



RPD File No. / N° de dossier de la SPR : TB1-17983

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	November 21, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	December 5, 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 149579 (CA IRB)

REASONS FOR DECISION

INTRODUCTION

[1] The claimant, XXXX XXXX, claims to be a citizen of Sri Lanka. He 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 April 1996, the Sri Lankan army took control of the area around Manipay where the claimant was living. From April 1996, to April 2001, the claimant was picked up several times by the army as part of regular roundups and arrests. The claimant was questioned and put in front of a masked man who would identify members of the Liberation Tigers of Tamil Eelam (LTTE).

[4] In April 1997, the claimant's brother lost five fingers after he picked up and tried to open a bomb he found in the field. The claimant was apprehended by the Sri Lankan army and handed over to the police who detained him for three days and accused him of being involved with the LTTE and hiding arms. After investigating, the police confirmed that the bomb had been dropped years earlier by the Indian peace-keeping force who had been in Sri Lanka.

[5] In 2001, the claimant left the country to go and work in Doha, and returned in 2004, at the end of his contract. The claimant then worked in XXXX and started a business in XXXX and XXXX with a vehicle he acquired. In December 2006, the Eelam People's Democratic Party (EPDP) came to the claimant's home and demanded money because they were aware that he had been working for three years abroad.

[6] In October 2008, the claimant was stopped at a checkpoint after speeding to avoid breaking the curfew. The claimant and his passenger were detained overnight and beaten when it was discovered that his passenger did not have his ID card.

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

[7] In April 2010, the EPDP came to the claimant's home and asked him for his vehicle to use in canvassing during the election. When he refused, the EPDP beat the claimant and accused him of being an LTTE sympathizer.

[8] In 2011, the claimant and three other neighbours were arrested after they had chased a man they discovered inside their compound. Following two days in detention, the claimant was released by the police after being questioned. Upon release, the police accused him of supporting the LTTE. Sometime after his release, members of the EPDP attempted to kidnap the claimant, but left after a crowd gathered. The claimant then went into hiding until arrangements were made with an agent to get him out of the country.

DETERMINATION

[9] 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

[10] The key issues in this case are whether the claimant has a well-founded fear of persecution and whether Colombo is a viable internal flight alternative (IFA).

Identity

[11] The claimant provided a copy of his birth certificate and National Identity Card,² as well as his Sri Lankan driver's licence³ in support of his identity. The panel is persuaded, on a balance of probabilities, that the claimant is who claims to be and is a citizen of Sri Lanka.

² Exhibit 1, Package of information from the referring CBSA/CIC.

³ Exhibit 6, Copy of the claimant's driver's licence, received.

Well-foundedness

[12] The claimant testified that he cannot return to Sri Lanka because he continues to fear the Sri Lankan army, the police, and the EPDP. The claimant provided a letter from his wife, dated October 28, 2018,⁴ which states that the EPDP came looking for him, three to four times after he left the country in 2011. There is insufficient evidence, including the letter from the claimant's wife, however, that either the army or the police have demonstrated any continued interest in the applicant. The claimant's interactions with the army or police were of short duration and he was released each time after a brief period of detention, ranging from one night to three days. The panel also notes that the applicant left the country on his own genuine passport and experienced no difficulty from the authorities on departure from Sri Lanka. The panel finds that there is insufficient evidence to indicate that the army or police have a continued interest in the claimant.

The EPDP

[13] The claimant's main difficulties appear to be as a result of his interaction with members of the EPDP. According to the claimant, his first encounter with the EPDP took place in December 2006, when they came to his home and demanded money because they were aware that he had worked abroad in Doha for three years. When they tried to take his vehicle, the claimant paid the EPDP members their extortion demand.

[14] The claimant indicated that his next encounter with the EPDP took place in April 2010, during the run-up to the 2010 elections in Sri Lanka. According to the claimant, the EPDP once again came to his home and asked him for his vehicle for their use in canvassing for the election. Since the vehicle was not at the claimant's home, the EPDP accused him of hiding it, beat him, and told him that he was an LTTE supporter.

