

**IMMIGRATION AND PROTECTION TRIBUNAL
NEW ZEALAND**

[2021] NZIPT 801838-839

**RŌPŪ TAKE MANENE, TAKE WHAKAMARU
AOTEAROA**

Appellants:	HE (Sri Lanka)
Before:	L Wakim
Counsel for the Appellants:	S Parsons
Counsel for the Respondent:	No Appearance
Date of Hearing:	26 and 28 May 2021
Date of Decision:	17 June 2021

DECISION

[1] These are appeals against the decisions of a refugee and protection officer declining to grant refugee status or protected person status to the appellants, a husband (“the husband”) and wife (“the wife”), both of whom are citizens of Sri Lanka.

INTRODUCTION

[2] The appellants claim to have a well-founded fear of being persecuted or subjected to qualifying forms of harm because the Sri Lankan authorities believe that the husband was involved in a money transfer business which was linked to Islamist terrorist bomb attacks in Sri Lanka in April 2019.

[3] For the reasons which follow, the Tribunal finds that the appellants’ accounts are credible and their fears are well founded. It finds that they are both refugees.

[4] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

THE APPELLANTS' CASE

[5] The accounts which follow are summaries of that given by the appellants and their witness at the appeal hearing. It is assessed later.

Evidence of the Husband

Background

[6] The husband was born in Colombo in the early 1990s. He is the only child of a wealthy Sinhalese Roman Catholic couple. He enjoyed a comfortable childhood.

Relationship with the wife

[7] Around 2010, the husband met the wife for the first time when he saw her at the Catholic church that he and his family attended. He introduced himself and, although she was reluctant, eventually convinced her to take his telephone number. Initially, he was not aware that she was Tamil.

[8] The couple began to speak regularly on the telephone and the husband fell deeply in love. Neither told their families about their growing relationship. As a result of the Sri Lankan civil war, the husband's parents believed that all Tamils were supporters of the Liberation Tigers of Tamil Eelam ("LTTE") terrorists. The wife told the husband about her family history, including the fact that her father had been murdered, her brother had disappeared, and her mother had been detained and assaulted, all for suspicion that they were involved with the LTTE.

[9] In 2011, the wife left Sri Lanka and went to live in Z country with her mother (AA), and her older sister. She lived there for three years during which the couple continued their relationship over long distance.

[10] In June 2014, the wife returned to Colombo. She lived with her uncle BB. The husband was studying ZZ subject at university and, although the wife wanted to get married, he felt reluctant because he wanted to complete his studies and establish himself in employment so they could have a solid foundation for their life together. The wife decided to leave Sri Lanka again and travelled to Y country in October 2014 to teach at a school. The couple continued their relationship over long distance.

[11] Although the husband's mother was aware that he was having a relationship, she was not aware that the wife was Tamil until the wife returned from Y country in

late 2016. His parents were strongly opposed to the relationship and tried to ostracise him from the family to convince him to end the relationship. The husband became so depressed that he tried to commit suicide.

Marriage

[12] In August 2017, the couple married, despite their families' opposition. Since then, the husband's parents have refused any contact with him, which has affected him deeply.

[13] Despite this estrangement from the husband's parents, the couple were otherwise happy. The husband was employed as a ZZ occupation and also had his own business in that industry. Although the wife's mother, AA, had initially objected to the relationship and marriage, she had come to accept it and offered them one of her Colombo properties in which to live.

Money transfer scheme

[14] In April or May 2018, AA contacted the couple to see if the husband would be interested in earning some additional income through assisting in a money transfer process between Z country and Sri Lanka. AA explained that she would send the money from Z country and the husband would collect the funds from a specified place and deposit them into bank accounts belonging to people identified by AA. The husband had never heard of, used or seen this process, referred to as *undiyal*.

[15] The husband did not have a clear idea of how the business worked. Originally, he thought that AA was sending the money. Later, he came to understand that someone else told AA the details which she would then relay to him over the phone, including the location of the collection point (one of two jewellery shops), the amount to collect, the amount of commission he could keep, and the details of where he should deposit the funds (the bank, and name and account number of the person).

[16] After receiving the details from AA, the husband would visit the relevant jewellery shop, show his identification and collect the specified amount of money in cash. He would keep his commission and then physically visit the nominated bank, where he would deposit the remainder in the person's bank account. He did not recognise any of the names into which he deposited the funds and does not recall

any specific names. He did not know why the recipients could not collect the funds themselves but surmised it was because they lived outside of Colombo.

[17] The husband's involvement in the transfer process lasted around 11 months, until June 2019, during which time he conducted up to seven or eight *undiyal* transactions a month, but often far fewer. He did not think much about it; he saw it simply as a small side business through which he could earn a little additional income.

The wife's detention

[18] On 1 July 2019, the husband left home around 11am to travel to a small town for his work. Around 6pm, he received a telephone call from his neighbour CC who told him that the Criminal Investigation Department (CID) police had come to their home and arrested the wife whom he had seen terrified and crying. The police then told CC that the husband had been helping people to bomb Sri Lanka and mentioned AA.

[19] The husband was shocked. He tried to call AA but she did not pick up the telephone. Terrified, he thought of films where the police had tracked people using their telephones, so he took out his SIM card. He had no family to help. Then he remembered that his wife had told him how her uncle BB had assisted the family when the wife's brother went missing and helped to have AA released from detention. Using a work telephone, he called BB and reported what the neighbour and told him. BB told the husband not to worry and he would look into the matter.

[20] The husband then called his friend DD and told him that the wife had been taken by the CID because of his business with AA. DD agreed to go to the CID and find out what was happening but told the husband to keep safe and stay away. The husband was panicking. He had never experienced anything like this. He decided to travel to X town to stay with EE, a friend of the wife's father. The couple had previously visited EE and his wife and hosted them when they visited Colombo.

