

CANADA / JUDGMENT

TB3-05585

COURT

Refugee Protection Division

DECIDED

29 January 2014

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RPD File No. / N° de dossier de la SPR : TB3-05585 TB3-05596 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Claimant(s) XXXX XXXX XXXXXXXXXXXX XXXX XXXX
Demandeur(e)(s) d'asile Date(s) of Hearing October 3, 2013 Date(s) de l'audience Place of Hearing
Toronto, Ontario Lieu de l'audience Date of Decision January 29, 2014 Date de la décision and
reasons et des motifs Panel B. Lloyd Tribunal Counsel for the Claimant(s) John W Grice Conseil(s)
du (de la/des) demandeur(e)(s) d'asile Designated Representative(s) Représentant(e)(s) désigné(e)
(s) Counsel for the Minister Conseil du (de la) ministre REASONS FOR DECISION

- [1] XXXX XXXX (the claimant), born XXXX XXXX, 1984 in Sri Lanka and XXXX XXXX (the female claimant), born XXXX XXXX, 1992 in Sri Lanka seek refugee protection in Canada pursuant to section 96 and subsection 97(1) of the Immigration and Refugee Protection Act.¹ ALLEGATIONS
- [2] Details of the claimants' allegations are documented within their Basis of Claim (BOC) forms² and their testimonies. The claimant alleges that on XXXX XXXX, 2010 he was abducted by men in a white van who said that were from the EPDP.³ The claimant was held as his father was a citizen of XXXX and it was assumed his father had money. The claimant was slapped and kicked, threatened with death if the money wasn't paid. The claimant was released after the money demanded was paid. After speaking with his family it was arranged that the claimant flee Sri Lanka.
- [3] In XXXX 2011, the claimants eloped without permission from the female claimant's family, which caused serious problems. Before the marriage, the female claimant was locked in a room for five days by her mother and sister. The female claimant was beaten. The female claimant told her mother she would not marry the claimant and her mother allowed her to attend school but instead the couple eloped. In XXXX 2011, the female claimant's uncles and cousins came to the claimant's family home. The claimant's mother saw them coming and had them hide in a room. The claimant's mother argued with the males and neighbours came to aid his mother in dispatching the male relatives.
- [4] On March 3, 2011, the claimants went to Colombo to make arrangements to leave the country. The claimant was able to leave XXXX XXXX, 2011 however the female claimant remained behind. The female claimant found out she was pregnant and returned to her mother and sister. They forced the female claimant to abort the baby. The female claimant

left her family home and went to live with the claimant's mother. The female claimant was able to leave Sri Lanka on XXXX XXXX, 2011 with assistance from the agent. The male and female claimant met up and travelled through various countries, arriving in the United States XXXX XXXX, 2013. They filed a claim for asylum in the United States (U.S.). Travelling to Canada and on August 15, 2013, they arrived and submitted a claim for refugee protection.

DETERMINATION

- [5] The panel finds the claimants have not satisfied the burden of establishing a serious possibility of persecution for a Convention ground or that they would be personally subjected, on a balance of probabilities, to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to Sri Lanka. Therefore, the panel finds the claimants are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the Immigration and Refugee Protection Act.

ANALYSIS

- [6] The determinative issue is credibility and generalized risk. Identity
- [7] The claimant's identity as a citizen of Sri Lanka is established by way of his testimony and the documentary evidence, namely birth certificate,⁴ identity card⁵ and his marriage certificate.⁶ The panel is satisfied that the claimant is Sri Lankan and Tamil.
- [8] The female claimant was asked how she obtained the birth certificate that was issued in July 2013.⁷ She testified her husband's sister got the document but she did not know how. The claimant was asked about her identity card⁸ she did not know how it was obtained. The female claimant could not recollect how she obtained the other identity documents but stated that in March 2011 she obtained her Sri Lankan passport while she and her husband were in Colombo. When asked how she obtained this document as she had fled her family home, the female claimant testified she utilized her marriage certificate and birth certificate as identification. The panel had some concerns as to the female claimant's identity and it was agreed the panel would seek evidence from the Canadian authorities in Sri Lanka to verify the identity card utilized by the female claimant.⁹ The document was verified and the panel is satisfied to the female claimant's identity. Credibility
- [9] In assessing the credibility of the evidence presented by the claimant in support of the claim for Convention refugee status and for the claimant to be a person in need of protection, the panel is guided by the principles established in the Federal Court of Appeal's decision of *Maldonado*,¹⁰ wherein the Court states, in part, "When an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness."¹¹

