Appeal No:	**HX/ 17516/2001 CC/ 12439/2001**
STARRED	**AE FE (PTSD-Internal Relocation) Sri Lanka * [2002] UKIAT 05237**

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing:	**10 July 2002**
Date Determination notified:	12 November 2002

Before:

The President, The Hon. Mr Justice Collins
Mr. C.M.G. Ockelton
Mr. K. Drabu

Secretary of State for the Home Department	Appellant
And	
A.E. and F.E.	Respondents

For the Appellant: Ms Lisa Giovannetti
For the Respondents: Mr Raza Husain

DETERMINATION AND REASONS

1. The respondents in this case are husband and wife, aged 51 and 41 respectively. They are Tamils from Sri Lanka. They arrived separately in the United Kingdom, the wife and their four children in early 1999 and the husband in July 1999. Each claimed asylum. The wife was interviewed on 20 February 2000 and her claim was refused on 29 March 2000, about a year after she had made it. Her husband made his claim on 6 July 1999 but failed albeit by only a few days to submit the required SEF. For some reason, it took until

15 September 2000 for his claim to be rejected on the grounds of non-compliance with his obligation to submit a SEF.

2. Each respondent appealed to an adjudicator. The two appeals were separate. However, they were heard together pursuant to Rule 42 of the Procedure Rules and the adjudicator (Richard McKee) gave determinations which were identical (save for the heading) for each. The appeals, which related only to the asylum claims since the refusals had in each case been made before 1 October 2000, were allowed. The adjudicator's determinations were promulgated on 26 June 2001. On 9 August 2001 the appellant was given leave to appeal. Unfortunately for various reasons including a change of representatives and illness which required an earlier hearing date to be vacated the appeals could not be heard until 10 July 2002. Further delay has resulted from the incidence of the long vacation and the President's involvement with SIAC hearings. It is regretted.

3. The adjudicator allowed the appeals on the basis that the husband had a well-founded fear of persecution in the north of Sri Lanka where the family had lived because of his involvement with the LTTE and evidence which the adjudicator accepted that when he left Sri Lanka the army was looking for him. He had been detained and tortured in 1998. He was released following the payment of a bribe but resumed his activities on behalf of the LTTE. These were at a low level involving provision of transport (he had a small transport business) but the army got to know what he was doing and came looking for him. The wife had no well-founded fear of persecution herself. The adjudicator allowed the appeals on the basis that it would be unduly harsh to expect the family to relocate to Colombo even though neither husband nor wife were reasonably likely to be persecuted there. This was because of psychiatric evidence that the wife was suffering from major depression and post traumatic stress disorder (PTSD) resulting from her experiences with the army in Sri Lanka. We shall in due course set out the relevant circumstances in greater detail.

4. In his grounds of appeal, the appellant sought to rely on a tribunal determination *Antonipillai* (16588: 12 July 1998) to support his contention that the wife's mental condition was not such as justified the adjudicator's conclusions. In granting leave to appeal, the President indicated that that determination needed reconsideration since it might be unduly restrictive. Accordingly, it was anticipated that this decision would be starred.

5. We must now set out the salient facts as found by the adjudicator. Since 1987 the husband had been assisting the LTTE on and off by the provision of transport and the wife had done some occasional cooking for them. In January 1998 he was arrested by the army

and was kept in detention until June 1998 when he was released following the payment by his wife of a bribe of 50,000 rupees. Whilst in detention, he was severely ill-treated, being punched, kicked and beaten with plastic pipes. A medical report from a Dr Nandi recounted that the husband had said that his hands had been placed on a table and repeatedly struck with a sand-filled pipe and on one occasion his left hand had been cut by a bayonet. He had scars consistent with his account of the treatment he had suffered. Following his release, he was reluctant to assist the LTTE any further, but in September 1998 he resumed his activities because he feared that otherwise his eldest son, by now 16, would be recruited instead. In January 1999 the army came looking for him but he had gone into hiding. The army molested and assaulted his children and, according to his wife's answers in interview, 'tried to be funny and had sexual harassment' to her. She did not then allege that she had been raped. Fear of further visits by the army led to the decision to leave Sri Lanka. The family went to Colombo, managing to avoid road blocks, and with the help of agents, made their separate ways to the United Kingdom. The husband had to remain in Colombo after his wife and children had left. He stayed with and was assisted to find an agent by a cousin.

