

**IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
(CROWN OFFICE LIST)**

Royal Courts of Justice
Strand
London, WC2
28 June 1985

B e f o r e :

Taylor J

Regina

Appellant

-v-

**The Secretary of State for the Home
Department ex parte SELLADURAI
JEYAKUMARAN**

Respondents

Marten Walsh Cherer

**K S Nathan for the applicant (instructed by Julius Melchior & Co)
John Laws for the respondent (Treasury Solicitor)**

HTML VERSION OF JUDGMENT

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JUSTICE TAYLOR: This is an application for judicial review by Selladurai Jeyakumaran: He seeks review of the decision of the Secretary of State for the Home Department dated 10 February 1984, refusing him asylum in the United Kingdom, and a decision of an immigration officer of

17 February 1984, refusing him leave to enter as a visitor or, alternatively, as a student.

The applicant, aged 34, is a citizen of Sri Lanka. He is by race a Tamil. He initially came to the United Kingdom on 23 January 1975, when he was given leave to enter for a period of 12 months as a student. He studied first at the South East London College and obtained a Higher National Diploma in production engineering in August 1977. His leave was extended, and he studied further at the Polytechnic of South London and the Institute of Management Services, obtaining diplomas from each. His leave to stay was further extended until 30 September 1982. He completed a foundation course at the Institute of Cost and Management Accountants but in August 1982 failed part I of the Institute's qualifying exams. Perhaps because of that, and also because he thought there were job opportunities for him, he left the United Kingdom on 24 September 1982 and returned to Sri Lanka. There he continued to study and had a series of short employments. The last of these had run some three weeks when, on 24 July 1983, racial riots broke out in Colombo. The applicant and his parents were forced to leave their house. He and his father were beaten up. They went to a refugee camp in Colombo for a fortnight. They were then taken by boat to Jaffna and later to a village called Manipai in the north of Sri Lanka.

The applicant says that there were violent racial incidents between Tamils and Sinhalese. The Tamil minority were being harassed and the armed forces were looking for Tamil youngsters, so the applicant went into hiding. Subsequently he returned to the family house in Colombo and found that it had been looted and badly damaged. While seeking to arrange repairs, the applicant was warned by neighbours to stay away, for fear of injury. Anti-Tamil slogans were sprayed on the house.

In these circumstances, the applicant decided to obtain a ticket and travel to the United Kingdom, which he did on 9 October 1983. On his arrival on 10 October, he was given temporary admission because of the unrest in Sri Lanka. The applicant was interviewed by immigration officers, after which he was told that it was unlikely he would be permitted to enter as a visitor or student. However, in view of the possibility of an asylum claim, the immigration officers referred his case to the Home Office in pursuance of rule 73 of HC 169. Representations were also made by a Member of Parliament on behalf of the applicant by letter dated 2 November 1983.

On 10 February 1984, the Minister indicated by letter that the claim to asylum was considered to be without foundation. On 17 February 1984, the immigration authorities refused the applicant leave to enter as a visitor or as a student and stated an intention to give directions for his removal.

Mr Nathan realistically abandoned the applicant's claim to enter as a student. need, therefore, say no more about it, except that the respondent points to the inconsistency of the three grounds upon which the applicant originally sought entry and relies, in effect, upon that inconsistency to defeat each of them.

As to the application to be admitted as a visitor, Mr Nathan says there was no reason to doubt the applicant's bona fides. He wanted to come temporarily because of the troubles at home, but hoped to return to Colombo by January 1984. Even if he were to change his mind, there would be nothing illegal or undesirable in his making further application to vary his leave. In this connection, I was referred to *R v Secretary of State for the Home Department ex parte Arjumand* [1983] Imm AR 123, in which McNeill J expressed the gravest doubt as to whether an immigration officer was entitled to say "if the applicant was granted leave for three to six months he would be highly likely towards the end of it to apply for an extension."

