

**AT AUCKLAND**

<b>Appellant:</b>	<b>SAMSUDEEN, Ahmed Aathil Mohamed</b>
<b>Before:</b>	A N Molloy (Chair) V J Vervoort (Member)
<b>Counsel for the Appellant:</b>	C Curtis
<b>Counsel for the Respondent:</b>	No Appearance
<b>Date of Hearing:</b>	12 December 2012
<b>Date of Decision:</b>	20 December 2013

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**DECISION**

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[1] The appellant is a national of Sri Lanka. He is a Muslim, of Tamil ethnicity. He appeals against the decision of a refugee and protection officer, declining his application for recognition as a refugee under the Refugee Convention and for protection under the Convention against Torture (“CAT”) and the International Covenant on Civil and Political Rights (“ICCPR”).

**INTRODUCTION**

[2] The appellant claims that he is at risk of being seriously harmed in Sri Lanka because of the long-standing antipathy between his father and Colonel Karuna Amman Vinayaganmurthy Musaliharem (“Karuna”). Karuna is a former member of the Liberation Tigers of Tamil Eelam (LTTE). In 2004, he switched allegiance and is now aligned with the Sri Lankan government. The appeal turns upon whether the appellant’s account is credible.

[3] The Tribunal will first summarise the account presented by the appellant. We will then assess the credibility of his account, before identifying the findings of fact upon which the appeal is to be determined. The Tribunal will then outline the

legislation governing such appeals, before assessing whether the appellant is in need of protection as asserted.

### **THE APPELLANT'S CASE**

[4] The appellant, who is now in his early 20s, was born in a city near Batticaloa, in the east of Sri Lanka. His father ("the father") is a retired school principal and his mother, who was for much of his childhood a housewife and homemaker, is a retired businesswoman. He has three siblings, all of whom have left Sri Lanka.

[5] As a principal, the father was an important figure in the family's home town. He was a well-known member of many local civic organisations, was respected and had the ear of local politicians. This eventually created difficulties for the father (and the appellant's family) that began during the 1980s, predating the appellant's birth. The father refused to cooperate with local members of the LTTE, then under the command of Karuna, who wished to hide weapons at his school. As a consequence of his stance, he was subjected to threats and later, towards the end of the 1980s (before the appellant was born) grenades were thrown into the family home. Fortunately, no-one was harmed.

[6] During the early 1990s, further attacks were carried out in the appellant's village. The local mosque and other buildings were damaged, including a factory operated at the time by the appellant's mother. While the attacks were not specifically aimed at the appellant's family, the father and others agitated for a police station to be opened in the town, in the hope that it would put an end to such incidents.

[7] Around that period gunmen affiliated with a local politician opened fire at the appellant's home, intending to kill the father. The father was not home at the time, but the appellant's mother and his cousin, AA, were wounded during the attack, AA fatally. This finally led the father to decide that the family needed to move. He eventually managed to secure a transfer to a school near Colombo.

[8] There was a ceasefire in Sri Lanka between 2002 and 2008, during which Karuna parted company with the LTTE. He was then party to numerous secret meetings with government ministers, including the Member of Parliament from the appellant's home area. That Member of Parliament accumulated a number of

documents and recordings relating to those meetings, which he passed to the appellant's father for safekeeping in early 2004.

[9] The appellant later learned that his father had hidden that material for a short time before becoming concerned about the risk it created for himself and his family. He tried to return them to the Member of Parliament, without success. Eventually, a man arranged to collect the material from the appellant's father. The man to whom the father gave the material was killed a few weeks later.

[10] The appellant's predicament revolves around subsequent attempts made by Karuna to recover those documents. The first occurred in mid-2004, when the father was kidnapped from the family home by several unknown men. The family complained to the police. The police refused to assist. When the father was released a few days later, he had been beaten and required medical treatment.

[11] During the final two years of the ceasefire the appellant's siblings all left Sri Lanka, out of concern for the deteriorating circumstances in which the family was living. Unknown men began to ask after the oldest brother at the university where he was studying. He is now living in the United Kingdom. Another sibling is working in the Middle East and the third is married to a North American national, and is living on that continent.

