



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA18/06013

Date and time of decision: 20 February 2019 15:27:00
G Deal, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The applicant (the applicant) claims to be a Tamil from Kilinochichi in the north of Sri Lanka. [In] May 2013 he arrived by boat in Australia. On 8 May 2017 an application for a Safe Haven Enterprise Visa (SHEV application) was lodged on the applicant's behalf with the Department of Immigration, now part of the Department of Home Affairs.
2. On 19 November 2018 a delegate of the Minister for Home Affairs (the delegate) refused to grant the visa. While the delegate accepted some of the applicant's claims including that he worked as a driver for the Liberation Tigers of Tamil Eelam (LTTE) up until the end of the conflict, she did not accept his other central claims, namely that he worked for an LTTE [Leader 1] or [Leader 2] or was otherwise close with high level former LTTE members or that he left Sri Lanka incognito on a false passport or was detained by the Criminal Investigation Division (CID) on his return to Sri Lanka in 2012 on suspicion of LTTE links and she ultimately concluded the applicant was not a refugee, did not face a real risk of significant harm and was not a person in respect of whom Australia had protection obligations.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 14 December 2018 the IAA received a submission from the applicant.
5. The submission contains unsupported statements as well as excerpts broadly stating Prime Minister Ranil Wickremesinghe was removed and Mahinda Rajapaksa re-appointed as Prime Minister by President Sirisena on 26 October 2018 and that Mahinda Rajapaksa is widely accused of being complicit in war crimes and human rights violations against LTTE supporters, and this is relevant to the applicant's claim to fear harm as he will be seen as a dissident. None of the excerpts contain personal information, in the relevant sense. The applicant claims the new information could not have been provided to the delegate before her decision was made because it was only available after the due date for the post interview submission. However, at the conclusion of the SHEV interview the delegate clearly advised the applicant and his migration agent that anything provided before her decision was made would be taken into account and the new information relates to events that occurred only three days after the post interview submission was lodged. The sources of the excerpts were also published weeks before the delegate's decision was made and the applicant has not satisfied me that the new information could not have been provided to the delegate before her decision was made. The new information indicates Mahinda Rajapaksa's appointment is controversial and speculates on the conditions in Sri Lanka should his appointment be ratified. I consider the new information of very limited value. I am not satisfied exceptional circumstances exist to justify consideration of the new information.
6. The submission also contains a very brief excerpt that says anyone with any LTTE links is at risk of harm. The source of this excerpt was published almost a year and a half before the SHEV interview and I am not satisfied it could not have been provided to the delegate before her decision was made. Further, the excerpt does not contain and the report does not appear to contain personal information, in the relevant sense. I also note other information on the same

subject is also already before me. The applicant has not satisfied me as to the matters in s.473DD(b). I am also not satisfied exceptional circumstances exist to justify its consideration.

7. The submission also contains an elaboration on the applicant's claims he was an LTTE member and he escaped a refugee camp and fled Sri Lanka in 2009 with the assistance of a [friend], including that he fought for the LTTE and he appears to state he was sent to a rehabilitation camp. This is new information. The applicant claims he did not reveal this earlier because he feared he would be deported. His migration agents also said the applicant was vulnerable. I do not accept these explanations. The applicant has been represented by the same migration agents and they and the Department have stressed to the applicant the importance of providing his truthful claims for protection as early as possible, throughout the visa application process, which has spanned some four years. Further, in his SHEV application he also said he had not revealed the true extent of his LTTE involvement earlier out of fear and proceeded to reveal new details about this. His migration agents assert the applicant was vulnerable on the basis of his having been assessed by the Department as eligible for Primary Applicant Information Service (PAIS). Being eligible for PAIS meant he was able to get assistance with his application. No further supporting information or even claims about his claimed vulnerability have been provided or were before the Department. The new information is briefly stated mostly without contextual detail and unsupported and I have serious concerns about its reliability, given he repeatedly stated in his interviews and SHEV application that he did not fight and did not mention going to rehabilitation. I am not satisfied exceptional circumstances exist to justify consideration of the new information.
8. The applicant's migration agents request the IAA give the applicant an opportunity to respond to any concerns in an interview or otherwise because they were unable to address all aspects of the delegate's decision due to constraints in terms of the length of the submission and time. However all applicants are subject to these limits and the IAA does not have a duty to get, request or accept, any new information. I consider the applicant has been ably represented by the same migration agents throughout the visa application process and has had adequate opportunity to provide his claims and supporting information. He has also not specified what type of additional information would be provided and any new information could only be considered in exceptional circumstances. I do not consider a further interview or opportunity to provide a response is warranted in the circumstances and I have decided not to provide this to the applicant.