Here, however, the immigration officer simply said he was not satisfied the applicant was genuinely seeking entry only for the period of three to four month requested. Moreover, in *Arjumand* there was no suggestion that the genuineness or credibility of the applicant could be impugned. Here, inconsistencies between the applicant's account and that of his brother as to the family's position in Sri Lanka, the applicant's failure to mention his two brothers in England and his concurrent applications to enter as a student and for asylum were all factors taken into account quite properly by the authorities in doubting the genuineness of the visitor application. In my view, the decision on this issue cannot be regarded a unreasonable, nor can it be assailed on any other grounds.

I turn, therefore, to the application for asylum, which Mr Nathan accepts is the vital issue in this case. His first point is that the court should assess the facts and make its own decision upon them as to whether the applicant is a refugee and thus entitled to asylum. For reasons which I have fully set out in the cases of *ex parte Santis* and *ex parte Bugdaycay*, I reject this submission. In my view, the court is limited to reviewing the decision of the Secretary of State on *Wednesbury* principles. This I proceed to do.

Paragraph 73 of HC 169 imports the definition of a refugee from article 1 of the 1951 Convention relating to the status of refugees. The question the Secretary of State had to determine, therefore, is whether this applicant had "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of particular social group or political opinion." That involves two aspects: subjectively whether he had a fear of the kind specified; and, objectively, whether it was well-founded.

Mr Nathan complains there is no indication that the Secretary of State acquainted himself with relevant information on the second aspect. In particular he says, there is nothing to show any consultation with the United Nations High Commissioner for Refugees as to the conditions in Sri Lanka, or to show the Amnesty International's shocking report was considered, or that direct inquiries were made between the date of the application in October 1983 and its refusal in February 1984.

On the other hand, it is clearly the function and duty of the Secretary of State to inform himself of the local conditions and, in the affidavit of Mr Handley there are indications that that has been done. I would not, therefore, regard the absence from the respondent's evidence of an inventory of sources as any indication that the Secretary of State had failed to obtain the information he should. I am, however, disturbed by some of the factors which do seem to have been taken into account and others which have not. It is, therefore, necessary to look at the respondent's evidence in some detail.

The applicant was interviewed by three different immigration officers on 10 October 1983. He said that after the troubles I have already described, his parents told him to go to London for four months or so until things returned to normal. He added that he would be happy to go back when things were normal that he was not seeking permanent asylum and that as the eldest son he must return to take responsibility for the family. To one officer he said he would return in January 1984 come what may. It may be that, applying proper criteria, these assertions, despite the applicant's unchallenged evidence as to events in Sri Lanka and the way in which they affected him, could reasonably lead to a rejection of his claim to asylum. However, it is necessary to quote the considerations and reasons in fact taken into account by immigration officers and a senior executive officer from the Home Office.

First, Mr Rourke, immigration officer:

"The applicant said their lives had been threatened and they were told to leave or they would be killed. The family had not been singled out however: it was just the fact that they were Tamils and had lived in Colombo for eight years."

Later in his affidavit, he said:

"The applicant agreed however that his position was no different from that of thousands of other Tamils: he was not being sought out or persecuted as an individual, and he had never been involved in politics."

Then there was a Mr Stoy, an immigration officer:

"He is not being persecuted as an individual in Sri Lanka, but claims to be oppressed as one of the Tamil community. It is my opinion that he fails to satisfy the criteria for being granted political asylum."

Finally, Mr Handley, senior executive officer at the Home Office:

"The applicant described in detail the difficulties and dangers endured by his family as Tamils in the recent disturbances, but said that he was not being sought out or persecuted as an individual and that he had never been involved in politics. By his own admission, neither he nor any member of his family had ever been involved in politics and there was no suggestion that he had been singled out as an individual for harassment or persecuted for any of the reasons referred to in paragraph 73 of HC 169. In so far as violence had been directed against the Tamil minority in Sri Lanka, of which there was ample evidence, this had not been directed against the applicant or any member of his family in particular."