- [10] In assessing credibility, the panel was mindful of the claimants' ages, education and background. In addition, the panel is cognizant of the difficulties faced by a claimant in establishing a claim, including cultural factors, the milieu of the hearing room and the stress inherent in responding to oral questions through an interpreter. The panel has taken these considerations into account in arriving at the negative credibility findings.
- [11] The panel finds that there were plausibility, omissions and credibility issues central to aspects of these claims. As a result, the panel does not accept on a balance of probabilities that the claimants' allegations as to what occurred in Sri Lanka that led to their flight to Canada.
- [12] The claimant alleges that he was targeted by EDPD in XXXX 2010, whereupon he was detained for three days. During this time he was slapped and kicked and threatened with death if his family failed to pay the ransom. After this he decided to leave Sri Lanka, he and his wife eloped as her family did not approve of him. At the time the claimant made his refugee claim at the port of entry he was asked why he was seeking protection in Canada the claimant stated due to his marriage, that he and his wife belong to two different castes and his wife's family was not happy about the marriage.¹² The claimant makes no mention of being detained by the EDPD. The claimant was asked why he made no mention of the EDPD, the claimant testified that there were a lot of questions asked at the port of entry and they were scared. The panel does not find it credible that the claimant would omit being kidnapped by the EDPD and held for three days, nor mentioned being threatened and abused.
- [13] The panel finds this omission to be important as the claimant's failure to mention this at the first instance when he entered Canada is not credible, particularly as he had reached a place of safety and had already sought asylum in the U.S. Furthermore, this was the reason the claimant had decided to flee Sri Lanka. The panel finds, on a balance of probabilities, the abduction by the EPDP did not occur.
- [14] The female claimant alleges fear of the army, government and Tamil groups connected with the government but when asked if she had any experiences with any of these groups she testified she did not. The female claimant testified it was common knowledge that these groups targeted young Tamils like her, she had heard stories. She testified to fearing returning and being stopped at the airport and questioned. The female claimant alleges she fears the ladies of her family as they were against her marriage to the claimant. She testified that once her husband left Sri Lanka she returned to her mother. The female claimant testified of being assaulted by her mother and forced to take medication that aborted her baby. After this she left her family home and went to her husband's mother to stay. When asked if her mother and family tried to locate her at her husband's mother she testified that they did but her mother-in-law was able to send them away. When asked how she was able to send her family away the female claimant testified that her mother-in-law asked them to please leave and they left. The female claimant was asked if they returned and she testified her family returned 2-3 days per week but each time was sent away. The panel does not find

it credible that the female claimant's family would just allow her to remain with her husband's mother. Her explanation that they just left when her husband's mother talked to them is not credible in light of the actions previously taken by her family, not allowing her out and forcing an abortion on her, with the men coming to her mother-in-laws home with knives and threatening the claimants causing them to flee to Colombo.