[12] The appellant became concerned in early 2007 when he was followed home from school by several men whom he did not recognise. He heard reports about men asking his friends for information about him. During that same period of time the family began to receive anonymous telephone calls, accusing them of being sympathisers with the LTTE. As a result the appellant's parents sent him to a different school out of Colombo for the following year.

[13] In early 2010, about a year after the appellant finished high school, he was travelling to work by motorcycle when he was hit by a vehicle and knocked off the bike. Several men got out of the vehicle and began kicking and punching him. They hit his head with a plank of wood. The assault was eventually interrupted by bystanders, who took the appellant for medical treatment. The appellant does not know who the men were or why they attacked him, but believes that it was linked to his father. The attack frightened him and he gave up work.

[14] Early one morning in February 2011, four men tried to gain entry to the appellant's home near Colombo. The appellant and his mother managed to make

enough noise to attract the attention of neighbours. As people in the surrounding homes came outside to find out what was happening, the men left on motorcycles.

[15] The father tried to lodge a complaint with the police the following day, but was unable to rouse any interest on their part. The appellant and his father then relocated elsewhere in Colombo, in the hope of avoiding further difficulties. However, in the second half of 2011, several armed men abducted the appellant and his father. They were bundled into a vehicle and driven to an unknown location with their hands tied and their eyes covered. They were held, in different rooms, for two days.

[16] During that period the appellant was periodically tied to a chair. His hair was pulled; he was slapped across the face and beaten about the body. He could hear his father crying out in pain from an adjacent room. On the second day the appellant was dragged into a hallway. He was stripped and photographed in front of his father. He was cut, burnt with cigarettes and beaten unconscious. They were later released and the father subjected to further threats about the Karuna material.

[17] At that point, the appellant and his father went into hiding elsewhere in the Colombo area. Men came to the family home again later that month and pointed a gun at the mother, demanding to know where the appellant was, she denied any knowledge of his location. The appellant's parents then decided that the appellant had to leave Sri Lanka. He obtained a student visa to enable him to travel to New Zealand. He made his way here in late October 2011 and lodged a claim for refugee status early the following month. His travel was paid for by a sibling.

[18] At the end of November 2011, the appellant learned that his mother had been kidnapped by unidentified men who demanded payment of a large sum of money to release her. The family managed to raise money among relatives in Sri Lanka and the mother was released.

[19] After interviewing the appellant in December 2011, a refugee and protection officer issued a decision declining his claim. It is from that decision that the appellant now appeals.

[20] The appellant believes that if he returns to Sri Lanka he will be located and seriously harmed by parties affiliated with Karuna. He does not believe that the police will protect him.

## **Additional Evidence**

[21] The Tribunal was provided with written statements from the appellant's father and brother, as well as a report from a clinical psychologist. Their evidence is summarised below.

### *The appellant's brother*

[22] The Tribunal was provided with a letter dated 2 February 2013, written by the appellant's brother. He confirms that he has been living in the United Kingdom for nearly five years. He states that he left Sri Lanka in fear, after members of the Karuna group had made enquiries about him. He had to leave his wife behind as they could not afford to travel together.

### *The appellant's father*

[23] The father's letter confirms that he is a retired school principal. It confirms that he has been involved in a number of social and civic roles that have led to the current difficulty facing his son. He states that he and his son have faced various difficulties. These include, since 2004, being abducted (on his own and with the appellant), beaten, blackmailed, and threatened. He confirms that his son is still at risk in Sri Lanka.

### *Report of Amanda McFadden*

[24] Counsel provided the Tribunal with a detailed written report from Ms McFadden, a clinical psychologist who has been in private practice since 2001. She is a member of the New Zealand Psychological Society and the New Zealand College of Clinical Psychologists. She has worked in a variety of court and tribunal settings and states that "the majority of my current assessment work lies in a legal arena as a Specialist Assessor or Expert Witness". Among her areas of interest are specialist immigration and deportation assessments and the assessment and treatment of complex trauma.