[15] The claimant's last involvement with the EPDP occurred sometime in August 2011, after he had been released by the police for having participated in chasing down some individual with his neighbours whom they suspected was a thief. It was not clear as to why the police had accused

⁴ Exhibit 5, Letter from claimant's wife, received November 7, 2018.

the claimant and his neighbours of being LTTE supporters for having chased the individual. The claimant testified that they knew the individual they were chasing was an EPDP because of a similar event that had taken place in a neighbouring town. The claimant explained that, members of the public had caught and beaten a man, and were then accused by the army of being vigilantes organized by LTTE supporters. The panel finds that the claimant did not really “know” that the man he was involved in chasing was a member of the EPDP, but speculated based on a similar incident that occurred in the neighbouring town. The panel also finds that the incident in the neighbouring town does not indicate that the EPDP had been involved. The panel further finds that the claimant has tried to establish a connection between the EPDP, the army, and police in the incidents he experienced in order to establish a basis for his refugee claim. While the claimant may believe that the problems he experienced were a result of collusion between the EPDP, the army, and police, the panel finds that there is insufficient evidence to draw this conclusion.

[16] Sometime after the August 2011 incident, the claimant stated that members of the EPDP had tried to kidnap him when they pulled him from his vehicle. The EPDP members apparently left after the claimant shouted and people gathered. Again, it was not clear how the claimant knew that the men who tried to pull him out of his vehicle were members of the EPDP, or that, in fact, they were actually trying to kidnap, and not simply trying to steal his vehicle, since members of the EPDP had tried to take his vehicle on two previous occasions.

[17] The panel has reviewed and notes the following information regarding the EPDP in a Response to Information Request, March 17, 2017.⁵ The party was originally formed in the late 1980’s to fight alongside the LTTE, but later allied itself with the government and operated as a paramilitary outfit supporting Sri Lankan military forces against the LTTE. It was described in a 2016 report by the International Crisis Group as a “former Tamil militant group” that is part of the United People's Freedom Alliance, a “diverse coalition of parties.”⁶

[18] The US *Country Reports 2014* is also quoted in the RIR as stating that:

[t]here were persistent reports of close ties between progovernment paramilitary groups such as the [EPDP] and government security forces. Whereas during the war these groups served more of a military function, often working in coordination

⁵ Exhibit 3, National Documentation Package (NDP) for Sri Lanka (April 30, 2018), Item 13.11.

⁶ Ibid., at p. 13, s. 3.

with security forces, in the postwar environment they increasingly took on the characteristics of criminal gangs as they sought to solidify their territory and revenue sources.⁷ [footnotes omitted]

[19] *Country Reports 2014* further stated that:

[t]here were persistent reports that the EPDP ... engaged in intimidation, extortion, corruption, and violence against civilians in the Tamil-dominated district of Jaffna. Reports throughout the year especially focused on the role of EPDP members in issuing threats to opposition Tamil politicians or community members engaged in human rights cases that could bring disrepute on the government.⁸ [footnotes omitted]

[20] A 2016 report by the International Truth and Justice Project in Sri Lanka stated:

[t]he [EPDP], which plays a key role in brokering releases of the victims, is still operating with impunity. The modus operandi for abduction, detention, interrogation, torture, sexual violence and release in exchange for large payments to the security forces and human smugglers remains unchanged.⁹ [footnotes omitted]

[21] The panel further notes that recent country documents found in the latest National Documentation Package, 30 April 2018, such as the US Department of State Report, 20 April 2018; the Amnesty International Report, 22 February 2018; the Freedom House Report on Sri Lanka for 2017; and the Human Rights Watch World Report, January 2018, make no mention of the EPDP. The 2015 election in Sri Lanka saw the EPDP win only one seat.¹⁰ It would appear that the EPDP's power, at least political, has been diminished and as highlighted in *Country Reports 2014*,¹¹ its activities are focused in the Tamil-dominated north of the country.

[22] In reviewing the letter from the claimant's wife, there is no mention of when the EPDP visited the claimant's home in Sri Lanka, other than the statement: "EDPD men came searching for him [the claimant] 3-4 times after he left the country."¹² The panel notes that the claimant arrived in Canada in 2011 and, therefore, the three or four visits from the EPDP could have taken place some seven years ago, shortly after he left the country. The panel also notes that there was

⁷ Exhibit 3, NDP for Sri Lanka (April 30, 2018), Item 13.11, at p. 14, s. 3.1.

⁸ Ibid., at p. 14, s. 3.2.

⁹ Ibid.

¹⁰ Ibid., Item 4.2.