- [15] The panel has credibility concerns that were not satisfied at the hearing. The claimants did not persuade the panel that they, on a balance of probabilities, were generally credible or trustworthy witnesses. Nexus
- [16] A determinative issue in this claim is nexus, that is, whether there is a link to any of the Convention grounds. Counsel's submission is the claimants are linked to the Convention by being Tamil and the male claimant being a target of the EDPD. That young Tamils, particularly males, are targeted by the Sri Lankan officials, particularly those who are returnees to Sri Lanka, including failed refugee claimants. The panel finds that the claimants fear is as identified at the port of entry the fear of the female claimant's family members as they do not approve of their marriage. The panel does not find this to be a link to the nexus. Family difficulties and vendettas¹³ are not a link to the Convention. Tamil Returnees
- [17] As to the issue of returnees, the claimants allege a fear of returning to Sri Lanka due to being young Tamils from the north of Sri Lanka. The claimants testified they would be targeted upon their return, arrested and sent to an army camp. The claimants allege that since they would be travelling on emergency passports they would be targeted upon return. The panel has considered Counsel's submissions in regards to the claimants' being targeted and that the claimants would face persecution upon their return. The documentary evidence is clear that despite the fact the war has been over for more over four years, the situation in Sri Lanka is continuing to evolve. The documentary evidence¹⁴ speaks to a situation where the government is struggling implementing democratic practices and ideals.
- [18] Counsel has drawn to the panel's attention articles whereby the various sources including the Canadian government expressed concerns with the poor treatment of Tamils, particularly Tamil returnees.¹⁵ The documentary evidence in regards to returnees is mixed, with evidence that some returnees who are perceived as either LTTE members or LTTE supporters would face detention and/or torture upon their arrival at the airport in Sri Lanka.¹⁶ The panel notes that returning Tamils are subjected to the same screening processes as all persons returning to Sri Lanka, regardless if they return on a voluntary basis or as a result of failed refugee process.¹⁷ There are procedures in place in Sri Lanka to identify those who left the country either legally or illegally.¹⁸ The FCO October 2009 also reported on whether specific factors would affect the way an individual is treated at the airport. In particular the report recorded: The Superintendent Police, Criminal Investigations Department (CID) at Bandaranaike International Airport said that if a person was suspected of being associated with LTTE, SIS would hand them over to the Terrorist Investigation Department (TID). Sometimes they were referred to Colombo Detection

Bureau headquarters, or sometimes CID. In such cases a detention order for 90 days could be issued. The senior intelligence official said that if a person had an arrest warrant outstanding they would be arrested. If they had a previous criminal record, it would depend on what they said at interview. SIS would probably check with the local police where they came from: if they were wanted, they would be detained; if not, they would be released.¹⁹

- [19] The Board's own documents indicate a mix of information, with a recent Response to Information that states: An October 2012 UK Border Agency Policy Bulletin on the allegations of mistreatment and torture of returnees to Sri Lanka from the UK presented by Human Rights Watch, Freedom from Torture, TAG and Amnesty International, expresses the opinion that in general the acts of torture are random and usually used to extract confessions. As reflected in the OGN [Operational Guidance Note] for Sri Lanka, the Agency accepts that ill treatment amounting to torture does exist and that certain categories of individual by the fact of their profile, or by accumulative risk factors, might be at risk. This is in accord with existing UK and European case law. The Agency does not accept that Tamils in general would be at risk on return to Sri Lanka. [...] A key question in light of improvements in the overall security situation remains whether any past involvement in the LTTE, actual or perceived, is currently likely to bring returnees to the adverse attention of the Sri Lankan authorities. (UK Oct. 2012, Sect. 1, 3, 13.1, 13.9)²⁰ Sources indicate that some Tamil returnees have been interrogated about their political activities abroad (Human Rights Watch 29 May 2012; TAG 16 Sept. 2012, 10; Freedom from Torture 13 Sept. 2012, 3). Freedom from Torture reports that in at least 12 of the 24 cases documented, returnees indicated that they were interrogated about their or other Tamils' activities in the UK (ibid.).²¹
- [20] The panel further notes: In 2011, a total of 1,728 refugees returned to Sri Lanka through the facilitated voluntary repatriation programme from India, which is supported by the Governments of India and Sri Lanka and facilitated by UNHCR. This was a decline compared to the previous year, when some 2,054 individuals' returned. A commercial ferry service from Tamil Nadu to Colombo raised additional interest in voluntary repatriation in late 2011, but the ferry was later discontinued due to commercial disputes. Also in 2011, a handful of refugees returned voluntarily with UNHCR assistance from other countries of asylum, specifically Malaysia, Georgia and St. Lucia. In addition, some 634 refugees, who returned on their own, registered with UNHCR field offices in 2011. The interest of Sri Lankan refugees in voluntarily repatriating continued to decline in 2012, with fewer than 1300 individuals returning to the country through UNHCR's facilitated return program from January to mid December 2012. As in prior years, most refugee returnees came from India, but a small number returned from Malaysia, Hong Kong and Cambodia. In addition, the number of spontaneous refugee returnees who approached UNHCR in field locations has reduced by half compared to 2011. Some sources have reported recent cases of former Sri Lankan (in particular Tamil) asylum-seekers who were allegedly detained and ill-treated or tortured after having been forcibly returned to Sri Lanka upon rejection of their asylum claims or who voluntarily returned to Sri Lanka. There is no systematic monitoring after