Applicant's claims for protection

9. The applicant's claims can be summarised as follows:
 - He is a Tamil male from Kilinochichi in the north of Sri Lanka, an area controlled by the LTTE during the conflict.
 - He had relatives and friends who were former LTTE members. His father worked as a driver for the LTTE for some [years].
 - He was an LTTE member and worked for the LTTE from 2005 to the end of the war as a driver and body guard for [Leader 1] and [Leader 2], transported items including weapons, and underwent training including rifle training.
 - In 2009 he was interrogated and severely mistreated by the CID on suspicion of LTTE involvement at least three times while in a welfare camp. He escaped the camp and fled Sri Lanka on a false passport with the help of a friend.

- In about December 2012 he was detained by authorities on suspicion of LTTE links and only released and fled Sri Lanka on a false passport on the payment of a bribe and with the help of a friend.
- He fears former LTTE members who now work for the authorities will identify him given his past association with the LTTE, that he will be questioned about [Leader 1] and [Leader 2's] whereabouts (they are missing) and the government will view him as having a political opinion averse to the Sri Lankan government.
- He is a failed asylum seeker who departed Sri Lanka illegally.

Factual findings

10. Based on the applicant's evidence, including his documentary evidence and the country information before me, I accept he is a Tamil male from Kilinochchi and the north of Sri Lanka, an area controlled by the LTTE during the conflict.¹ Given its consistency and the detail provided I also accept his [family] continue to reside in the north. I also accept he completed [schooling].
11. The applicant claims his father worked as a driver for the LTTE for some [years] for [Leader 1]. The applicant has consistently stated that his father was a driver; it was only in his SHEV application that he first said his father drove for the LTTE and that was how the applicant got his work as an LTTE driver. In his SHEV interview the applicant said, rather inconsistently, that he got his work with the LTTE through [Leader 1] who lived [locally] and he said, for the first time, that his father also drove for [Leader 1]. He said his father did not experience the same problems as him with the authorities which I find surprising given he claims his father drove for the LTTE and [Leader 1] for [many] years (in contrast to the applicant who worked in broadly the same capacity for only a few years and yet he claims to have been targeted by the authorities because of this). He was unable to provide much detail about his father's role as a driver for the LTTE including when he stopped working in this capacity.
12. In his SHEV application the applicant mentioned that in the arrival interview he feared being identified as an LTTE member and so was unsure of what to say during that interview. However he mentioned he drove for the LTTE in the arrival interview, and given he felt comfortable revealing his own personal involvement with the LTTE I do not accept he feared mentioning details relating to his relatives, including his father, at that time (or details in relation to his work as a driver for the LTTE or any other matters unrelated to the LTTE).
13. In his SHEV application the applicant set out a number of discrepancies between his arrival interview and SHEV application stating that he was not made aware before or during the arrival interview that the information provided during that interview would be used for assessing his claims for protection. Having listened to the audio and read the written record of that interview I do not accept this explanation accounts for any significant inconsistencies in his evidence. At the commencement of the interview the applicant was told that he needed to provide reasons why he should not be removed from Australia, that he was expected to give true and correct answers to the questions asked and that if the information given was different to that provided at any future interviews this could raise doubts about the reliability of what he had said.

¹ Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345.