6. The adjudicator was considering the situation in Sri Lanka as at 31 May 2001. It has changed since then following the recent cease fire which seems still to be holding. The adjudicator's conclusion is set out in these words: -

> "There is a serious possibility that the Security forces in the Jaffna area will remember him if he returns, even after a gap of more than 2 years. He has a current well-founded fear in the north of the island".

That conclusion is now unlikely to be correct. However, the appellant did not seek to challenge it before us and the respondents' counsel was not required to consider it. In the circumstances, we are prepared to accept the adjudicator's conclusion and to approach this appeal on the basis that the husband has a well-founded fear of persecution in his home area, namely the north of Sri Lanka. But, as we have already noted, the adjudicator made no such finding in relation to the wife and decided that neither was reasonably likely to be persecuted in Colombo. The husband's scars, though visible, were not likely to be material since his age was such as not to put him at risk of being rounded up nor would he be likely to be interrogated on return. These findings have not been challenged and they are undoubtedly correct in the light of the present situation in Sri Lanka.

7. What led the adjudicator to allow the appeals was the psychiatric condition of the wife. He relied on a report by Dr. Stuart Turner

dated 21 November 2000. This was based on an interview "which took place on 17 October 2000 and lasted for about an hour". Dr. Turner had a copy of the wife's asylum interview and there was an interpreter present. He has considerable expertise in dealing with patients who have suffered reactions to traumatic stress, being a consultant in the Traumatic Stress Clinic which is a national referral centre in the NHS for traumatic stress reactions. He has an impressive curriculum vitae. The adjudicator's comment that he is an acknowledged expert in the field may well be correct.

8. However, his expertise and qualifications do not necessarily mean that his views must be accepted without question. The I.A.A. is accustomed to receiving reports from psychiatrists which indicate that the asylum seeker in question is suffering from depression or PTSD or both. That there should be a large incidence of PTSD in asylum seekers may not perhaps be altogether surprising, although we are bound to comment that what used to be considered a relatively rare condition seems to have become remarkably common. Asylum seekers may be found not to be refugees and in many cases accounts when tested before adjudicators are found to lack credibility. But many who try to come to this country have suffered at least deprivation and poverty and may well have suffered ill-treatment or discrimination which does not amount to persecution or persecution for a Convention reason. They are all desperately anxious not to have to return to their country of origin and may well have spent large sums of money they and their relations can ill afford to get here. It is hardly surprising that they should suffer at least depression so long as their situation is not settled and there is a real chance that they may be refused entry and returned. In this case, Dr. Turner notes that PTSD can be treated effectively but that such treatment may not be effective when the individual feels insecure and there is a risk of return. He suggests that the wife be given exceptional leave to remain so that she can have treatment, but that will not resolve the uncertainty or the risk of eventual return.

9. The adjudicator refers to Dr. Turner's 'long and careful examination'. We are far from persuaded that that is an apt description of an examination which lasted for about an hour and which was not assisted or followed up by a sight of her General Practitioner's notes. Dr. Turner says: -

> "She told me that she gets some tablets from her general practitioner but hadn't got these with her".

He examined her in October 2000. The hearing before the adjudicator was in May 2001 and before us was in July 2002. No further medical evidence was forthcoming and in particular no

indication was given that any treatment had been sought or provided. Dr. Turner does not seem to have been asked to pursue the matter any further.

10. Doctors generally accept the account given by a patient unless there are good reasons for rejecting it or any material part of it. That is not and is not intended to be a criticism. There is no reason why a doctor should necessarily probe the history or approach his patient's account in a spirit of scepticism. But this does mean that the doctor's conclusions will sometimes be seen to be flawed if it transpires that the account is not credible. That is not the position here, but it illustrates the danger of uncritical reliance on in particular psychiatric reports. In this case, Dr. Turner records that he did ask why she had not disclosed the rape in interview. Her explanation that there was an interpreter present was hardly persuasive since there was an interpreter present when she was being seen by Dr. Turner. Nor does her explanation that her solicitor had told her to tell the truth carry great weight: she must have appreciated the need to tell the truth at all stages. Dr. Turner comments that her mental state was such that it was entirely understandable that she should not have mentioned the rape and added to this were the cultural inhibitions. This reasoning has not been tested. However, she did, it seems, break down when the issue was raised before the adjudicator (see Paragraph 8 of his determination). The adjudicator accepted that she had been raped and in all the circumstances we do not believe that we should do other than accept that finding.