[25] At the time her report was prepared, Ms McFadden's report was initially submitted in draft form, as she had taken maternity leave. Following the hearing, counsel confirmed that Ms McFadden had advised that she was content for the report to stand, unchanged.

[26] Ms McFadden records that she was asked to assess the appellant's psychological condition "with particular attention to his stated history of torture and his ability to cope and communicate in a formal interview situation". To that end, she met with the appellant twice, for a total of six hours.

[27] Dealing first with the appellant's stated history of torture, Ms McFadden states that he presented as a "highly distressed and damaged young man", who meets the criteria for a DSM-IV diagnosis of post-traumatic stress disorder (PTSD). In her view there is "strong evidence" of the appellant persistently re-experiencing traumatic events. Further, there is evidence of "persistent avoidance of stimuli associated with the trauma and of a numbing in the appellant's general responsiveness...".

[28] She concludes that the appellant "currently meets criteria for a diagnosis of major depressive episode" and states that:

"Currently his acute experience of trauma (alleged torture), separation from his family, ongoing fears for his parents' safety, the refugee claims process and the lack of certainty about his future have triggered severe symptoms. However in the absence of any specific triggers it is likely that [the appellant] would present with a persistent dysthymia (low grade mood disturbance)."

[29] In Ms McFadden's view, the data she gathered during her assessment of the appellant indicates that he developed depression before the onset of PTSD. She stated that "the trauma has exacerbated his pre-existing depression".

[30] She observes that:

"A primary trigger for [the appellant] becoming overwhelmed [during the interviews] was discussion of his father and in particular the need to recount memories of the torture that involved himself being tortured in front of his father and his father's responses to this, or listening to his father's responses to being beaten while they were separated."

[31] She states that the appellant's depression is therefore likely to be "elevated by his untreated post-traumatic stress symptoms and difficulties with impaired self-reference". Scores elicited from tests "reflect the impairment of concentration" reported by the appellant "as a result of intrusive thoughts and memories as well as his current social isolation and impaired sense of self-reference".

[32] She concludes:

"At this point on the basis of my current findings I can conclude that [the appellant's] presentation is consistent with the presence of multiple mood disorders namely major depression and PTSD. There is also robust evidence to support that these conditions have arisen as a result of his exposure to trauma and more longer

term experiences of living within the context of fear, multiple displacements and familial and social stress.”

[33] Importantly, she continues (emphasis added):

“There is no doubt that [the appellant’s] psychological state is exacerbated by his isolation in New Zealand, his relative immaturity and the absence of a secure sense of self and self confidence. **But these factors in and of themselves fail to fully account/explain for his presentation on interview and the findings obtained on multiple psychometric measures. It would be very difficult for someone to fabricate the degree of disturbance [the appellant] presents with or the degree of emotional arousal witnessed within the interviews conducted to date.**”

[34] Turning to the appellant’s ability to cope in a formal interview, Ms McFadden stated that, in her view, he is vulnerable to coping poorly when under pressure. His symptoms and conditions “increase the risk of him presenting as inconsistent, vague or suggestible in the face of repeated and multiple questioning from parties in positions of power and authority”. Hence, she states, “he does not function well under stress and presents as very indecisive when faced with important decisions”. At times this can result in his account appearing to be fragmented and vague.

*Dr Wong*

[35] The Tribunal was also provided with a copy of a brief report, dated 10 January 2013, prepared by Dr Wong. His report contained elements of the appellant’s claim which were presumably self-reported. After examining the appellant, the report refers to:

“....

- Slight tenderness insertion of trapezii muscles at nuchal prominence;
- Small areas of pigmentation (R (wrist and medial aspect of (R) elbow in configuration which may be consistent with abrasion scars;
- Small laceration scars on the (R) anterior trunk and (R) side of jaw;
- Superficial lumps on the appellant’s right ankle ‘which have the appearance of scar tissue’;
- A patch of irregular skin surface (R) anterior scalp ‘which may be the result of trauma to the skin’;
- Small circular areas of increased pigmentation of skin that may be consistent with circular burn scars;
- faint lines on the right upper back and lower back ‘which may be consistent with scars’;
- two ‘definite’ scars, comprising ‘laceration on trunk and jaw’.