14. In light of the above, and given the consistency of the broader claim his father was a driver; I am willing to accept this aspect of his claim. However based on the evidence before me including its belated raising and the lack of detail I do not accept his father drove for the LTTE for some [years], for [Leader 1], transported diesel, petrol or water or that that was how the applicant got his job with the LTTE.
15. The applicant claims he knew a lot of people who fought for the LTTE and had relatives who were former LTTE members. However, when questioned on this claim, which was first raised in his SHEV application, in the SHEV interview, the applicant was unable to provide any detail and said none were immediate family. While I am willing to accept he may have had relatives who were in the LTTE as plausible, I do not accept he was close to any or that they were high-ranking.
16. The applicant claims he was an LTTE member and worked for them from 2005 to 2009 as a driver and security guard for [Leader 1] and [Leader 2] and also transporting items including weapons and LTTE members and undertook training including rifle training. While working he was injured in bombings. In the arrival interview on two separate occasions he said he drove for the LTTE from 2005 to 2008 and this was why the authorities arrested and detained him. He said he had never participated in any armed conflict or fighting or received any training in preparation for conflict. He said he did not have any other involvement other than to drive for them. In his SHEV application he said he only worked for the LTTE as a driver from 2005 to 2009 and did not undergo weapons training and that one of his roles was to drive an LTTE [Leader 1] to work because he lived close to him. During the war everything was expensive and he was experiencing financial problems and he only worked for the LTTE for the money and other items, like food. He started driving for the LTTE at [age] years of age, underwent basic military training which did not include weapons training and drove for an LTTE [Leader 1] who lived close to him. [Leader 1] collected taxes in the area for the LTTE. The applicant also used to transport goods, like diesel and food supplies, as well as LTTE members from one area to another. While working he was injured twice by bombs, once in 2007 and once in early 2009, and has shrapnel [injuries] from this.
17. In the SHEV interview when asked about his LTTE training the applicant said, among other things, that he was given rifle training for a few days. When asked for more detail about his training I found the applicant did not answer the question but instead mentioned working as a body guard for a person and watching sentry points at night and not sleeping. Eventually when he provided a description of the rifle training it was very brief, he said they assembled and dismantled the rifle and were shown how to shoot straight. When asked if he had ever been involved in any armed combat the applicant said he had not. He said [Leader 1] was responsible for everything, even rifles and these things came to him and then they distributed them. When asked for more detail about the weapons they handled the applicant clarified that they only handled small weapons like AK47s, pistols and PKs but he provided no further detail despite being given an opportunity to do so. When asked for more detail about his role I found his responses vague, generalised and repetitive despite the delegate's numerous attempts to elicit more detail from him. For example, he said if they asked him to deliver something he did it. He delivered everywhere. [Leader 1] would give him things and he would give them to the person. When asked what other items he delivered he said food, rifles whatever they needed. When asked what kind of truck he drove he said big trucks and something else that was indecipherable. He worked directly for [Leader 1] for about two and a half years, speaking to him about once a week and started transporting things after the first six months. When asked where he took him he said everywhere. From 2007 until the end of the war he said he drove for [Leader 2] who was [details deleted]. When asked for a description of this role I again found his responses very vague and generalised. For example, he said whenever he was asked to

drop something off he dropped it off and he would provide the boys under [Leader 2] with whatever they needed. When asked what he delivered he said walkie talkies and whatever [Leader 2] needed, like food and clothing. Later in the interview the applicant also said he worked as a body guard but when asked what this role required of him he said he had to make sure [Leader 1] was not attacked and to drive carefully but did not provide more detail about this. He said that [Leader 2] had 2000 people working under him and the applicant had been asked by at least 100 of them where [Leader 2] was (because he was missing), however I do not accept this brief and belatedly raised claim.