It was concluded that:

"the fear which he said he felt of returning to Sri Lanka could not be considered a well-founded fear of being persecuted for any of the reasons referred to in Paragraph 73 of HC 169. I have re-examined the case and reviewed all the matters raised and I have come to the same conclusion. I have also taken account of the further violence which has occurred between the Tamil and Sinhalese communities in Sri Lanka. The most recent violence appears however to be more in the nature of conflict between factions than persecution of individuals"

A number of criteria seem to underly these remarks which, in my judgment, are false:

(1) If an applicant or his family have not been personally singled out for persecution he does not qualify for asylum. This is a startling proposition. It can be little comfort to a Tamil family to know that they are being persecuted simply as Tamils rather than as individuals. How can this dismal distinction bear upon whether the applicant has a well-founded fear of persecution? When Mr Handley says there is ample evidence of violence against the Tamil minority, but not that it was directed against the applicant's family in particular, the words "in particular" surely mean no more than "alone", in which case they are nihil ad rem. If they mean that violence had not been directed at the applicant and his family, they are totally contrary to the unchallenged evidence that the applicant and his father were beaten up

and threatened with death. Whilst I am conscious of the administrative problem of numbers seeking asylum, it cannot be right to adopt artificial and inhuman criteria in an attempt to solve it.

(2) The implication that violence to individuals flowing from a conflict between factions cannot amount to persecution seems to be that oppression or violence to a racial minority will only be persecution if conducted by the authorities. Again, I ask what solace is it to the victim to know he is being persecuted by soldiers out of control rather than by the Government, if that be the case. In this context, it is relevant to quote paragraph 65 of the Handbook on procedures and criteria for determining refugee status issued by the UNHCR. The paragraph is headed "Agents of persecution" and reads:

"Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection."

(3) A lack of any involvement in politics is a critical factor in determining whether the applicant has refugee status. It may well be that in cases where political activity has been the reason for oppression, an applicant's political or apolitical record may be material. Here, the evidence clearly shows the reason for oppression to have been simply membership of the Tamil minority. Mr Handley says that there is no suggestion that the applicant had been persecuted for any of the reasons referred to in paragraph 73. This I do not follow. The evidence seems crystal clear, that the reason for his treatment was membership of the Tamil minority. That brings the case squarely within the reasons set out in paragraph 73. No other reason has been suggested. I can well see and accept that the applicant's assertion that he would go back in January come what may was a material matter both in regard to his alleged fear and as to whether it was well-founded, but to hold against an applicant his assertion that he would like to go back to his native country when things returned to normal would, in my view, be unjust. Such an assertion would surely be a very natural one and by no means inconsistent with presently having a well-founded fear of persecution. To be fair, there is no expression of any view contrary to this in any of the respondent's affidavits or in the letter of decision. I mention it because some reliance was placed in argument upon the inconsistency of the applicant's claim to asylum with his application to enter as a visitor for a limited period.

I appreciate that my citations of what I consider erroneous criteria have been from the affidavits officers, whereas the decision challenged is that of the Secretary of State. However, the letter of decision dated 10 February 1984 repeats these criteria:

"The claim to asylum is considered to be without foundation. Although all applications are considered thoroughly and sympathetically, we would look for rather more than the fact that the applicant is a Tamil and that there has been civil unrest in Sri Lanka directed against the Tamil community. Mr Jeyakumaran has had no involvement in politics and has not been singled out for harassment during the recent troubles."

Apart from the criticism I have made of the matters which are mentioned there the general tenor suggests that the personal violence and harassment of which the applicant complained have not been taken into account.

In the result, whilst expressing no view as to whether the Secretary of State could, on a proper appraisal, reasonably have come to the decision he did, I am, for the reasons I have given, of opinion that in reaching his decision he took into account matters which ought not to have been taken into account and failed to take into account matters he should. Accordingly, this application must succeed. Certiorari will go to quash the rejection of the claim for asylum. I have no doubt that in considering the matter afresh, the Secretary of State will have regard not merely to the situation in Sri Lanka as at February 1984, but to the situation now.

Application granted

Solicitors: Julius Melchior & Co, London NW6; Treasury Solicitor