

jh
Heard at Field House

MS (Risk on Return -
Detention - India - "Q"
Branch) Sri Lanka [2003]
UKIAT 00124

On 14 October 2003
Dictated 14 October 2003

IMMIGRATION APPEAL TRIBUNAL

notified: Date Determination
31.10.03

Before
:

Mr Richard Chalkley (Chairman)
Mrs A J F Cross De Chavannes

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Mr J Collins of Counsel, instructed by Rasiah & Co, Solicitors, appeared on behalf of the appellant and Mr D Ekagha, a Senior Home Office Presenting Officer, appeared on behalf of the respondent.

DETERMINATION AND REASONS

1. The appellant, a citizen of Sri Lanka, appeals with leave of the Tribunal against the determination of an Adjudicator, Ms Susan B Pitt, who, in a determination promulgated on 9 April 2003, following a hearing at Taylor House on 31 March 2003, dismissed the appellant's appeal against the decision of the respondent, taken on 13 March 2001 to refuse to grant leave to enter after refusing asylum.

2. The appellant's claim that he was forcibly recruited as a driver by the LTTE in 1990. As a result of internal divisions within the LTTE he was detained by them in 1992. In December 1997 he managed to escape and fled to Southern India in March 1998. While in India he was arrested by security officials on suspicion of being a member of the LTTE and was held in gaol without charge until October 2000 when an uncle of his, who travelled to India on business, secured his release on payment of a bribe. He then travelled back to Colombo in December 2000 but was arrested at the airport by the authorities and accused of LTTE connections. He was detained for two months in prison until his uncle was able to obtain his release by bribing a prison official. The appellant then fled Sri Lanka, fearing both the LTTE and the authorities. He claimed asylum on his arrival in the United Kingdom on 6 February 2001.
3. The grounds of appeal challenge the Adjudicator's findings and suggest that her reasoning is irrational. At paragraph 10 of the determination the Adjudicator accepts that the appellant gave a generally consistent and accurate account, and at paragraph 11 she referred to medical reports submitted on his behalf. However, she did not accept that the reports were determinative evidence of his account, despite the fact that serious scars had been noted by the doctor who gave the opinion that causation was likely to be as asserted by the appellant. The grounds also challenge the Adjudicator's failure to accept the appellant's means of escape from the LTTE, because they were somewhat similar to his sister's account of her escape via a toilet. The grounds assert that the appellant's sister's account was irrelevant as to the appellant's claim and submitted that the coincidence of the sister's account of how she escaped from detention should not have played any part in the Adjudicator's assessment of the appellant's own escape. The grounds also suggest that at paragraphs 16 and 17 of the determination the Adjudicator indulged in speculation and that there was nothing incredible about his returning to Sri Lanka after securing his release in India, or by him stating that he had nowhere else to go. The Adjudicator did not accept that the appellant would be able to secure his release on payment of a bribe after he had been detained in Sri Lanka in February 2001, but given the fact that bribery is endemic in Sri Lanka this finding is irrational. The grounds suggested that given the current volatility in Sri Lanka the Adjudicator erred in finding that the appellant would not be at risk of ill-treatment on return.
4. In his submissions to us, Mr Collins suggested that the Adjudicator's conclusions did not stand up to scrutiny. The

Adjudicator accepts that the appellant was a member of the LTTE and that following internal disagreements he was held in custody for two years, until he managed to run away in 1997 and go to India. While he was in India he was held by "Q" Branch of the Security Services and, Mr Collins suggested, if it was accepted that he was held by "Q" Branch in India then there must be a serious possibility that they will have passed on information concerning the appellant to the Sri Lankan authorities. That, he suggested, explained the appellant's swift detention on return once he had secured release in India. He was known to have been involved in the LTTE. On his return to Sri Lanka now, he would simply be detained again. In recent months there has been a serious deterioration in the situation in Sri Lanka. He relied on paragraph 4.76 of the CIPU report of April 2003, an extract of which he handed to us. He suggested that security had been tightened in Sri Lanka and as a result the Tribunal should exercise increased caution. While scarring is not an overriding concern, the fact that this appellant does have scarring indicates that he has been mistreated in the past. The Adjudicator accepts that he was an LTTE member and the authorities in Sri Lanka know that this appellant has been detained in India. So far as the Adjudicator's findings in relation to his escape from LTTE custody is concerned, on any proper view it was, submitted Mr Collins, entirely plausible that he could have escaped in the way in which he described to the Adjudicator. The Adjudicator's approach was irrational and in the circumstances the appeal should be allowed.

5. Mr Ekahga submitted that the determination was sustainable. The Adjudicator did not believe that the appellant had been held in custody in India and did not believe that if he had been he would have returned to Sri Lanka. She did not therefore accept that he had been detained on his return to Sri Lanka or that he would have been released on payment of a bribe. He invited us to dismiss the appeal. In his closing remarks to us, Mr Collins submitted that the appellant was known to have had involvement with the LTTE. It was to escape from the LTTE that he went to India. The authorities will know of his involvement with LTTE and that will cause him to be at risk.
6. We reserved our determination.
7. We have concluded that we must dismiss this appeal.
8. We handed back to Mr Collins a bundle of documents which had been submitted by his instructing solicitors but only within the last few days and not in accordance with directions that had been clearly issued by the Tribunal. We permitted him to

hand in pages 101 and 102 of the Sri Lanka April 2003 Country Information and Policy Unit Report.