18. At the end of the SHEV interview the applicant's migration agent said the applicant had been brought up in a rural area and had no experience with interviews. However the applicant completed up to year [level] schooling and at the time of the SHEV interview had been in Australia for some four years and had undergone earlier interviews in Australia and overseas in relation to his refugee applications with UNHCR. He had also been represented since lodging his SHEV application. While I am willing to accept minor inconsistencies in his evidence may be attributable to the reasons claimed I do not accept these, or the factors sometimes identified as affecting an applicant's ability to provide evidence including cultural differences, translation issues or poor past experiences with governmental officials, as the reason for any significant inconsistencies in the applicant's evidence. In his post interview submission his migration agents said, for the first time, that the applicant was an LTTE member although no detail was provided specifically in relation to this other than to repeat claims already before the Department about his work for the LTTE and to add some more minor details like he also transported oil.
19. Based on the evidence before me, I am willing to accept the applicant may have worked as a driver for the LTTE for a wage from about 2005 to 2008 given the consistency of this aspect of his claim and the detail provided, particularly in relation to his reasons for taking up this work. Given it was belatedly raised and lacking in detail I do not accept he drove [Leader 2]. Given it has been consistently claimed I am willing to accept he may have been required to drive an LTTE [Leader 1] [on occasion] because he lived [locally], as stated in his arrival interview, but I consider he has exaggerate his involvement with the [Leader 1] and do not accept they were in constant contact or that they were close. I consider the detail provided in relation to the tasks he performed while in this role inconsistent and increasingly exaggerated and I do not accept he worked until the end of the conflict, that he transported weapons, underwent LTTE training or worked as a personal body guard for any LTTE leaders. Given its belated raising in the post interview submission and the lack of detail in relation to the claim I do not accept he was an LTTE member. Given the detail provided and his consistent claim to have sustained injuries during the conflict which has resulted in scarring, which I also find plausible, I am willing to accept this.
20. The applicant claims he was placed in a welfare camp at the end of the war and interrogated and mistreated by authorities on at least three occasions in relation to LTTE links. He escaped the camp with the help of a [friend] on the payment of a bribe and fled incognito on a false passport in fear of his life to [Country 1].
21. In his arrival interview the applicant said he was in the welfare camp for five months after the end of the war. The applicant has consistently said he was placed in the refugee camp at the end of the war (there were some minor inconsistencies in these dates in the arrival interview although I accept this might have been due to nerves) and given this is also consistent with the country information which indicates thousands of civilians were sent to these camps at this

time, I accept this claim.² Consistent with being placed in the camp for about five months after the end of the conflict the applicant also said in the arrival interview that he left for [Country 1] in about November 2009. In his SHEV application he said he had erroneously said he was in the camp for five months in the arrival interview, when he was actually only in the camp for four to six weeks and in his SHEV interview he said he was only in the camp for three to four weeks. Based on the evidence before me including the significant inconsistencies I consider the applicant was in the welfare camp for five months as consistently stated in his arrival interview. I also note that in the arrival interview the applicant said that when he was put in the welfare camp he did not get an identity card which is also a problem. When the interviewer said he had earlier mentioned being issued with a card while in the welfare camp he said it was a family card. I find it surprising the applicant would be issued with a family card but not an individual card, he only otherwise briefly alluded to this claim in his SHEV interview and I found the claim seriously lacking in detail and unsupported and I do not accept he was not issued with an individual welfare card or that this caused him problems in Sri Lanka.

22. The applicant has consistently claimed to have been interrogated and mistreated by the authorities on at least three occasions while in the camp on suspicion of LTTE involvement, stating a couple of times in the SHEV interview that they asked him if he was in the LTTE and he said that he was not, which is consistent with the country information before me which indicates that in the wake of the conflict human rights abuses were committed on both sides, and that in the camps the authorities screened thousands of civilians for suspected LTTE links and sent about 11,000 suspected of LTTE involvement to rehabilitation camps.³ In a post interview submission his migration agents said his interrogations by the authorities focused on his close connection to [Leader 1] and that he was repeatedly asked to expose the whereabouts of [Leader 1's] family. In his SHEV application he said that he was questioned about his "involvement with the LTTE". I am willing to accept the applicant was interrogated about three times while in the camp of suspicion of LTTE links but given its belated raising and lack of detail and that I do not accept he had a close relationship with the [Leader 1] or [Leader 2] I do not accept he was questioned about either of their whereabouts.⁴ I consider if he were genuinely suspected of involvement he would have been sent to a rehabilitation camp in the five or so months he was in the welfare camp and interrogated but he has not said that he was.
23. I found a number of issues with the applicant's evidence in relation to his claimed subsequent escape from the camp and departure from Sri Lanka in 2009 which make me seriously doubt the veracity of these claims. In his arrival interview the applicant said he was released after paying a bribe through a [friend] and that he did not get released from the camp, he escaped. It was in his SHEV application that the applicant mentioned, for the first time, that a [friend] advised him to go to the welfare camp at the end of the war because it was safer there and that after being constantly harassed and abused by the CID a friend in the camp told him if he paid him some money he would help him escape to [Country 1]. His friend put him in accommodation for three days and brought him an army uniform which the applicant put on and he was taken to the airport and flew out on a false passport also organised by his friend. Yet in his SHEV interview he said his friend, "S", helped him escape the camp and that the applicant was at his aunt's place before he left for the airport. In the SHEV interview he was also not clear on what S did, describing him variously as a CID supporter, in the CID or Karuna despite clearly stating in his SHEV application that S was his best friend and a former LTTE member, who subsequently joined [Karuna]. In his post interview submission he said S was a

² Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345.

³ Ibid.

⁴ Ibid.

[detail deleted]. The applicant also appeared to confuse the 2009 and 2012 events; when asked about what happened in the welfare camp he proceeded to detail his claimed escape and departure in 2012 and when asked if he had ever been in a welfare camp he said yes and when further probed about the relevant events in 2009 the interpreter said she could not understand him as he was not speaking clearly. In the SHEV interview he also said, for the first time, that S was also wearing a uniform and that they both changed out of their uniforms before entering the airport and he changed into a white shirt and black jeans which he said in his post interview submission was intended to identify him when he was pointed to a particular counter at the airport. I found the applicant was unable to provide much detail about his departure from the airport, when asked what happened when he departed he initially said "they organised it" and then proceeded to give short and sometimes conflicting accounts. I also note that at other times in the interview the applicant was able to provide clear and spontaneous responses to the delegate's questions, for example, detailing the schools he went to and where they were located or where his [family] lived in Sri Lanka. When questioned in more detail about his claimed false passport in the SHEV interview he said he got it in 2009 to travel to [Country 1], a Muslim man, "M", helped him obtain it, that it had the applicant's photo in it and that the applicant signed the application form and as far as he knew it was genuine and in his arrival interview he indicated he legally travelled to [Country 1] in 2009.

24. Based on the evidence before me, including the late introduction of significant details, and only when the delegate asked very detailed and probing questions, the applicant's inability to spontaneously respond to the delegate's questions and the country information before me which indicates people in welfare camps were given freedom of movement at the end of 2009, I do not accept the applicant escaped the camp by paying S or anyone else, but consider it more plausible that the applicant was released at the end of 2009 like many other detainees in welfare camps were at that time.⁵ In light of the above, the country information, inconsistencies and the applicant's inability to spontaneously respond to the delegate's questions I also do not accept the applicant fled to Sri Lanka by disguising himself as an army officer and on a false passport. I consider it more plausible that he left Sri Lanka on his genuine passport passing through the airport without issue as he was not of interest to the authorities. Given the detail provided in relation to the claim he travelled to [Country 1] at the end of 2009 and worked there I accept this aspect of the claim. I also accept he remained in [Country 1] for about two years, registered with the UNHCR and then attempted to travel to Australia by boat but was intercepted by [Country 2] authorities and placed in immigration detention for about a year, given the consistency of this claim and the detail provided.
25. The applicant claims that in about December 2012 he returned to Sri Lanka. He was detained by authorities at the airport on suspicion of LTTE involvement and taken to a house and only released when he paid the authorities a bribe and S subsequently helped him travel to the airport in disguise and leave on a false passport to avoid detection by authorities.
26. Given the consistency of the broader claim he voluntarily returned to Sri Lanka in 2012 because of family problems I accept this aspect of his claim. In his SHEV application he said that he returned with the assistance of the International Organisation for Migration (IOM). The country information before me indicates that at around that time IOM ran an assisted voluntary return (AVR) program for those whose asylum claims were rejected or who had abandoned their asylum claims.⁶ In the arrival interview the applicant said that he had applied for refugee status in both [Country 1] and [Country 2] and that he returned to [Country 1]

⁵ Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345.