¹¹ Ibid., Item 13.11, at p. 13, s. 3.

¹² Exhibit 5, Letter from claimant's wife, received November 7, 2018, at p. 1, para. 3.

no explanation as to how the wife knew that it was the EPDP who had come to “visit” and inquire about the claimant. Understandably, as she states in the letter, she is “scared” as a woman living alone with her children. The EPDP, according to the claimant, have come to their home previously to extort money and tried to take his vehicle, when they discovered he had been in Doha for three years. If, in fact, the visits were by individuals from the EPDP, they are aware that the claimant has left the country and is living in Canada. They would be interested in his return, as the letter indicates, to possibly extort him once again, given perceptions that he would be coming from a wealthy country.

[23] The panel has considered the letter from the claimant’s wife and has concerns with its reliability, in light of its source. The panel assigns little weight to the letter from the claimant’s wife. 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.¹³

[24] The claimant’s counsel has submitted that the claimant’s risk is not generalized, that he has been targeted by the EPDP because of perceived political opinion that he is an LTTE supporter or sympathizer. Counsel submits that the EPDP is connected with the government and therefore by extension, the agent of persecution is the state.

[25] The panel finds that while the EPDP worked with Sri Lankan security, especially during the conflict with the LTTE which ended in 2009, and that they have been connected to the former Rajapaksa regime, there is insufficient recent evidence that they continue to be a significant force or have their previous level of connection to the security forces and government. As one of the sources quoted in 2016 in the Sri Lanka COI Compilation, December 2016 stated:

“[W]ith the exit of Mahinda Rajapaksa from power, paramilitary wings have lost much of their influence and relevance to pressurize people”, and that “Military Intelligence, which had enjoyed a lot of patronage during the previous regime to

¹³ *El Bouni, Haidar v. M.C.I.* (F.C., no. IMM-7627-14), Annis, June 2, 2015, 2015 FC 700.

use paramilitary as coercive instrument of power outside the pale of law, is at present under a lot of pressure from the government”.¹⁴ [footnotes omitted]

[26] The panel also notes that the EPDP’s interaction with the claimant has essentially been one of a criminal nature, based on extortion and intimidation. As stated in *Country Reports 2014*: “...they [the EPDP] increasingly took on the characteristics of criminal gangs as they sought to solidify their territory and revenue sources.”¹⁵ The panel finds that his interactions with individuals whom the claimant believes were members of the EPDP were of a criminal nature. Given the huge number of Tamils who have worked abroad, or have a member of their family currently living in the Tamil diaspora, the panel finds that the risk faced by the claimant is one generally faced by most Tamils, especially in the north of Sri Lanka, where the Tamil population in the country is most concentrated.

IFA in Colombo

[27] In the alternative, the panel has put forward Colombo as a viable IFA destination for the claimant. The claimant’s counsel asked the claimant if he could go to Colombo. The claimant replied that he could not because rent is too high and because it would be difficult to get a job, having been out of the country for so long. The claimant also stated that when he enters the country, the army and the EPDP would know and inform the police in Colombo and he would be in trouble because they still suspect he is an LTTE sympathizer. The claimant’s counsel has submitted that because the EPDP is associated with the army and given the small size of the country, there is no IFA for the claimant.

[28] The panel notes that the Australian Government’s DFAT Report, January 2017, on Sri Lanka states that unemployment in Sri Lanka is relatively low (4.7 per cent in 2015) and that education is generally of a high level.¹⁶ The claimant is still relatively young at XXXX years of age and, given the low levels of unemployment, it is reasonable to expect that, as a Sri Lankan national, he would not face insurmountable barriers to employment in Colombo, where it would be reasonable to expect more opportunities than in a small town in the north. The panel also notes that the claimant has two young daughters currently living in the north with his wife. A move to

¹⁴ Exhibit 3, NDP for Sri Lanka (April 30, 2018), Item 1.12, at p. 50, s. 2.1.4, para. 5.

¹⁵ Exhibit 3, National Documentation Package (NDP) for Sri Lanka (April 30, 2018), Item 13.11, at p. 14, s. 3.1.

¹⁶ Ibid, Item 1.13, at p. 7, ss. Education & Employment, paras. 2.15 - 2.18.