[21] While the husband was *en route* to X town, DD called him and told him that he had not found the wife at the CID office. Devastated, the husband decided to turn around and go to find his wife himself. He called BB to tell him, but BB yelled at him not to be stupid and stop making problems. He told the husband to calm down and that his contacts in the CID had confirmed that the wife was there. He told the husband not to make any hasty decisions which would make the situation worse and he would call again in the morning with news.

[22] The husband continued to X town and reported to DD that his wife was in the CID building. Arriving around midnight, he told EE about the situation. EE tried unsuccessfully to call a friend of his to help, but reassured the husband that, if BB had said that he was dealing with it, they should wait to hear from him.

[23] In the morning, BB informed the husband that he had arranged for the wife's release for the price of four or five *lakh* rupees (approximately NZ\$2,800-3,500). He called back later, confirming the police had demanded five *lakh*, but he had negotiated four *lakh* and she had been released. The appellant called DD and asked him to go to his home and find his wife. He knew that she had no telephone because, several days before, he had broken his telephone and had borrowed hers (into which he placed his SIM card) while his telephone was being fixed.

[24] DD went to the couple's home and met with the wife and, from there, called the husband. The husband spoke to the wife, who was crying and upset. He told her to take their jewellery, cash, and certificates and important documents and to join him in X town. He asked DD to have his wife stay with him overnight, and then arrange for her transport to X town the following day.

[25] The husband spoke again to the wife when she arrived at DD's home. She told him that the CID were looking for him and he should be extremely careful. She cried as she reported how she had been beaten.

[26] Early the following morning, the wife arrived at EE's home. The husband saw that she had a wound on her right leg and bruising and swelling on her arms and body which EE's wife treated with a hot towel massage.

Time in X town

[27] The husband then called AA in Z country and they had an argument. He blamed her for making their lives miserable and told her that the business had ruined their lives and hurt his wife. AA was angry too. The wife also had an argument with her mother before the conversation ended.

[28] The husband had talked to EE about leaving the country. EE contacted a friend, FF, who worked at a travel agency in Colombo. FF came to the house the following day and told the couple that he could help but that it would cost around 35 *lakh* rupees, which EE later negotiated down to 30 *lakh*. The husband told him that he could pay this through the sale of his car and the jewellery the wife had brought with her. EE was not concerned; he just said he would organise it and arrange for the money later.

[29] FF returned the next day and told the couple. He advised them to dress smartly and took photographs of them in several changes of clothes. He also asked them to sign their signatures multiple times on blank pieces of paper. He took the couple's original passports, original national identity cards, original certified birth and marriage certificates, and the wife's original Z country residence permit card.

[30] The couple waited for several weeks. They did not leave EE's house, even to go to the supermarket or seek medical attention for the wife. They were very worried and stressed. The husband did not contact his work or any of his friends. He destroyed all the SIM cards the couple had used. He did not contact DD or BB. He signed the ownership papers of the car over to EE to sell.

[31] Some weeks later, FF called and said that everything was ready. One week later, he came to handover new passports. He explained that the couple would be travelling as a director and managing director of a company and that they should dress in smart clothes. At the airport, they should go to the second counter two hours prior to the departure of their flight. He handed back most of their documents, but not their original identity cards or their old (genuine) passports. The husband did not question these instructions or ask about these documents. His priority was to leave the country.

Leaving Sri Lanka

[32] The couple followed the directions that they were given and passed through the airport without problems. They arrived in New Zealand on 23 August 2019 and claimed refugee and protected person status on 9 September 2019. They sought medical attention for the wife's leg wound.

[33] Since then, the husband has not spoken to BB. He called DD in September 2020 and told him that they were in New Zealand. He has not spoken to AA; while he concedes that she did not mean the couple any harm, he has felt unable to speak with her. He has had no contact with his parents, although they are now aware that he is in New Zealand after he contacted a friend to retrieve something from the family home. The friend told his parents that the husband was in New Zealand studying for a PhD.

Fears of returning to Sri Lanka

[34] The husband is fearful of returning to Sri Lanka. Before, as a Sinhalese, he could not imagine coming to harm, but he now realises that he is at risk of

disappearance just like his wife's brother. This is because the authorities see him as a traitor. He has married a Tamil woman, who has a sister who married a Muslim. Based on what the police told his wife, the authorities believe that he has helped finance terrorists involved in the Easter bombings. The husband thinks it might be possible that some of the accounts into which he deposited money were somehow linked to people involved in the attacks, but he has no idea about this nor does he have known connection to anyone associated with the attacks.

Evidence of the Wife

Early life

[35] The wife was born in the early 1990s in Colombo, the youngest of four children. Her parents owned a shop.

[36] The wife's father died in 1998 when she was very young and, although she was initially told he had died of a heart attack, her mother later explained to the wife that her father had been kidnapped by the army, tortured and had died of his injuries. He was suspected of supporting the LTTE by assisting Tamils to leave the country.

[37] When the wife was about eight, her eldest sister eloped with a Muslim man. This was devastating news for her mother, AA was still struggling in the aftermath of her father's death.

Brother's disappearance; mother's detention

[38] In 2009, the wife was at home when her mother AA received a telephone call saying that her son GG (the wife's brother) and an employee from the family's shop had been taken away from the shop by security forces. The wife's other brother, HH, left home immediately to stay with a friend. AA went to the CID to find out what had happened but returned, crying, because the CID would tell her nothing. To this day, the wife has no idea what happened to GG or the employee. She also never saw HH again. Her mother later told her that he had escaped Sri Lanka and now lives in Australia.

[39] The following day, the police came to the home and arrested AA after they could not find HH. She was detained for a week. Later, the wife overheard AA telling a relative that she had been beaten and sexually assaulted while in detention. AA was terrified that she would be killed like her husband had been and, after her release, went into hiding. The wife did not see AA before she left Sri Lanka around

2010 for Z country, although they spoke regularly on the telephone. The whole family was very scared.

