

**IN THE IMMIGRATION APPEAL TRIBUNAL**

**YS(Ceasefire - Risk on Return -  
Detention - Jeyachandran) Sri  
Lanka [2004] UKIAT 00003**

Heard: 25.11.2003  
Signed: 25.07.2013  
Sent out: 14.01.2004

**IMMIGRATION AND ASYLUM ACTS 1971-99**

Before:

**John Freeman** (chairman)  
and  
**Andrew Jordan** (vice-president)

Between:

**Secretary of State for the Home Department,**  
appellant

and:

**DECISION ON APPEAL**

Mr M Blundell for the Secretary of State  
Mr J Collins (counsel instructed by Rasiah & Co) for the claimant

This is an appeal from a decision of an adjudicator (Mr JK Stanford), sitting at Surbiton on 25 February, allowing an asylum and human rights appeal by a Tamil citizen of Sri Lanka. Leave was given to challenge the adjudicator's finding of exceptional circumstances (see below).

- Jeyachandran [2002] UKIAT 01869** (written by Collins P) sets the scene for appeals of this type under current conditions, as both sides were aware. While the circumstances of each individual case (of a Sri Lanka Tamil) still need to be considered, "... it is only the exceptional cases that will not be able to return in safety." (§ 8) Since those words were written, the situation has changed markedly for the better: in the course of the third week of September 2002, the ban on the Tamil Tigers was lifted, and peace talks started between them and the government. By 5 December, those talks had resulted in a joint declaration, described by the BBC as a 'breakthrough', by the government side as 'irreversible', and by the Tamil Tigers as 'historic'.

3. While there is still no concluded peace agreement, for which the government would need a two-thirds majority in Parliament, and which the President still opposes; while negotiations between the parties are currently suspended; and while a number of atrocities leave room for doubt as to the Tamil Tigers' commitment to democracy in the areas they control, it must be perfectly clear to any reasonable person that the tide of history has turned, leaving many claims of this kind high and dry on the shores of the past. There is certainly nothing to be gained from reference to any case heard before **Jeyachandran** came out on 10 June 2002. We have to decide this case on an individual basis; but it remains clear that, for such an appeal to succeed, it must indeed be exceptional. The peace process is, regrettably, stalled at present; but there is nothing to show it is no longer in being. There have been recent disquieting events on the political front in Colombo; but nothing to show that the situation on the ground has changed so far, or is likely to do so in the immediately foreseeable future.

4. The effect of **Jeyachandran** was considered by the Court of Appeal in **Selvaratnam [2003] EWCA Civ 121**. They endorsed the approach in **Jeyachandran**, though they took the view that it had been misapplied in the case before them. The clearest explanation is *per* Peter Gibson LJ at § 16:

*... it is only in exceptional cases that a person returned to Sri Lanka will attract the attention of the authorities there and that such persons are likely to be limited to those who are wanted persons. The question is whether the case of the applicant is an exceptional case as a person likely to be of interest to the Sri Lankan authorities and so likely to be detained, it being conceded that, once he is detained, there is a substantial risk of persecution.*

That is the question before us in the present case

5. The Court of Appeal revisited the question of the approach to be taken by the Tribunal in cases of this kind in **Indrakumar [2003] EWCA Civ 1677**. In the judgment of Hale LJ, at paragraph 13, she sets out a number of different types of appeal. Both sides rightly agreed the one with which we are concerned is that at sub-paragraph (iv):

*There are findings as to the application of those general country conditions to the facts in the particular case. There will be an inference to be drawn by the adjudicator and then, if appropriate, by the Tribunal. The Tribunal will be entitled to draw its own inferences, just as is the appellate court under the CPR, once it has detected an error in the adjudicator's approach."*

6. Hale LJ goes on at paragraph 14:

*How should those principles be applied to this case? The question, as I have already indicated is whether the Tribunal was simply taking a different view from the adjudicator. If that were the case that would be an error of law on the part of the Tribunal, with which this Court could interfere. On the other hand, was the Tribunal, having found an error in the adjudicator's approach, simply substituting its own inferences for those drawn by the adjudicator? This is something that the Tribunal is entitled to do and this Court cannot interfere.*

7. The history in this case is clearly set out by the adjudicator and the significant part consists in four periods of detention. First, from February to June 1998 when the claimant was detained by the Tamil Tigers on suspicion of being a spy for the Sri Lankan Army. He said that they had ill-treated him although the adjudicator did not accept that. The second was between July 1998 and August 1999 when most unfortunately this time he was detained by the Sri Lankan Army as a suspected spy for the Tamil Tigers. The third was from September 1999 to December 1999 when he was detained by PLOTE, a paramilitary Tamil organisation on the Government's side, in Vavunya. He was further ill-treated which resulted in his being taken to hospital from where he escaped.
8. The adjudicator accepted both those periods of detention, as also the fourth, which took place in Colombo in January to February 2000, resulting in his release on bribe, and departure for this country. It has not been suggested at any stage in this appeal that the adjudicator was not entitled to make those primary findings of credibility. The question before us is as to the consequences which should have ensued. The adjudicator's view of that appears at paragraph 35:

*I find that although this appellant may not be on a wanted list in relation to particular crimes there is a serious possibility that he will be on the security service files. He has been in their custody twice and detained also by the LTTE and PLOTE and was not released in a way which demonstrated a clear conclusion that they were no longer interested in him. I find that if he were to be detained then again his scarring may fuel any suspicions held that he is a member or supporter of the LTTE. That could again lead, despite the progress made towards a ceasefire and peace agreement, to detention and torture or other ill-treatment while in detention. I find that this appellant is in exceptional circumstances.”*

That view is led up to by what the adjudicator had to say in his credibility findings at paragraph 24:

*I find that he has been caught up in a spiral of suspicion, his detention by one group probably triggering suspicions by others.*

9. Both sides agree that there was and is no specific evidence in this case about any interest there might have been in this claimant by what in this country we should call the security services, as opposed to the security forces. The security forces (army and police) clearly were responsible for his second and fourth detentions, and to some extent for the third, although most of that was in the hands of PLOTE, who are their collaborators. We take the view that the adjudicator must have intended to refer to the security forces and not “security service” at paragraph 35. Mr Blundell's case is that takes this claimant out of the exceptional circumstances required by **Jeyachandran**. There is the additional point that the latest of these events took place a whole year before the ceasefire in Sri Lanka, which the adjudicator does not seem fully to have taken into account in his credibility findings or conclusions; and there is nothing to show that the claimant is still wanted, as required in terms of **Selvaratnam**.

10. Mr Collins, rightly in our view, puts forward the third detention from September to December 1999 in Vavunya as being the significant one. That is not because of any reason for it as to which there is and was no evidence but because it was ended by the claimant's escape from custody which, if not exactly lawful, was at least in the hands of the authorities' allies. Mr Collins, however concedes that there is no visible link between that detention and the last of January to February 2000 in Colombo and that the latest records likely to exist on this claimant are likely to justify his release from that last detention. Mr Collins does not rely on the claimant's scarring except, as the adjudicator did, to say that if the other facts in the case resulted in a significant enough interest in this claimant for him to be detained and strip searched then it would come to light.
11. Mr Collins has taken us through the background evidence as to recent events. The passages to which he referred us come first from a BBC release of 22 April 2003 and the headline says most of what needs to be said, "*Sri Lanka steps up security: Sri Lankan President Chandrika Kumaratunga has placed security forces on a state of high alert*". This had followed the suspension of peace negotiations by the Tamil Tiger side, to which we have already referred. The next item on which Mr Collins relied was a Guardian item of 21 August 2003 headlined, "*Plot to kill Sri Lankan President*". This is said to have resulted in increased security in the capital, Colombo, where the plot was due to be carried out. Mr Collins suggests that the increased security may also extend to Colombo Airport to where, if at all, this claimant would be returned. There is no specific background evidence about that: as most people dealing with these cases know, the evidence had always suggested that those returned there were questioned, whether or not they were Tamils, and it seems nothing has changed in that respect.
12. Mr Blundell concedes that recent events and the current stand off between the President and the Prime Minister are disquieting, as we have already indicated; but his main submission is that there is nothing in them to show any revival of interest in persons such as this claimant.
13. In our view the adjudicator's decision is extremely well set out, and in that respect almost a model of its kind. He deals with the evidence at paragraphs 10-15, sets out his findings at paragraphs 24-31 and draws his conclusions at paragraphs 34-36, all in chronological order, a principal not always respected by adjudicators or others. However, we are left with his reference, which clearly he regarded as significant, to the "security service". The adjudicator seems to have regarded that as taking this claimant outside the normal run of cases of this kind. If it were to be looked at on that basis, then clearly it was a figment of his imagination. The history of army and police detention accepted in this case, though regrettable, is nothing extraordinary for cases of this kind before the ceasefire; and, as we already noted, the adjudicator does not remind himself anywhere in his findings or conclusions that these events had all ended a whole year before that happened. There does not seem to have been anything before him, and there is certainly nothing before us, to show why any interest there might have been in this claimant in the state of affairs at that time should have revived by the present.

**14.** If we had to consider whether this adjudicator was plainly wrong in his decision then we should unhesitatingly say that he was; but on the authority of **Indrakumar** that is not the question before us. We start from those errors of the adjudicator, which in our view led him to a wrong approach to the way that this claimant would be affected by the general situation in Sri Lanka, and so to take a wrong view as to whether he would be at any real risk on return. In our view of all the evidence before us, the right conclusion is that the claimant's history, for the reason we have already given, would not put him at any real risk on his return, and it follows that this appeal is allowed.

**Appeal allowed**

A handwritten signature in black ink, appearing to be 'JF', written in a cursive style.

**John Freeman** (chairman)