Colombo would provide them with greater access to education. It is to be expected that rent in the largest urban centre in the country will be higher than in the primarily rural areas of the north. Nonetheless, the panel does not find higher rents to be sufficient reason to rule out Colombo as a viable IFA. Reasonably, as well, one would also expect wages to be higher in Colombo than in Chulipuram-Jaffna area, where the claimant's home is currently located.

[29] The claimant has also stated that he would be “in trouble” in Colombo because the police in Colombo would be informed of his presence there by the EPDP, and would target him because he is a suspected LTTE sympathizer. The panel finds that there is insufficient evidence to conclude that the EPDP is currently associated with army or any other government agency. While the EPDP may have had a direct relationship with state agents, the panel finds that there is insufficient evidence to conclude that the EPDP is currently working with the army or police. Further, the panel will demonstrate in the next section, the claimant's profile is not one that will attract negative attention by the authorities. While the panel acknowledges that the authorities will initially note that he has been abroad for some eight years living in the Tamil diaspora, they will find that he is not wanted for any crimes, that he left the country legally, and that any interaction with authorities in the past did not indicate any support for or significant involvement with the LTTE. The panel, therefore, finds that the claimant will not experience any significant difficulties or face persecution were he to return to Sri Lanka and settle in Colombo.

The Claimant's Risk Profile

[30] The panel finds that, since the claimant has not adduced any evidence that he has been involved in any Sri Lankan-related political activities during his time in Canada, there is, therefore, no evidence for authorities to conclude that he is opposed to the government or in any way supportive of pro-LTTE activities. In light of his lack of political involvement, and the political changes in Sri Lanka since the claimant has left, the panel finds that there is insufficient evidence to conclude that authorities would have adverse interest in him, even given his past experiences in the country.

[31] 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.”¹⁷

[32] 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.¹⁸

[33] 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 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.”¹⁹ 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.

[34] 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’ ”.²⁰ 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

¹⁷ Exhibit 3, NDP for Sri Lanka (April 30, 2018), Item 13.7, at p. 6, para 1.

¹⁸ Exhibit 3, NDP for Sri Lanka (April 30, 2018), Item 2.2, at p. 1, s. Arbitrary arrests and detentions, para. 1.

¹⁹ Ibid., Item 13.1, at p. 3, s. 1.1, para. 2.

²⁰ Ibid., at p. 7, s. 2.1, para. 1.

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.

[35] The claimant has stated that he believes that he will experience problems as soon as he arrives in Sri Lanka because authorities there have demonstrated an ongoing interest in him. As stated, the panel finds the claimant's assertions of ongoing interest in him by authorities to be unsupported by his evidence and his fears not to be well-founded. The panel also finds the letter from his wife, as evidence of ongoing interest in the claimant by the EPDP, to be unreliable. The panel finds, therefore, that the claimant has provided insufficient reliable evidence as to why the EPDP or indeed the current regime would be interested in him.

[36] 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.²¹ [footnotes omitted]

[37] The panel notes that the claimant 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.²²

²¹ Exhibit 3, NDP for Sri Lanka (April 30, 2018), Item 1.4, at p. 6, s. 2.3, para. 2.3.3.

²² Ibid., at p. 7, s. 2.3, para. 2.3.9.

[38] The claimant 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 claimant's activities subsequent to his departure from Sri Lanka do not indicate any reason for any particular interest in him by authorities. The panel also notes that, in 2011, the claimant was released after two days and fined 40,000 rupees (\$295 CAD). The panel finds that, had the authorities had any concerns as to potential LTTE ties, he would not have been released.

[39] The panel has also considered the evidence regarding failed asylum-seekers, given the particular circumstances of this claimant. In light 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 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 he 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.²³

[40] The panel finds that the claimant has provided insufficient evidence to support his stated fear of the EPDP, the army, and the police. Given that the claimant has not had any apparent 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.

CONCLUSION

[41] 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

²³ Exhibit 3, NDP for Sri Lanka (April 30, 2018), Item 1.4, at p. 6, s. 2.3, para. 2.3.3.

satisfied the burden of establishing a serious possibility of persecution on Convention grounds, or that, on a balance of probabilities, he would be subject personally to a danger of torture, or face a risk of cruel and unusual treatment or punishment, if he were returned to Sri Lanka.

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

(signed)

“Anthony da Silva”

Anthony da Silva

December 5, 2018

Date