[40] The wife later learned that the authorities suspected that the employee who was arrested with GG, and who had sometimes stayed with the family because his home was some distance away from the shop, was an LTTE supporter.

Relationship with the husband

[41] After AA left, the wife lived her aunt. Very lonely, she spent a lot of time at church and it was there that she met the husband. She quickly understood that they were of different ethnicities and, not wanting any further problems for her family, did not want to have a relationship with a non-Tamil. She knew her family would not approve and worried that his would not either. But the husband persisted and won her over, and they fell in love.

[42] In 2011, the wife moved to Z country to be reunited with her mother, her sister and her sister's husband. However, her experience in that country was not happy. The educational institutions in which she was enrolled closed and her visa conditions did not allow her to work so she was largely stuck at home. There were also difficulties in her relationship with her sister, who accused her of having an affair with her brother-in-law. The wife continued her relationship with the husband through daily telephone conversations and eventually had his name tattooed on her wrist. It made AA very angry to learn that she was in a relationship.

[43] Eventually, unhappy in Z country, and against the wishes of her family, the wife decided to return to Sri Lanka. She stayed with her uncle BB who had also opposed her return because he feared she was in ongoing danger from the authorities. He then discovered that the wife was in a relationship with a non-Tamil and told AA. Both were angry.

[44] The wife was not sure what to do. She wanted to marry, but the husband was reluctant to do so until he had completed his studies. Unhappy living with her uncle, she decided to leave Sri Lanka and, in October 2014, found work at an English school in Y country where it was not difficult to obtain a work permit. She decided to stay there until the husband finished his studies and established himself. Their relationship continued over long distance.

[45] In December 2016, the wife returned to Sri Lanka. She moved in with a friend because her uncle BB remained angry with her. The husband had finished his studies and secured a good job and they started planning their wedding.

[46] The couple married in August 2017, in the presence of several friends. Although AA was very angry about the marriage, she softened after the wife spent time trying to apologise. Around a month later, she offered the couple one of her properties in which to live. The wife's uncle BB remained angry. The husband's family completely disowned him. Despite these difficulties, the husband had a good job and the wife was happy at home as a housewife.

Money transfer business

[47] Around April 2018, AA told the wife that a man she knew in Z country was looking for someone living in Colombo to help him out and she wondered if the husband would like to earn some extra money. AA then spoke directly to the husband about the proposition and he agreed to take part. The wife understood that her husband would collect money from certain jewellery stores and then deposit the funds into particular bank accounts, according to instructions sent by AA. For his role, he would earn a small commission. The wife did not know what role her mother played in the business in Z country and she did not discuss the business with her husband in any detail.

Detention

[48] On 1 July 2019, the husband left to conduct some work outside of Colombo. Around 3 or 4pm, the wife heard and saw someone trying to climb over the gate at the front of their house. Four other men then came into the property, dressed in civilian clothes but who appeared to be armed. They told her that they were from the police and asked where the husband was and about AA. When the wife said that she did not know, the police slapped her hard across the face. They told her to sit down while they searched the house. They demanded keys to locked cupboards and drawers. They told her she would be humiliated in front of everyone and that her whole family were all LTTE supporters.

[49] The officers asked the wife again about the husband's whereabouts and telephone number and threatened to take her away if she did not respond. The wife was terrified, remembering what had happened to her mother in detention. Eventually, the police dragged her out of the house and put her in a vehicle. It was a quiet and respectable neighbourhood in which there was never much noise, but the wife started screaming and shouting, trying to attract attention. She was very scared because there were no female officers present.

[50] The wife saw her neighbour CC watching what was happening as she was dragged into the vehicle. From there, she also saw one of the officers go and talk to CC. Inside the vehicle, the officers said vulgar things about her and AA, that they could not do things alone, and that they had been using and manipulating a Sinhalese man to help.

[51] The police took the wife to the CID office. They pushed her into a dark room where she knocked over a piece of furniture and fell, puncturing her leg on a metal part of a chair. The wound bled badly, but no medical attention was provided.

[52] After about 15 minutes, officers entered and questioned the wife about where she had been at Easter, her mother AA, and the whereabouts of her Muslim brother-in-law and her brother HH. She did not understand the relevance of these questions.

[53] The police told the wife that the husband had deposited money into people's accounts that were linked to the Easter bombings and that her Muslim brother-in-law, mother, and Sinhalese husband were all helping terrorists. The wife angrily denied that her husband could have been involved in such an activity. One of the officers then stepped on her wounded leg, saying that her husband had been involved. He took a piece of white paper and flashed it before her eyes, telling her he had evidence of the husband's involvement, but she did not and could not see what was on the paper. Another officer started pulling her hair and hit her repeatedly on the side of her head.

[54] Another officer entered the room. He was drunk and told the other officers not to hurt the wife, but then started touching her inappropriately on her breasts and other areas of her body. She pushed his hand away and went to the corner crying, begging for nothing to happen. Eventually, he was removed by other officers. The officers asked more questions about the husband's involvement in the *undiyal* business. The wife was confused as to why the husband was implicated in a business that belonged to AA.

[55] The officers eventually left. The wife spent all night sitting in a chair. She did not leave the room and was not given any food. Without explanation, around lunchtime the next day, she was released and dropped at a junction nearby her home. She walked home but was unable to contact her husband (as he had borrowed her telephone while his was being fixed) and was too embarrassed to seek help from the neighbours.

[56] The wife had not been home long when her husband's friend DD arrived. Initially, she was confused at his presence, but he told her that he knew about her detention and that her uncle BB had paid a bribe to have her released. He then called the husband and the wife was able to speak directly to him. The husband told her to come to him in X town, where he was staying with EE, with the cash, jewellery and important documents and certificates. He said that DD would organise everything.