## **Material and Submissions Received**

[36] The Tribunal was provided with the Immigration New Zealand file.

[37] On 6 December 2010 counsel forwarded a copy of Ms McFadden's report, in draft form, dated 7 June 2012. It was headed "draft interim psychological assessment report".

[38] Counsel forwarded written submissions under cover of a letter dated 10 December 2012, together with various items of country information and samples of letterhead from various organisations in Sri Lanka, bearing the father's name in various capacities.

[39] Counsel forwarded letters dated 5 February 2013 and 20 March 2013, under cover of which she enclosed letters from the appellant's father and brother and copies of medical notes from the doctor seen by the appellant in Colombo. Also enclosed was the report from Ms McFadden, in final form. Counsel confirmed that the final report is identical to the content of the draft interim report previously supplied on 7 June 2012. Finally, the Tribunal was provided with the report dated 10 January 2013, from Dr Wong.

## **ASSESSMENT**

[40] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 Convention Relating to the Status of Refugees ("the Refugee Convention") (section 129); and
- (a) a protected person under the 1984 Convention Against Torture (section 130); and
- (b) a protected person under the 1966 International Covenant on Civil and Political Rights ("the ICCPR") (section 131).

[41] In determining whether the appellant is a refugee or a protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant's account.



### **Whether the Appellant's Account is Credible**

[42] The Tribunal finds that the appellant is credible. While aspects of his account were superficially unsatisfactory, the Tribunal is satisfied that such concerns are adequately addressed by various factors.

[43] First, much of the appellant's account related to matters that happened to his father, not him, and concerned events that occurred prior to his birth.

[44] Further, we have the benefit of Ms McFadden's report. In her clearly articulated professional opinion, the appellant is persistently re-experiencing traumatic events. His major depressive episode pre-dated, and has been exacerbated by, those events. She also finds that the primary trigger to his experience of trauma revolves around being mistreated in front of his father.

[45] Ms McFadden expressly considered the appellant's predicament in terms of being a young man, lacking self-confidence, and being away from home. She found that all these factors contribute to his presentation, but do not explain it. She believes that it can only be explained in terms of traumatic experience, and she states that, in her opinion, it would be very difficult for him to have fabricated the degree of disturbance displayed during the interviews she conducted.

[46] Alongside Ms McFadden's report is the report of Dr Wong. It is apparent from his examination that the appellant's body bears marks consistent with scarring and burns. While Dr Wong is unable to provide evidence as to the cause of the appellant's injuries, the relevance of his report is that it is consistent with the appellant's claim to have been subjected to mistreatment and beatings in the past.

[47] Finally, as we will address in more detail below, the claim is not inconsistent with, or implausible in light of, country information concerning Sri Lanka.

[48] In all the circumstances the Tribunal finds that it is appropriate to give the appellant the benefit of any doubt.

### **Summary of Factual Findings**

[49] Accordingly, we find that the appellant is a young Muslim male, of Tamil ethnicity, from Sri Lanka. For historic reasons, his family have been within the sights of Karuna and his cohort over a period that spans Karuna's fight against the Sri Lankan government, Karuna joining the Sri Lankan government and, most recently, Karuna becoming a part of the Sri Lankan government. Those difficulties

have occurred both in the family village in the east of Sri Lanka, and in Colombo after the family relocated.

[50] Superimposed on to the general difficulty of living most of his life within a country riven by civil war, the appellant has experienced the difficulties endured by his father, has himself been the subject of attention by “unknown men”, has been attacked on his way to work, forced into hiding, the subject of ongoing threats, and abducted, physically mistreated and humiliated in front of his father.

[51] The appellant departed Sri Lanka, lawfully, using his own valid passport in late 2011. Since his departure his family have continued to be the subject of attention from the Karuna group.

[52] It is on this basis that the appellant’s claim is to be assessed.