⁶ UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8.

legally. I accept he returned with the assistance of IOM. The country information before me indicates that under these types of programs returnees were questioned by Immigration officials and State Intelligence Services, often for many hours, and that while organisations were not allowed in the interview rooms they were allowed to remain outside and returnees were subsequently given post arrival assistance and reintegration support including assistance with travel home.⁷

27. There were a number of significant inconsistencies in the applicant's evidence in relation to his detention and questioning by authorities on his return in 2012. For example, in the SHEV interview he initially said the CID kept him for three days, and then later in that same interview said they kept him for a month, which was in contrast to his arrival interview where he said he was detained for a total of three months. In the SHEV interview he initially said his aunt paid the [amount] lakhs for his release later correcting this when the delegate queried it given he said his uncle in [country deleted] paid for this in his SHEV application. In his arrival interview he said his parents had to beg to raise the [amount] lakhs and that it took them three months. In the SHEV interview he initially said he had only ever been issued with one passport but later in that interview after describing how S helped get him a false passport for his departure in 2012 he said he had been issued with two and when the delegate pointed out this inconsistency I found the applicant's explanation inadequate; he essentially said he believed it was the same passport but it may have been a second one and he was not sure.
28. I also found the applicant's evidence about his questioning and detention on return to Sri Lanka increasingly exaggerated. In the arrival interview the applicant said that on his return to Sri Lanka [in] July 2012 he was arrested and kept in a dark room for about 20 days and eventually called his family who had to pay [amount] lakhs for his release and his parents begged others for this money and it took them three months to collect it but they paid it and he was released. He said the CID arranged his passport to travel back to [Country 1] and he returned. When asked why the CID would do this I found his explanation, namely that he did not know, inadequate. When asked what their reason for returning him was he said one officer told him if he remained he would be killed and it was better for him to return. It was in his SHEV application that he mentioned, for the first time, that he was taken to a house by the CID after being questioned at the airport and that two had covered their faces which meant they knew him. It was in his SHEV interview that he mentioned, for the first time, that S helped him to leave Sri Lanka on a false passport and that he wore army clothes to get past checkpoints without being questioned which description bears a remarkable resemblance to his claimed 2009 departure from Sri Lanka.
29. Whenever the delegate asked more detailed and probing questions I found the applicant was often unable to spontaneously respond. For example, when the delegate asked the applicant in the SHEV interview what he did with the uniform after changing the applicant did not answer the question instead stating that he was not wearing an army uniform but rather green clothing worn by the army (after having said he wore an army uniform). When asked to describe this clothing, his responses were brief, often one worded, and after detailed questioning the only description he had provided was that it was green, included a t-shirt and trousers and had stripes. He also said it had pale yellow on it but only after the delegate asked if it had yellow on it. The applicant submits that the interpreter had problems understanding him which adversely affected his evidence. However I do not accept this explanation as earlier in the interview the applicant said he understood the interpreter and he did not raise this as an

⁷ UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8; Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345.

issue at any point in the interview or even in his post interview submission, despite being explicitly asked to let the delegate know at any point if he believed there were any interpretation issues. In the SHEV interview the applicant said the passport he departed on had his photo and name and in his arrival interview he indicated he legally travelled to [Country 1] in 2012.

30. Given the consistency of the broader claim he was questioned at the airport and based on the country information detailed above which indicates this was not unusual at that time I accept the applicant was questioned at length by authorities after clearing immigration at the airport, particularly given that at that time he was a young Tamil male from the north with scarring. However in light of the above, including the significant inconsistencies and his inability to spontaneously respond to the delegate's questions I do not accept the applicant was wanted by the authorities in connection with an adverse security profile when he left Sri Lanka in 2009, I do not accept he was detained by CID officers and taken to a house and only released and returned to [Country 1] on the payment of a bribe to the CID in 2012, through S or otherwise. It follows that I do not accept he left on a false passport and consider it more plausible that he left on his genuine passport obtained in 2009.
31. I note that in the arrival interview the applicant mentioned providing some school records and his welfare camp identification card to Australian authorities, however these were not in the review material. However, as detailed above, I have accepted his claims regarding his education and being placed in a welfare camp at the end of the conflict. I have therefore decided it is not necessary to request these documents from the applicant.