[57] When the wife went to collect the cash, jewellery and certificates from the bedroom hiding place, she found that the whole room had been ransacked with clothes and documents strewn everywhere. A small container of gold had been taken and all of the cash. She was able to collect up the documents and take some jewellery, along with some clothes for her and her husband.

[58] The wife spoke again with her husband from DD's home. She followed his instructions to get to X town where she arrived early in the morning.

Leaving Sri Lanka

[59] After they were reunited, the couple called AA. A very angry argument took place and everyone was very upset. The husband then threw away the SIM cards. He told her that he had talked to EE about arranging someone to help them leave the country. An agent visited the house but, because it was a Muslim household, she did not participate in meeting with him. The agent returned later and took photographs of the couple in several different changes of clothing. He also asked the wife to sign her signature many times on blank pieces of paper. She provided him with documents including her birth certificate, identity card, passport and Z country residence permit card.

[60] Following the instructions of the agent — going through the second counter two hours before departure and dressing in smart clothes as she was identified as a director in her new passport — the couple had no problems leaving the airport.

[61] The wife is not aware of any associations her family has had with the LTTE, nor of any involvement of her husband financing terrorism in Sri Lanka.

Fears of returning to Sri Lanka

[62] The wife is fearful that if she returns to Sri Lanka, the authorities will arrest her husband and murder him, just like they have her brother and other members of

her family. If they cannot, she is worried that something will happen to her. She feels she has lived a “gypsy life” running away and had hoped that being married would lead to a peaceful life. That has not happened, and the pressure has felt overwhelming.

Evidence of AA, the Wife’s Mother

[63] The wife’s mother, AA, appeared before the Tribunal via video link, having previously provided a written statement to the Tribunal (18 May 2021).

Husband’s death

[64] AA was born in Colombo. The wife is the youngest of the four children she had with her husband, who died in 1998 during a period when there were many problems between the government and the LTTE. AA’s husband was taken away by the army and then transferred later to the CID. Despite searching for him everywhere, AA was unaware of where he was until, two weeks after he had been taken, she was contacted by someone she knew who worked at the hospital who told her that he had been admitted.

[65] AA was initially denied entry to the hospital by security forces but was able to gain access through her friend that was working at the hospital. She briefly visited her husband. He was unable to speak and had clearly been tortured and severely beaten. In the morning, the police informed her that her husband had died overnight. She returned to the hospital where she was told that her husband had committed suicide. She tried reporting to the police that her husband could not have committed suicide, but she was told to leave. She then went to the CID, which refused to issue a death certificate for several days. Finally, when one was issued, it recorded that her husband had jumped from a high place.

[66] AA was not aware of any links her husband had with the LTTE. However, he had a friend who owned a travel agency, who would arrange to help people leave Sri Lanka and would sometimes stay at the family home before departing. At the time, AA did not think that any of these people were associated with the LTTE but she now believes that her husband’s name was given to the authorities by a man who had been caught with plans connected to the LTTE, whose sister had once stayed at their home.

Son’s disappearance and AA’s detention

[67] In 2009, AA’s son, GG, and a trusted employee at the shop were arrested,

detained and disappeared. AA was not aware that the employee had any links to the LTTE and had no reason to think that he did.

[68] Shortly after her son and the employee were taken, AA was detained, physically and sexually assaulted, and tortured for more than a week by security forces. Eventually, her brother, BB, was able to secure her release. She went into hiding with her sister and then left Sri Lanka in 2010. She successfully claimed refugee status in Z country on the basis of her experiences.

Husband and wife's relationship

[69] AA had initially been upset about the wife's relationship with the husband because he was not Tamil. In Z country, the wife had become angry and objected when AA had tried to arrange a marriage proposal. Instead, the wife got a boy's name tattooed on her wrist. She refused to apply for refugee status and returned to Sri Lanka. AA felt sad because she had lost her husband and felt that none of her children respected her or listened to her advice. Nevertheless, the wife was her baby daughter and she loved her very much so, when she later heard that she and her husband were paying a high price to rent a very small studio, she encouraged them to go and live in one of the empty properties which she owned.

Undiyal business

[70] From Z country, AA would occasionally send money to her siblings in Sri Lanka through a Muslim Sri Lankan man she knew. One time, he told her he was finding it difficult to find a trustworthy person in Colombo to arrange cash withdrawals and deposits. He asked her if she knew anyone he could pay to do this.

[71] AA did nothing about this request because it involved a money matter which she did not understand. However, the man came back and asked her again if she could help him find someone, and so she talked to the wife and husband. Although the husband was working at the time, she thought it could be a useful source of extra income for the couple. She never expected any problems to come of it.

[72] The husband agreed to help, and AA gave his name and identity card number to the man. As she understood it, the man would send money to someone in Sri Lanka, then tell her over the phone (or sometimes in person, as he lived close by) the details of where the money was going and the recipient. She would write the details down and call the husband on the telephone and tell him the details. She

no longer has any of the details she wrote down because, after this problem arose, she was scared and threw them all away. The man told the husband to collect the money from one of two specific jewellery shops although, as the business went on, the husband would figure out which shop from the nature of the transaction.

[73] AA does not know how the man arranged for the money to get to Sri Lanka.

[74] AA recalls being involved in three or four transactions a month, sometimes more, depending on the rates of exchange. She did not earn anything for her part in the process, but she was not charged commission by the man when she occasionally sent money to her own family.

June–July 2019

[75] In June or July 2019, AA missed a call from the husband, but, when she tried returning the call, there was no answer. Then, a couple of days later, she received a telephone call from the couple. They yelled at her, blaming her for “bad things” that had happened with the money transfer business. She tried to understand what had happened, but they just kept yelling. Eventually they hung up.