### **The Refugee Convention**

[53] Section 129(1) of the Act provides that:

“A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.”

[54] Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

“... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

[55] In terms of *Refugee Appeal No 70074* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

### **Assessment of the Claim to Refugee Status**

[56] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative

of a failure of state protection – see *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90]. Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[57] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective – see *Refugee Appeal No 76044* (11 September 2008), at [57].

*Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Sri Lanka?*

[58] The Sri Lankan government declared military victory over the LTTE in May 2009, ending a conflict that had lasted more than 25 years. Throughout that period, thousands of Sri Lankans sought asylum overseas, including a large contingent of Tamils. The United Nations High Commission for Refugees (UNHCR) has from time to time published guidelines to inform the assessment of such claims. The *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka* (5 July 2010) (“the 2010 Guidelines”) (p 1) states that the risk to Tamil citizens in Sri Lanka generally had dissipated “significantly” since the end of the conflict (p 3).

[59] However, those Guidelines are not definitive and they remind decision-makers of the need to consider the particular characteristics of each appellant. This reflects the approach already taken by the Tribunal in light of the decision of the High Court in *A v Chief Executive of the Department of Labour* (HC Auckland, CIV 2004-404-6314, 19 October 2005). Justice Winkelmann held that a decision-maker must consider whether an individual, having all the characteristics of the particular appellant, confronted with the predicament identified on the facts, would face a real chance of being subjected to serious harm for a Convention reason (at [38]).

[60] While the conflict in Sri Lanka has ended, the International Crisis Group dispels any thought of a return to normalcy in terms of governance. In its report, *Sri Lanka’s Authoritarian Turn: The Need for International Action* (20 February 2013), it states that Sri Lanka’s democratic government has deteriorated “dramatically” since 2009. The normal apertures through which dissent might be

expressed, such as the courts and civil society, have been closed, resulting in the lack of any check on the executive and the military. According to the report, parliament and the judiciary have been weakened to the point where they are little more than arms of the executive (Conclusion, p 37). The executive, in turn, is said to be controlled by “an unusually small group of people, mostly of the same family”.

[61] In that context it is perhaps unsurprising that the human rights environment is still described as “extremely precarious”: Adrian Schuster *Sri Lanka: Current Situation Update* Swiss Refugee Council (15 November 2012) (p 8) (“the Swiss Refugee Council report”). The Swiss Refugee Council refers to continuing reports from 2012 of abductions and disappearances conducted by “unknowns”, both in Colombo and the north. Responsibility is attributed to the public security forces and paramilitary cadres (p 9).

[62] With respect to Karuna, he defected from the LTTE in early 2004 in order to join with the Sri Lankan government. He later established a political party, the Tamileela Makkal Viduthalai Pulikal (Tamil People’s Liberation Party), or TMVP, but split from the political wing in late 2007. The TMVP came under the leadership of Pillayan, while Karuna joined the Sri Lanka Freedom Party (SLFP). Karuna was later sworn in as Minister for National Integration and Reconciliation, and is currently described as the Deputy Minister for Resettlement; Human Rights Watch *Sri Lanka: Probe into LTTE Crimes Should Start with Karuna* (28 March 2013).

[63] From its inception, the Karuna group engaged in armed activity in support of government security forces. It is implicated in the enforced recruitment of child soldiers and in the abduction of “hundreds” of young men between the ages of 18 and 30: Human Rights Watch *Sri Lanka: Complicit in Crime: State Collusions and Abductions and Child Recruitment by the Karuna Group* (24 January 2007).

[64] The activities of the Karuna group did not come to an end with the end of the conflict in May 2009. Guidelines issued by UNHCR in 2009 state that the ongoing presence of armed para-military groups, including the Karuna group, was a “major source of instability in the East”. Those organisations are implicated in extra-judicial killings, deaths in custody, abductions and forced recruitment. Moreover, these acts are allegedly carried out with the knowledge and acquiescence of the Sri Lankan government.