arrival in Sri Lanka of the treatment of Sri Lankans who were forcibly returned.²²

- [21] The documentary evidence speaks to the United Kingdom deportation of failed Tamil claimants and identifies that those who had an association with the LTTE in Sri Lanka (actual or perceived) in their own right and/or through their immediate family members before they went to the United Kingdom were more likely to be targeted by upon return.²³ This is not case for these claimants; they were fleeing the female claimant's family members.
- [22] The panel finds that after consideration of the totality of documentary evidence, the panel agrees with the United Kingdom authorities in their Operational Guidance Note that find that though ill treatment, including torture, of some individuals returning to Sri Lanka but that applied to only certain categories of individuals by their profile or by accumulative risk factors who may be at risk, that does not mean that all Tamils in general would be at risk on return to Sri Lanka.²⁴ [Emphasis added]
- [23] The panel does not find the claimant to be a trustworthy and credible witness, the panel does not find that he was detained or abducted as he has alleged. The female claimant alleges a fear due to her being young and Tamil. The claimants are not alleging any anti-government involvement while in Sri Lanka or while on route to Canada, nor have adduced any evidence of such activity while in Canada. Based on the above the profiles of the claimants, the panel find that there is no evidence to suggest that the Government of Sri Lanka would consider the claimants a security threat or that they were members or supporters of the LTTE. The panel finds that in the claimants' particular circumstances, their personal profiles are not ones that would subject them to be viewed or targeted with suspicion by the Sri Lankan authorities.
- [24] For these reasons, the panel does not find the claimants' profiles in regards to being a failed asylum seeker returning to Sri Lanka would subject them to a risk of persecution upon their return to Sri Lanka. The panel finds that the claimants have not satisfied their burden of establishing a serious possibility that they would be persecuted or that they would be personally subjected to risk of life or a risk of cruel and unusual punishment or danger of torture by any authority in the Sri Lanka. Generalized Risk
- [25] There is no doubt that life in Sri Lanka is not easy, particularly for those who had to live through the war and are facing rebuilding their lives. The panel notes that there are restrictions on Tamils, particularly in areas formerly controlled by the LTTE, however in the circumstances particular to the claimant, the panel does not find the claimants were targeted, even if one were to accept that the claimant had been kidnapped by the EDPD, it was for financial reasons. Thus, the extortion of money can be perceived as a generalized risk. The panel finds that the risk faced by the claimants is one faced generally by all persons in Sri Lanka. Therefore the claimant is not a person in need of protection.