[76] Concerned, AA called her brother BB. He asked if she had got the couple involved in a money transfer business and, when she said that she had, he explained that money had been deposited into an account belonging to people who had then carried out the Easter bombings. The police were looking for the husband and had taken the wife. He had secured the wife’s release but was scared because he had historical problems with the authorities himself and was worried for his two sons. He told AA that the couple were now in X town. She knew that they would be safe there with the family’s close friend, a Muslim. She called the friend and he confirmed that the couple were staying with him, but they were very angry with her. She explained that she had not had any intention to cause trouble for the couple and had had no idea that this would happen.

[77] AA has not spoken to the wife or the wife’s husband since then, except on one occasion when her daughter called regarding sending some documents. Her friend in X town told her that the couple had left for New Zealand. The wife has not told her what had happened in detention, although BB told her that the wife was badly beaten. The wife’s mother was aware of such beatings from her own experience.

[78] Since the couple left Sri Lanka, BB has been taking care of AA’s properties in Colombo, including the house where the couple had been living. He has told AA

that, when he went to arrange for the cleaning of the house, neighbours told him that unknown people had been observing the house.

Material and Submissions Received

[79] On 8 April 2021, counsel provided, in support of a request for an adjournment which was granted by the Tribunal, a psychological report (7 April 2021) for the appellants from Ted Wotherspoon, psychologist, which outlined significant mental health challenges they were both facing.

[80] On 19 and 21 May 2021, the Tribunal received submissions (21 May 2021) from counsel; updated statements (14 May 2021) from both the husband and the wife; a statement (18 May 2021) from the wife's mother; documents from Z country authorities confirming the wife's mother's refugee status; and a second psychological report (11 May 2021) from Ted Wotherspoon.

[81] Counsel also provided a bundle of country information including the general human rights situation in Sri Lanka, the treatment of Muslims and suspected LTTE members in Sri Lanka; and remittance practices of Tamils in Norway.

[82] During the hearing, the Tribunal provided counsel with copies of the appellants' New Zealand visitor visa applications.

[83] During the hearing the appellants submitted:

- (a) the wife's original Z country resident card;
- (b) photocopies of the appellants' original identity cards;
- (c) the wife's original Sinhalese language birth certificate;
- (d) the original certified copy of the wife's birth certificate (dated 11 March 2019);
- (e) the original English translation of the certified copy of the wife's birth certificate (translated on 12 March 2019);
- (f) the original certified copy of the husband's birth certificate (dated 11 March 2019);
- (g) the original English translation of the certified copy of the husband's birth certificate (translated on 12 March 2019);

- (h) the appellants' original marriage certificate;
- (i) the original English translation of the certified copy of the appellants' marriage certificate (translated on 12 March 2019); and
- (j) the original death certificate for the wife's father, recording that he died on 3 March 1998 after falling from a high-rise building and dying from his injuries at the Colombo General Hospital.

[84] Counsel also informed the Tribunal that he had received letters from BB (3 March 2021) and EE (4 March 2021) but despite his best efforts, translations had not been completed by the time of the hearing. In the circumstances, the Tribunal can give them no weight.

ASSESSMENT

[85] 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 each of the appellants as:

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

[86] In determining whether the appellants are refugees or protected persons, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellants' account.

Credibility

[87] The Tribunal records that the Refugee Status Unit (RSU) declined the appellants' claims largely based on apparent inconsistencies in the evidence provided by the husband and wife. The Tribunal finds that those inconsistencies

were either so peripheral as to be irrelevant (such as the brand of telephone), or plausibly explained upon appeal.

Documentation

[88] At the RSU interview, the appellants were shown documents provided to Immigration New Zealand in support of their visitor visa application (which they had never seen before) which had been generated by FF when he applied for the visas. These included dozens of (fake) entry and exit stamps for countries they had never visited in their (genuine) passports.

[89] The RSU had concerns that the certified copies of the appellants' birth and marriage certificates (and official English translations) were produced by the Sri Lankan authorities in March 2019 and attested by the Ministry of Foreign Affairs in May 2019. Because this was well before the couple's difficulties with the Sri Lankan authorities, it suggested their intentions to leave Sri Lanka were unrelated to their refugee claim. The RSU did not accept the couple's explanations that they sought those certified copies (and English translations) in March 2019 in anticipation of starting a family and enrolling their children at private school.

[90] Having heard directly from the appellants, and sighted the genuine documents obtained by the appellants from the authorities, the Tribunal accepts the couple's explanation that they sought certified copies (and English translations) of their birth and marriage certificates in March 2019 for the reasons they claimed. It also appears that FF made changes to those documents by adding an attestation from the Sri Lankan Ministry of Foreign Affairs (22 May 2019). Such attestations are not present on any of the original documents and the Tribunal accepts the appellants know nothing of their origin.

[91] FF also provided Immigration New Zealand with documents apparently signed by the appellants (such as company registration documents), which they had never seen or signed. It appears that these documents were created and falsified by FF using the signatures the couple had signed on blank paper while they were in X town. Similarly, the photographs taken in X town were used in the new passports and other documents the couple were provided by FF. It also appears that FF was able to access a photograph of the husband at a much younger age [withheld] to generate a fake Schengen visa, ostensibly from 2014, which was placed in his old (genuine) passport.

[92] Having been through the original documents with the appellants, the Tribunal finds that the concerns raised by the RSU in this respect have been addressed.

[93] The Tribunal finds that the evidence of both appellants was credible, consistent and compelling, both individually, and between their two accounts. The documentary evidence provided on appeal supports their claims, as does the consistent and credible evidence provided by the wife's mother. The appellants' accounts are accepted in their entirety.

[94] The Tribunal has also considered whether the money transfer business in which the husband was involved may be, in some way, linked to the financing of the Easter bombings. However, even assuming that there is some link, the Tribunal accepts the evidence from the husband and the mother in relation to their lack of knowledge regarding both the senders and recipients of the funds sent between the Z country and Sri Lanka, and their ignorance of any possible links to the terrorists who carried out these attacks.

Accepted facts

[95] A summary of the facts accepted by the Tribunal follows.