9. The Adjudicator found that the appellant gave generally consistent evidence across his interview and his witness statement, and in oral evidence and that he was accurate as to the sequence of events in his account and the dates. She found it credible that he was a member of the LTTE. In dealing with the medical evidence, the Adjudicator noted that the appellant may have had a broken ankle and has back pain. She reports on the asylum medical care report and notes the scarring referred to in it. In his conclusion, Dr Costa said:

"[The appellant] has scars which, in my professional opinion, on the balance of probability, are compatible with his allegations of how they were sustained."

The Adjudicator notes that the scars were not particularly serious and could have been incurred in various other ways than that described by the appellant. She did not find that they were determinative evidence of his account and noted that in his submissions, Mr Collins accepted that scarring was no longer considered to be a significant issue on return to Sri Lanka. The Adjudicator did not accept that scarring would be a significant factor on return. We find that contrary to paragraph 5 of the grounds, the Adjudicator did take the report into account. Simply because the author believed, "on balance of probability" they were compatible with the appellant's allegations of how they were sustained, did not believe that they could not have been sustained in some other way.

10. In relation to the appellant's escape from the LTTE, the Adjudicator noted at paragraph 14 of her determination that he claimed he had escaped by going through the side of a latrine which was screened by palm leaves. What she said was that she did not find it plausible,

"that someone the LTTE would want to detain for two years would be able to escape in such a simple fashion. He stated that his escape could be linked to or somehow explained by the assassination of the Deputy Leader of the LTTE in 1997. He did not elaborate on this and I am unable to see any connection."

11. Having found the appellant's account of his escape to be implausible, she then went on to note that the account was rendered even more implausible when the appellant's sister also stated at the hearing that she too escaped from the LTTE whilst using a latrine. The Adjudicator found that this undermined the appellant's account of actually being detained

by the LTTE. We find there to be no merit in paragraph 6 of the grounds of appeal. The appellant's sister's account of how she escaped from detention did not play any part in the Adjudicator's assessment of the appellant's own escape. What the Adjudicator did was to find it implausible and then note the coincidence.

12. The Adjudicator went on in paragraph 16 to find it implausible that the appellant would choose to return to Colombo in December 2000 when he had been in detention in India as a suspected LTTE member. She notes that there was a possibility that, had he been held in detention in India, the authorities would have passed details to the Sri Lankan authorities. She notes also that if it was possible for the appellant's uncle to obtain false passports to enable the appellant to travel to India, there would have been no reason why he could not have been sent to somewhere safer than Sri Lanka. She noted also that during the appellant's interview he stated that his uncle had said that he had a friend in Colombo who would take him away, and this suggested to the Adjudicator that there was an intention for the appellant to leave Sri Lanka again or that he was to go into hiding there. In oral evidence he said he went back to Sri Lanka because he had nowhere else to go. She found that these statements were not compatible and she did not believe his account of having returned to Sri Lanka in December 2000 to be credible. We find there to be no merit in paragraph 7 of the grounds. The Adjudicator's findings were ones which, on the evidence before her, she was entitled to make. The Tribunal find that it would have been illogical for the appellant's uncle to have secured the appellant's escape from custody in India, only to return the appellant to Sri Lanka when it must have been obvious that, if the appellant had been held by "Q" Branch of the Security Services on suspicion of being a member of a terrorist organisation, the Indian authorities were more than likely to have made enquiries of the Sri Lankan authorities which would only have alerted the Sri Lankan authorities and put him at risk if he were to return to Sri Lanka. In the event it would have been illogical for the appellant to return to Sri Lanka in order that his uncle's friend could then send him away. There would have been no need for the appellant to have returned to Sri Lanka; he could simply have left India for a third country.
13. A challenge was made to the fact that the Adjudicator did not accept that the appellant would have been released on payment of a bribe on his return to Sri Lanka when he was detained by the Sri Lankan authorities. In actual fact the Adjudicator clearly did not believe that the appellant ever did

return to Sri Lanka, but what she does in paragraph 17 is simply to find it incredible that if he had returned to Sri Lanka and been detained by the authorities because of his membership of the LTTE, as claimed by the appellant in oral evidence, she did not believe that he would have been released, even on payment of a bribe. Given the background evidence which suggests that over the 18 years or so of the war in Sri Lanka, members of the LTTE had committed the most appalling human rights abuses, the Tribunal find that the Adjudicator was entitled to reach that conclusion. In any event, as we have already said, it is perhaps academic since the Adjudicator did not believe that the appellant had ever gone to India in the first place, and could not believe that if he had gone to India he would have returned to Sri Lanka after securing his release on payment of a bribe.

14. There was no credible evidence before the Adjudicator that the authorities in Sri Lanka had ever known of the appellant's involvement with the LTTE, neither was there any credible evidence before the Adjudicator that the appellant was of any interest to the Sri Lankan authorities. The Adjudicator carefully considered the objective evidence before her and found there was no reason to believe that he faced a real risk of mistreatment if returned to Sri Lanka. We note that there have been difficulties with the peace talks. At paragraph 4.874 to 4.84 of the Sri Lanka Country Information and Policy Unit Assessment (being the extract handed to us by Mr Collins) shows a clear downward trend in child recruitment and in other ceasefire violations by both sides. We note that in April this year the LTTE suspended participation in the peace talks but indicated that they had no intention of breaking the ceasefire. We have concluded that the Adjudicator did properly evaluate all the evidence before her and make a proper assessment of the appellant's claim. Her findings are supported by clear reasons and on the evidence before her were ones which she was entitled to reach.
15. We have concluded therefore, that for all these reasons we must dismiss this appeal.

Richard Chalkley
Vice President