[65] A report of the Danish Immigration Service: *Human Rights and Security Issues Concerning Tamils in Sri Lanka* (October 2010) (“the Danish Report”)

described Karuna's cadres as "very powerful and active in the East" (p 35) and asserts that it, along with other para-military groups, is engaged in abductions and extortion. It records that among its sources, the Karuna group and other paramilitaries acting alongside the government were perceived to be able to act with impunity (p 37).

[66] The 2012 UNHCR guidelines confirm that the paramilitary groups are reported to perpetrate serious human rights violations and engage in criminal activities such as extortion, attacks, kidnappings and the collection of ransom (p 19). Other reports suggested that the Karuna group was still armed (although it claimed otherwise): see Immigration and Refugee Board of Canada *Sri Lanka: The Tamil Makkal Viduthalai Pulikal (TMVP) and Karuna Factions; their Relationship with Each Other; Reports Concerning their Treatment of Sinhalese and Tamil Citizens; Whether They are Still Active as Paramilitary Groups* (17 February 2012) ("the IRB report") and the Swiss Refugee Council report (p 7) and stated that it took "an aggressive stance towards those who resist... the SLFP" (the Swiss Refugee Council report, p 7).

[67] The Swiss Refugee Council report also states that the activities of Tamil paramilitary groups are frequently covered up or supported by security forces, and that they are conducted with effective impunity, not being subject to legal proceedings (p 7).

*Assessment of risk to the appellant if he were to return to Sri Lanka*

[68] The Tribunal has found that a paramilitary group aligned with Karuna has maintained ongoing interest in the appellant's family during a period that spans three decades. We have found that the appellant has been followed, beaten, abducted, beaten again, forced to witness the mistreatment of his father and humiliated in front of his father. It is apparent that the impact of that treatment has been significant, not just in terms of physical injury but in terms of the appellant's mental state.

[69] If the appellant were to return to Sri Lanka, there is a real chance that his return would eventually come to the attention of the group by which his family has been targeted. The group has been able to locate the appellant's family as it has moved from one area of the country to another and as it has moved around Colombo. That group has acted with impunity and there is a real chance that he will be subjected to similar treatment if he were to return to Sri Lanka. The impact of such treatment upon him, particularly in light of his mental state, is easily

characterised as serious harm. The appellant has been, and would be, unable to access meaningful state protection against such a group.

[70] For these reasons the Tribunal finds that the appellant has a well-founded fear of being persecuted if he were to return to Sri Lanka.

*Is there a Convention reason for the persecution?*

[71] The Tribunal finds that the appellant's predicament is due at least in part to his membership of a particular social group, namely his family. It is also clear that his predicament, and in particular his inability to access adequate state protection, is related to his Tamil ethnicity. It is therefore also for reason of his race.

### **Conclusion on Claim to Refugee Status**

[72] For the reasons given, the Tribunal finds that the appellant is entitled to recognition as a refugee under section 129 of the Act.

### **The Convention Against Torture**

[73] Section 130(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

### **Conclusion on Claim under Convention Against Torture**

[74] The appellant is recognised as a refugee. In accordance with New Zealand's obligations under the Refugee Convention, he cannot be deported from New Zealand, by virtue of section 129(2) of the Act (the exceptions to which do not apply). Accordingly, it is not necessary to determine whether there are substantial grounds for believing that he would be in danger of being subjected to torture if deported from New Zealand. He is not a person requiring protection under the Convention Against Torture, and therefore he is not a protected person within the meaning of section 130(1) of the Act.

## The ICCPR

[75] Section 131(1) of the Act provides that:

“(1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.”

## Conclusion on Claim under ICCPR

[76] For the reasons already given, the appellant cannot be deported from New Zealand. Accordingly, it is not necessary to determine whether there are substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand. He is not a person requiring protection under the ICCPR, and therefore he is not a protected person within the meaning of section 131(1) of the Act.

## CONCLUSION

[77] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture; and
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[78] The appeal is allowed.

“A N Molloy”  
A N Molloy  
Chair

Certified to be the Research  
Copy released for publication.

A N Molloy  
Member