[96] The husband (Sinhalese, Catholic) and wife (Tamil, Catholic) were both born in Sri Lanka. In 1998, the wife's father was tortured by Sri Lankan authorities and died of his injuries after being suspected of supporting the LTTE. In 2009, her brother was detained and disappeared, and her mother was detained, beaten and sexually assaulted by the authorities. Her sister has lived outside Sri Lanka for several decades after eloping with a Muslim man against her family's wishes.

[97] The husband and wife met at church around 2010, after the appellant's mother had moved to Z country and made her successful claim for refugee status. Their relationship continued, long distance, during the five years the wife spent outside Sri Lanka. They married in August 2017 and moved in together, living in a property owned by the wife's mother.

[98] In April or May 2018, through the wife's mother, the husband became involved in a money transfer business (*undiyal*) between Z country and Sri Lanka, run by a Sri Lankan Muslim man. AA would instruct the husband to collect cash from two jewellery businesses and he would deposit those funds (less a small commission for himself) into specific bank accounts. The husband's involvement lasted around 11 months, until June 2019.

[99] In the late afternoon on 1 July 2019, while the husband was travelling out of the city for work, non-uniformed police broke into the couple's home while the wife

was home alone. They ransacked the bedroom, stole cash and jewellery. They verbally abused and physically assaulted the wife, slapping her across the face and hitting her. They were looking for the husband whom they accused of associating with terrorists. Neighbours watched as she was dragged into a vehicle.

[100] Taken to the CID offices, the wife was injured on the leg when she was pushed into a dark room. She received no treatment for her bleeding wound. Police officers slapped and hit her, stood on her injured leg and inappropriately touched her body. She was questioned about her husband, her mother, her brother, her Muslim brother-in-law, and the *undiyal* business. Her family's links to the LTTE were also mentioned. She was kept overnight and given no food. The following day, around lunchtime, she was released after her uncle BB paid a bribe.

[101] The husband discovered about his wife's detention when his neighbour called to tell him he had seen her arrested. The husband's friend then assisted the wife to travel to X town, where she was reunited with her husband who had sought safety in the house of the wife's father's friend, EE.

[102] EE contacted his friend and travel agent, FF, who organised for New Zealand visas and new passports for the couple to leave Sri Lanka. After two months of hiding at EE's home, the couple left Sri Lanka and arrived in New Zealand in August 2019.

The Refugee Convention

[103] 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."

[104] 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, is unable or, owing to such fear, is unwilling to return to it."

[105] 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

[106] For the purposes of refugee determination, “being persecuted” requires serious harm arising from the sustained or systemic violation of internationally recognised human rights, demonstrative of a failure of state protection – see *DS (Iran)* [2016] NZIPT 800788 at [114]–[130] and [177]–[183].

[107] 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, 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 appellants being persecuted if returned to Sri Lanka?

[108] It is necessary first to consider the relevant country information.

The “Easter Bombings”

[109] On 21 April 2019, eight suicide bombers affiliated with Islamic State-linked local jihadist groups, National Towheed Jamaat (NTJ) and Jammiyat-ul Millathu Ibrahim (JMI), carried out deadly terrorist attacks in Sri Lanka, targeting luxury hotels and Catholic churches in Colombo and other cities. At least 258 people were killed, the deadliest day of terrorist violence in the country’s history: International Crisis Group *After Sri Lanka’s Easter Bombings: Reducing Risks of Future Violence* (27 September 2019) at p3 (“the ICG report”).

[110] According to the ICG report at pp5–6, much or all of the money needed to fund the attack came from two brothers, Ilham and Inshaf Ibrahim, who came from a prominent Colombo business family, and were members of JMI.

[111] The ICG report, at p4, records the effect of the immediate security crackdown instituted by the government the day following the attacks:

The president issued emergency regulations giving security forces, including the army, sweeping powers of investigation, arrest and detention, and the weeks following the attacks saw island-wide police and army raids, mostly in Muslim villages and neighbourhoods. Police arrested hundreds of citizens and discovered hidden weapons caches and safe houses used by the network behind the attacks, but also knives and small swords hidden in Muslim neighbourhoods and near mosques, apparently for protection against periodic mob attacks by anti-Muslim groups.

[112] Citing police statistics, the United States Department of State *2020 Country Reports on Human Rights Practices: Sri Lanka* (30 March 2021) (“the 2020 USDOS report”) records at p10, that 2,299 individuals were arrested by the authorities in the aftermath of the attack. In its earlier 2019 report, the United States Department of State *2019 Country Reports on Human Rights Practices: Sri Lanka* (11 March 2020) records at p7 that dozens of complaints alleging detention on spurious grounds were lodged with the Human Rights Commission of Sri Lanka (HRCSL):

In a July [2019] letter to the acting inspector general of police, the HRCSL noted it had received an increased number of complaints for arbitrary arrests in the wake of the April 21 attacks, alleging detention occurred for possessing Arabic language literature or as a result of unsubstantiated rumors. The commission observed that in nearly all complaints the investigations occurred after arrest, leaving suspects detained for indefinite periods. A July review by Human Rights Watch of information provided by defense lawyers for 105 individuals detained under the [Prevention of Terrorism Act] summarized what Human Rights Watch judged as spurious justifications given by the authorities for arrests, including: “Keeping money at home”; “Talking in playground (Breaking emergency law)”; “A post [he] had shared on social media 5 years back”; “Having English lecturer docs”; “Arabic song in Laptop”; “Traveling to Jaffna for job”; and “no reason.”

[113] In February 2021, an official Commission of Inquiry report was submitted to the Sri Lankan President. Although the report is not public, media articles regarding the Parliamentary debate of the report contain some details of its contents: see “Sri Lanka Parliament Debates Presidential Commission Report on Easter Sunday Attack” *ColomboPage* (10 March 2021):

According to the Minister [of Public Security], so far 676 people have been arrested in connection with the 21 April 2019 Easter Sunday attack in Sri Lanka. Of these, 202 have been remanded, while another 66 are being detained and under investigation.