11. Dr. Turner recommended that she should undergo treatment. He says: -

> "She seems to be on some form of medication, although this was not available to me. It may be that much more could be done to improve her drug treatment regime".

There is no evidence that anything has been done to follow up this recommendation or the alternative psychiatric treatment. It is true that Dr. Turner thinks that there is a need for security in this country, but the refusal of asylum meant that that was not the position and exceptional leave to remain would not provide security since it would only last for a limited period. We are bound to say that we are not impressed by Dr. Turner's report. It is based on a relatively short interview and there has been no attempt to discover what treatment she was receiving. We are not ourselves experts and it might be said that we are not in a position to reject the opinions of those who are. But we are accustomed to seeing a large number of psychiatric reports in these cases and the same conclusions are reached in very many of them. We know that PTSD

is something which needs careful diagnosis and detailed consideration of individual cases. We know too that the process of seeking to make a new life in the United Kingdom and the circumstances which triggered that process may well lead to depression or worse if obstacles seem to be arising.

12. The adjudicator's reasons for allowing the appeals are set out in Paragraph 13 of his determination. He says: -

> "However, I find it unduly harsh to expect this family to relocate to Colombo. Two of the sons are now 18 and 17 years old, certainly of an age when they could be rounded up. This will add to the distress which the wife will undoubtedly suffer if she has to go back to Sri Lanka. Dr. Turner's prognosis is that psychotherapy and counselling will be of no avail to her as long as she remains in fear and uncertainty about returning to Sri Lanka. The consequences of actually going back while she remains in an acutely traumatised state are too serious to make a reasonable outcome in this case. The appeals are therefore allowed".

Nowhere does the adjudicator consider whether the wife could receive the necessary treatment in Colombo in the light of his positive finding that neither of the appellants is reasonably likely to be persecuted in Colombo. The possibility of the sons being rounded up is in the light of the current state of affairs remote. Nor is it clear to us what are the consequences of going back which make it unreasonable to expect the appellants to do so and thus to justify a conclusion that they are refugees.

13. It seems to us that the adjudicator has not properly analysed the cases before him. There were two separate appeals which for good reason were heard together. The adjudicator has given two separate decisions, albeit each is in identical terms. The wife has no well-founded fear of persecution and is not a refugee from any part of Sri Lanka. Her mental condition and any hardship involved in return cannot make her a refugee. It may be relevant in a human rights claim, but that does not arise in the present case. Thus her appeal could not properly be allowed.

14. As well as having a claim in her own right, she is a dependent of her husband. He does have a well-founded fear of persecution in his home area. Thus in his case the question whether there exists a safe area, which we shall call internal relocation (IR) is relevant. There is no suggestion that it would be unduly harsh to expect him or his children to remain in Colombo. The adjudicator has decided that it would not be reasonable to expect her to return to Colombo and so, it would be unreasonable to expect the family to return.

This conclusion could only properly have been reached if the adjudicator was persuaded that it would be unduly harsh to require the husband to return to Colombo because his wife should not be required to go there. The 'unduly harsh' test is established by the Court of Appeal in *R v Secretary of State for the Home Department ex p. Robinson* [1998] QB 929 which is binding on us.

15. The adjudicator has accepted that the wife's condition is such that it would not be reasonable to expect her to return to Sri Lanka. That we suppose reflects the language of Paragraph 91 of the UNHCR Handbook which, in dealing with a fear of persecution in a part of the country of nationality, provides:-

> "In such circumstances, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so".

If his wife cannot be expected to return, it is not reasonable to expect him to return since the family should remain together. That we must assume reflects the adjudicator's reasoning.

