lanka.

[59] As there is insufficient credible evidence to establish that the Associate Claimant will face a serious possibility of persecution, I find that there is also insufficient credible evidence to establish that he will face a risk of harm, on a balance of probabilities.

## CONCLUSION

[60] Having considered all the evidence, I find that the Claimants are neither Convention refugees nor persons in need of protection.

*(signed)*

**“Ashley Shaffer”**

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**Ashley Shaffer**

**July 11, 2018**

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**Date**