Although 408 people have been released on bail, investigations into them are still ongoing.

...

Since the current government came to power, 99 people have been arrested in Sri Lanka for their direct and indirect involvement in the Easter attacks, while 35 Sri Lankans living abroad have been arrested and investigated.

The State Intelligence Service, in coordination with foreign intelligence agencies, has extradited 50 of the 54 suspects arrested in connection with the attacks in five foreign countries. The other four will be extradited as soon as the trials in those countries are over.

It has also been revealed that these individuals while feeding extremism from those countries have been sending money to Sri Lanka for extremist propaganda. According to local information and investigations, their involvement in the attack will be categorized and prosecuted. The State Intelligence Service has developed a system to liaise with the relevant intelligence services in Sri Lanka to monitor the activities of such expatriate Sri Lankans.

...

It has been revealed that all the money and material resources needed for the attack were provided by the Dulhami Inshaf brothers from their own businesses, as well as by extremist organizations abroad and pro-IS groups in the Middle East.

[114] Other reports note that political and religious tensions have increased amid the government's inability to take decisive action against the groups and individuals mentioned in the report: A Roul "Islamic State's Easter Sunday Attacks in Sri Lanka: Assessing the Government's Response Two Years On" *The Jamestown Foundation: Terrorism Monitor* (9 April 2021).

Torture in detention

[115] Sri Lanka has a long history of using violence against detainees and a well-developed culture of impunity amongst security forces who carry out such human rights abuses. Although prohibited by the constitution and law, torture continues to be repeatedly employed by the Sri Lankan authorities, as outlined by the 2020 USDOS report at p6:

Interviews by human rights organizations found that torture and excessive use of force by police, particularly to extract confessions, remained endemic. The Human Rights Commission of Sri Lanka (HRCSL), for example, noted that many reports of torture referred to police officers allegedly "roughing up" suspects to extract a confession or otherwise elicit evidence to use against the accused. As in previous years, arrestees reported torture and mistreatment, forced confessions, and denial of basic rights, such as access to lawyers or family members.

[116] The 2020 USDOS report recorded that the HRCSL had documented 260 complaints of physical and mental torture between January and August 2020, in addition to 37 complaints from prisoners (at p6). It also noted that the Prevention of Terrorism Act (PTA) allows courts to admit as evidence any statements made by the accused at any time and provides no exception for confessions extracted by torture.

[117] The 2020 USDOS report also records, at p28, that Tamils continued to report being regularly monitored and harassed by security forces, especially activists, journalists, and former or suspected former LTTE members.

Hawala/Undiyal

[118] *Undiyal* (which means “piggy bank” in Tamil), and sometimes known as *hawala*, is an informal money transfer scheme used in Sri Lanka. Historically, such transfer systems facilitated Sri Lankans working overseas to remit money home, especially by the Tamil population: International Crisis Group *The Sri Lankan Tamil Diaspora after the LTTE* (23 February 2010) at p5.

[119] A recent Sri Lankan newspaper article — N Thennakoon, “Combating Invisible Financing for Terrorism” *Daily Financial Times* (29 May 2019) — explains how the *undiyal/hawala* system requires individual brokers in different countries. The remitter in country A pays their money to the broker in that country, providing details of who should receive the funds in country B. That broker contacts their broker-counterpart in Country B who pays out the funds to the receiver.

[120] The critical component of the system is that no money is actually transferred and there is no written contract. The two brokers work largely on trust and settle their accounts at a later date, although the broker in the recipient country generally delivers the money free of charge. The system is attractive for remitters because brokers charge a modest commission and use a more favourable exchange rate than the mainstream banks. The article notes:

Trust between the involved parties is the main attraction of the *Hawala* system. Moreover, the low or no cost for the remitters, speed of the transfer, anonymity, convenience for the recipients and the lack of rigid formalities, suitability for cultural aspects are considered as other attractive elements of the *Hawala* system.

[121] Explained in a different way, an older article by S Gunaraj “Illicit Dealers Offer Fast Money Transfers” *Sunday Times* (31 August 2003) explains:

Anyone who wishes to send money to a relative in Jaffna, simply visits these representatives, pays up front and identifies the person to whom the money should be paid by providing details of the person's national identity card. The representative then immediately contacts the local agent in Jaffna via telephone, and the amount is converted to Sri Lankan rupees according to the existing market rates, and paid to the person in Jaffna upon producing his National Identity Card.

[122] However, as well as being convenient method for expatriates sending money back to family members in Sri Lanka, the lack of a paper or electronic trail means the system is attractive to those engaged in illicit transactions including terrorist financing, tax evasion, exchange control violations and import/export frauds. In the past, the Sri Lankan authorities have also been concerned that the LTTE continued to receive funds from supporters overseas through this system: “Tamil Tigers: Defeated at Home, Defiant Abroad” *Independent* (23 October 2011).

Application to the facts

[123] The appellants' claims are assessed against the country information outlined above. Both the wife and the husband fear harm at the hands of the Sri Lankan authorities because the husband has been associated with a money transfer scheme which the authorities believe may have been connected to people involved in the Easter 2019 terrorist attacks.

[124] As outlined above, the *undiyal* system is attractive not only for expatriate remitters but also those wishing to transfer funds between countries outside of electronic (trackable) mechanisms. It is possible that the terrorist groups associated with the bombings may have utilised such money transfer mechanisms, although there is no public information available to the Tribunal which confirms that link.

[125] The Tribunal accepts that the husband's knowledge and understanding of the money transfer business in which he was involved was rudimentary. He was not one of the brokers involved. Rather, he was a courier who retrieved the cash from the Colombo broker(s) and deposited it into the bank account of the relevant recipient as directed by his mother-in-law, who had received those details from Z country broker.