16. The concept of IR is based on the recognition that surrogate protection is only required if there is no part of the country of nationality which can be regarded as safe in that no well-founded fear of persecution exists there and to which it would not be unreasonable to expect the claimant to relocate. At p.935F in *Robinson*, Lord Woolf M.R. said, after citing La Forest J in *A.G. of Canada v Ward* (1993) 103 D.L.R. (4th) 1, as follows:-

> ."It follows that if the home state can afford what has variously been described as 'a safe haven', 'relocation', 'internal protection' or 'an internal flight alternative' where the claimant could not have a well-founded fear of persecution for a Convention reason, then international protection is not necessary. But it must be reasonable to expect him to go to and stay in that safe haven…".
>
> In determining whether it would not be reasonable to expect the claimant to relocate internally, a decision-maker will have to consider all the circumstances of the case, against the backcloth that the issue is whether the claimant is entitled to the status of refugee".

It must be borne in mind that he will only be entitled to that status if he shows that he has a well-founded fear of persecution for a

Convention reason. Lord Woolf summarises the correct approach at p.943B in these words:-

> "In our judgment, the Secretary of State and the appellate authorities would do well in future to adopt the approach which is so conveniently set out in Paragraph 8 of the European Union's Joint Position. Where it appears that persecution is confined to a specific part of a country's territory the decision-maker should ask: can the claimant find effective protection in another part of his own territory to which he or she may reasonably be expected to move? We have set out, ante, pp.939H-940B, appropriate factors to be taken into account in deciding what is reasonable in this context. We consider the test suggested by Linden J.A. in the *Thirunavukkarasu* case, 109 D.L.R. (4th) 682, 687, "would it be unduly harsh to expect this person … to move to another less hostile part of the country?" to be a particularly helpful one. The use of the words "unduly harsh" fairly reflects that what is in issue is whether a person claiming asylum can reasonably be expected to move to a particular part of the country".

17. It is important to note what factors the Court considered to be of relevance in deciding whether it would be unduly harsh to require IR. These are set out at p.940B where Lord Woolf says: -

> . "Various tests have been suggested. For example, (a) if as a practical matter (whether for financial, logistical or other good reason) the "safe" part of the country is not reasonably accessible; (b) if the claimant is required to encounter great physical danger in travelling there or staying there; (c) if he or she is required to undergo undue hardship in travelling there or staying there; (d) if the quality of the internal protection fails to meet basic norms of civil, political and socio-economic human rights. So far as the last of these considerations is concerned, the preamble to the Convention shows that the contracting parties were concerned to uphold the principle that human beings should enjoy fundamental rights and freedoms without discrimination. In the Thirunavukkarasu case, 109 D.L.R. (4th) 682, 687, Linden J.A., giving judgment of the Federal Court of Canada, said:
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> > "Stated another way for clarity … would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to another less hostile part of the

> country before seeking refugee status abroad?"
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> He went on to observe that while claimants should not be compelled to cross battle lines or hide out in an isolated region of their country, like a cave in the mountains, a desert or jungle, it will not be enough for them to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there".

Lord Woolf there lays emphasis on the preamble to the Convention. The first paragraph of this reads: -

> "Considering that the Charter of the United nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human being shall enjoy fundamental rights and freedoms without discrimination".

The Universal Declaration of Human Rights is proclaimed as a common standard of achievement for all people and all nations. The rights set out in it are similar to those contained in the European Convention on Human Rights and in the International Covenant on Civil and Political Rights (ICCPR).

18. If an individual is not afforded basic human rights, he may often be properly said to be persecuted. If he is subjected to discrimination for a Convention reason, he may be entitled to be regarded as a refugee. But if he is not within the Convention, the fact (if it be the case) that the country of his nationality does not maintain the standards of the Universal Declaration will not make him a refugee. The Refugee Convention does not apply merely because persons have to exist in miserable conditions or there is economic deprivation. And the conditions on return cannot create a person a refugee unless he has a well-founded fear of persecution. Equally, the absence of medical or welfare facilities cannot of themselves make someone a refugee even though his health or his life would be in danger.

19. It follows that logic might suggest that, however wretched the conditions in what we shall call the safe area if IR is applicable, they cannot in the absence of a real risk of persecution for a Convention reason prevent return. But in the light of Robinson and the conclusion that a failure to meet the basic norms of human rights is a relevant factor, that cannot be a correct approach for us to adopt. It is in our view important to remember at all times that what is in