- [26] Subsection 97(1) of the Immigration and Refugee Protection Act states: A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally...
- (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if... (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country
- [27] The documentary evidence indicates that crime, including extortion, is a problem in Sri Lanka and kidnapping for extortion on wealthy people or those perceived to be wealthy, including returnees from western countries, by rogue elements of the government security forces and paramilitaries taking advantage of the post civil war conditions, as each group has turned to criminality in efforts to consolidate their revenue sources. While Sri Lanka continues to struggle through the upheaval of changes caused by the civil war and post-civil war, extortion, abduction for ransom and robbery are on the rise, particularly those perpetrated by criminal elements out to enrich themselves.²⁵ Reports of abductions for extortion and ransom increased during the year, particularly in the north and east. Whereas in the past, local citizens often reported they were reasonably certain which paramilitary groups were behind abductions and killings, during the year they more often stated that they were unsure of which group was involved in a particular incident.²⁶
- [28] In the case at hand the claimant testified that he was targeted as his father and brother lived abroad, there was a belief they would pay. Thus, the panel finds that even if the claimant were to be believed, that in the circumstances particular to the claimant if he were to return to Sri Lanka, if such risk were true, is or would be a generalized and prevalent risk faced by this sub-group of the general population; people perceived to be wealthy, or people with enough money to be targeted for extortion. As such, this risk is excluded by subparagraph 97(1)(b)(ii). That provision does not extend protection to those facing a risk that is faced generally by others in the country.²⁷
- [29] The panel finds that the harm feared by the claimant does not amount to persecution or to a personalized risk to his life or a risk of torture or a risk of cruel and unusual treatment or punishment. While it is true that extortion exists it is widespread and is faced by those in a similar or the same position as the claimant. Furthermore, if in fact, he were extorted, the panel concludes that this demand was purely criminal in nature, placing it within the category of generalized risk
- [30] As for the female claimant's fear of her family members, the claimants did not seek any recourse with the authorities, the female claimant was allowed to leave her family home for months and reside at her husband's mothers. There is nothing before the panel to suggest that the claimants could not relocate somewhere else in Sri Lanka or file a complaint with the police, which was not done in this case. Though there are problems in Sri Lanka, there is nothing before the panel to suggest that two individuals involved in a family dispute with

allegations of threats or allegations of harm committed by family members could not seek assistance from the police. The claimant's allegations that the police would not take it seriously have not been tested.

CONCLUSION

[31] Based on the foregoing analysis, the panel finds that the claimants are not Convention refugees pursuant to section 96 of the Immigration and Refugee Protection Act, nor are they persons in need of protection pursuant to section 97 of the Immigration and Refugee Protection Act. Accordingly, the panel rejects these claims. (signed) "B. Lloyd" B. Lloyd January 29, 2014 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27. 2 Exhibit 2, Exhibit 3. 3 Acronym for the Eelam People's Democratic Party. 4 Exhibit 1. 5 Exhibit 8, pp 8-12. 6 Ibid. 7 Exhibit 10. 8 Exhibit 8, pp 4. 9 Exhibit 12. 10 Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.). 11 Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.). 12 Exhibit 1, Port of Entry Notes. 13 Rivera, Omar Martin Farro v. M.C.I. (F.C.T.D., no. IMM-572-98), Tremblay-Lamer, February 22, 1999. 14 Exhibit 4-6. 15 Exhibit 11. 16 Exhibit 4, item 1.17, U.K. Home Office; and Exhibit 5, pp. 11, 15 to 19, 21 to 27 and 33 to 46. 17 Exhibit 4, item 14.3. 18 Ibid., item 2.7. 19 Ibid., item 2.7. 20 Exhibit 4, item 14.9. 21 Exhibit 4, item 14.9. 22 Exhibit 4, item 1.13. 23 Exhibit 5, pp 36m 44-45. 24 Exhibit 4, item 1.17 U.K. Home Office. Operational Note: Sri Lanka. 25 Exhibit 4, items 1.7, 1.13 and 2.1. 26 Ibid. 27 Osorio, Henry Mauricio Gil v. M.C.I. (F.C., no. IMM-585-05), Snider, October 27, 2005, 2005 FC 1459.

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