[126] The Tribunal recognises that the system described by the husband differs slightly from the country information above, in that it indicates that there is no commission charged on the receiving end and that clients collect the funds themselves from brokers. However, the very nature of such informal money transfer systems is flexibility. There are a multitude of reasons why the arrangement involving the husband as a courier paid by commission may have been utilised. The jewellery shop brokers may have wished to reduce the traffic of clients in their shops, or perhaps it was a service to clients living outside of Colombo. In any event, it is both speculative and unnecessary to determine because it is accepted that the husband was involved in this part of the transaction, even if he was unaware of the intricacies of the process or why his role was necessary. The Tribunal finds it plausible that the system functioned as described by the husband.

[127] In July 2019, when the emergency powers were still in place following the Easter bombing, the authorities attempted to find the husband on the suspicion that the money transfer business may have been linked to people involved in the attacks. When they failed to find him, the wife was arrested, detained, and mistreated and released only after a substantial bribe was paid. The wife's experience is consistent

with the pervasive use of torture and other mistreatment by the security forces against detainees, including those (such as the wife) who have not been charged.

[128] There is no public information before the Tribunal to corroborate the claim that the money transfer process in which the husband was involved is linked to the attacks. However, the country information shows a focus of the authorities on the expatriate Muslim community after the attack. Although the husband is Sinhalese, Z country broker was a Sri Lankan Muslim, and the fact that the wife's sister is married to a Muslim may have also raised flags for the authorities.

[129] Although it has now been some time since the Easter bombings, the Tribunal finds that the authorities will likely continue to have an interest in the appellants. AA's evidence is that BB reported that neighbours of the house the appellants were living in has been surveilled by unknown persons, which would be consistent with the authorities continuing to have an interest in the appellants' whereabouts.

[130] The Tribunal is satisfied that the husband was not involved in the scheme to support Islamist terrorist goals or views, nor is he aware if any money he deposited went to, or came from, people who may have supported such views. However, even if the Sri Lankan authorities have legitimate concerns about the money transfer process in which the husband was involved, the country information suggests that they will not treat the husband in a fair manner regarding their suspicions or accept his limited role in the process without seriously mistreating him to satisfy themselves. Given the ongoing pressure the government faces to prosecute those responsible for funding and carrying out the attacks, it cannot be assumed that the authorities will not use torture and mistreatment to extract from the husband a confession or information that he does not genuinely hold.

[131] This profile, combined with the wife's family history of suspected LTTE support, means it is likely that, upon return to Sri Lanka, or at some point after, the couple will come to the attention of the authorities. The Tribunal is satisfied that there is a real chance that both the husband and wife will be subjected to serious harm in the form of torture or other physical mistreatment constituting cruel, inhuman or degrading treatment in breach of Article 7 of the ICCPR and the *Convention Against Torture*.

[132] Given that the harm would be inflicted by agents of the state, who act with impunity in such circumstances, the Tribunal finds that state protection is not available to the appellants. Neither could they find safety from that threat anywhere in Sri Lanka.

[133] The appellants have established that they face a real chance of serious harm arising from breaches of their human rights, demonstrative of a failure of state protection. Their fear of being persecuted is therefore well-founded.

Is there a Convention reason for the persecution?

[134] While the use of torture and other mistreatment by the Sri Lankan security forces to extract confessions and information is routine, the Tribunal is satisfied that a contributing factor to the severity and duration of any such harm that would be inflicted on the appellants would be aggravated because of a political opinion imputed to them by the authorities. The Easter bombings in 2019 were carried out for theo-political reasons and it would be unrealistic to suppose that such torture and mistreatment would not be infused with, and aggravated by, an adverse view of the supposed religious and political views of those involved.

[135] Further, the wife's imputed association with the LTTE were a contributing factor to the harm she has already experienced, as evidenced by the questions asked of her (related to her mother and brother), such that the Tribunal is satisfied that her current predicament and the risk of serious harm she faces is contributed to by her race (Tamil), and her imputed political opinion (LTTE supporter). To a lesser degree, the same Convention ground of imputed political opinion is also relevant to the husband's predicament, because the wife's family's alleged association with the LTTE likely contributed to the authorities' suspicions of his involvement in the transfer business and would influence the treatment he receives if detained.

Conclusion on Claim to Refugee Status

[136] The appellants have a well-founded fear of being persecuted for a Convention reason if they return to Sri Lanka. They are recognised as refugees under Article 1A(2) of the Refugee Convention and section 129(1) of the Act.

The Convention Against Torture

[137] 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.

[138] The appellants have been recognised as refugees in accordance with New Zealand's obligations under the Refugee Convention and they cannot be deported from New Zealand by virtue of section 129(2) of the Act (the section 164(3) exceptions to which do not apply). They are therefore not persons requiring protection under the *Convention Against Torture* and are not protected persons within the meaning of section 130(1) of the Act.

The ICCPR

[139] Section 131 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.
- ...
- (6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment.

[140] For the same reasons, the appellants cannot be deported from New Zealand. Accordingly, the question of whether there are substantial grounds for believing that they would be in danger of arbitrary deprivation of life or cruel treatment if deported from New Zealand must be answered in the negative. They are not persons requiring protection under the ICCPR and are not protected persons within the meaning of section 131(1) of the Act.

CONCLUSION

[141] For the foregoing reasons, the Tribunal finds that the appellants:

- (a) are refugees within the meaning of the Refugee Convention;
- (b) are not protected persons within the meaning of the *Convention Against Torture*;
- (c) are not protected persons within the meaning of the *International Covenant on Civil and Political Rights*.

[142] The appeals are allowed.

Order as to Depersonalised Research Copy

[143] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellants' names and any particulars likely to lead to their identification.

"L Wakim"
L Wakim
Member

Certified to be the Research Copy
released for publication.

L Wakim
Member