issue is the need for surrogate protection. If the circumstances in the so-called safe area are such as Lord Woolf has referred to, there may be a real risk that the claimant will be compelled to return to his home area where he faces persecution. There is an analogy with refoulement. Thus if, persecution apart, the conditions are worse than those in the home area, it may be easier to conclude that it was unduly harsh to expect IR. In addition, if there is in the safe area a real risk that the conditions would expose the claimant to a serious breach of basic human rights, he should not be expected to go there. It may be said that there is a degree of illogicality in this if the risk of breaches of basic human rights are no worse than in his home area. It is perhaps possible to criticise the Robinson approach on the basis that the preamble to the Refugee Convention emphasises, as might be expected, the need for fundamental rights and freedoms to be enjoyed without discrimination. It is discrimination which will engage the Refugee Convention. However, it is not open to us to limit the issue of unreasonableness or undue harshness in this way since we are bound by Robinson. However it is in our view right that for IR to be regarded as unduly harsh any breach of fundamental rights must be established to be serious.

20. In *Karanakaran v Secretary of State for the Home Department* [2000] 3 All ER 449, the Court of Appeal considered further the correct approach to IR. At p.456F Brooke LJ said this: -

> "The argument turns on the correct interpretation of a few words contained in the definition of 'refugee' in Article 1A(2) of the Convention, being any person who:
>
> > "… owing to well-founded fear of being persecuted [for a Convention reason] is outside the country of his nationality *and is unable* or, owing to such fear, is unwilling *to avail himself of the protection of that country"* (My emphasis).
>
> The words I have italicised have not been interpreted literally. In theory it might be possible for someone to return to a desert region of his former country, populated only but camels and nomads, but the rigidity of the words 'is unable to avail himself of the protection of that country' has been tempered by a small amount of humanity. In the leading case of *Ex p. Robinson* this court followed an earlier decision of the Federal Court of Canada and suggested that a person should be regarded as unable to avail himself of the protection of his home country if it would be unduly harsh to expect

> him to live there. Although this is not the language of 'inability', with its connotation of impossibility, it is still a very rigorous test. It is not sufficient for the applicant to show that it would be unpleasant for him to live there, or indeed harsh to expect him to live there. He must show that it would be unduly harsh".

This shows that the threshold is a high one but the 'small amount of humanity' will apply to enable regard to be had to the situation in the safe area and if it will not afford basic human rights IR will not be reasonable. Nonetheless, the risk of compulsion to go to his home area is likely to be in many cases a helpful test. And the height of the threshold is illustrated by the decision of the EctHR in *Bensaid v United Kingdom.* In reality, the application of the preamble will mean that where IR is in issue the Refugee Convention and the European Convention on Human Rights will march together. That in our view is justified because the individual in question has shown that he does have a well-founded fear of persecution in his home area and may well have left the country of his nationality because of that fear. To send him back to suffer treatment that fails to afford him his basic human rights can properly be regarded as unduly harsh and unreasonable.

21. The absence of proper medical facilities to deal with a particular individual's problems will not normally be determinative unless his right to life is thereby put in jeopardy. If proper facilities are available, a person's medical condition however serious cannot make him a refugee. In *Antonipillai* at pp.32-33 of the determination the Tribunal said this: -

> "This is the first occasion where we have had to consider whether or not a medical or mental condition is an aspect which has to be considered when considering whether it would be unduly harsh for a person to seek internal flight. It is our view, and one to which we have given considerable thought, that within the context of that expression "unduly harsh" it would be unduly harsh to insist on internal flight or return to Colombo, as in the instant cases, where the option being exercised is a case where a person is suffering from an terminal illness or suffering from a physical or mental disability of such a nature as to render constant or almost constant attention of a medical or nursing nature, or whether, in the long term, such mental or physical condition is such as to preclude the person from obtaining employment, accommodation and generally acclimatising to the social conditions of the area to which internal flight is sought".

Far from being unduly restrictive, we think that what is there said is too wide. It is only if adequate facilities are not available that IR may be said to be unduly harsh. There may be compassionate reasons for not returning but not on the basis that the individual is a refugee.

22. We have already recited the facts of this case. There is no evidence that treatment for depression or PTSD is unavailable in Sri Lanka. There is no real risk of persecution or indeed that the sons will be rounded up. We do not regard Dr. Turner's report as supporting the

adjudicator's conclusion that the distress of the wife at the prospect of return will make it unduly harsh for the husband to be returned since there is no real impediment to his wife and family returning with him.

23. It follows that these appeals must be allowed.

MR JUSTICE COLLINS
PRESIDENT