Refugee assessment

32. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

33. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

34. I accept the applicant is a Tamil male from Kilinochichi and the north of Sri Lanka and that he worked for the LTTE as a driver for a wage from 2006 to 2008, was placed in a welfare camp at the end of the conflict where he was interrogated on suspicion of LTTE involvement, as was not uncommon at that time. I also accept he travelled to [Country 1] at the end of 2009 where he worked for a few years and voluntarily returned in 2012 and was questioned at the airport, as was the usual practise at that time for returnees, and that he subsequently returned to [Country 1] eventually travelling by boat to Australia in 2013. However, I do not accept he was an LTTE member, underwent LTTE training, transported weapons, and was close with LTTE leaders or that he escaped the welfare camp in 2009 or fled to [Country 1] on false passports in 2009 and 2012 or that he was wanted by the authorities or anyone else when he left Sri Lanka in 2012.
35. The country information before me indicates that conditions in Sri Lanka have improved since the applicant left in 2012, particularly after the election of the Sirisena government in 2015, which has since engaged constructively with the United Nations, established the Office of Missing Persons, removed military checkpoints on major roads and returned some confiscated land in the north and east and reviewed cases of those held under the *Prevention of Terrorism Act (PTA)*, among other things.⁸ However, the current government's progress has been slow, and a number of human rights challenges remain, including continued reports of the PTA being used to arrest and detain suspects, torture and other ill-treatment in detention and militarisation and "Sinhalisation" in minority areas.⁹
36. The country information before me indicates that the authorities know that everyone in the north had some level of involvement with the LTTE during the conflict, and that now some 10 years after the end of the conflict with the LTTE no longer an organised force the government's objective is to identify Tamil activists and those working to destabilise the unitary Sri Lankan state.¹⁰ In line with this the government holds sophisticated intelligence on those who continue to be of interest, such as those with an extant court order, arrest warrant, order to impound their passport or those suspected of separatist or criminal activities or close relatives of high profile former LTTE members.¹¹ The country information before me indicates that if an individual is detained in these circumstances they may be severely mistreated.¹²
37. DFAT reports that the influence and inclusion of Tamils in the political dialogue has increased in recent years and that while Tamils relevantly in the north still report of monitoring by the authorities, those associated with politically sensitive issues such as land release are more likely to be monitored, and the Tamil community feels more empowered to question this. While Tamils report systemic discrimination in areas including government employment, university education and access to justice DFAT assesses that the risk of this official and

⁸ DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064; UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826.

⁹ DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka A/HRC/34/54/Add.2', Office of the United Nations High Commissioner for Human Rights, 22 December 2016, CIS38A80123313; Amnesty International, Amnesty International Report 2017/18 - Sri Lanka, 22 February 2018; Freedom House, Freedom in the World 2018 - Sri Lanka, 5 April 2018; Minority Rights Group International, World Directory of Minorities and Indigenous Peoples- Sri Lanka: Tamils, March 2018.

¹⁰ DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064; UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826.

¹¹ DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064.

¹² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka A/HRC/34/54/Add.2', Office of the United Nations High Commissioner for Human Rights, 22 December 2016, CIS38A80123313.

societal discrimination is low.¹³ Consistent with this the UK Home Office has noted that being of Tamil ethnicity, in itself, does not warrant international protection.¹⁴

38. I have accepted the applicant has scarring from shelling injuries sustained during the conflict. DFAT is unaware of more recent evidence of people being detained because of scarring and the UK Home Office notes this may only become an issue if their clothing is stripped off when detained for another reason.¹⁵
39. The country information indicates that while the conditions in Sri Lanka have greatly improved for Tamils in recent years, issues remain. In particular close relatives of high profile former LTTE members or those who have engaged in separatist or criminal activities are at risk of being detained and mistreated and if detained in these circumstances they may be severely mistreated. However the applicant's profile does not meet this description. I have not accepted he was an LTTE member during the conflict, or close to high level LTTE members or that he was genuinely suspected of LTTE involvement by the authorities when he left in 2012. In the SHEV interview the applicant said he had not been a member of a political group or participated in any demonstrations or protests while in Sri Lanka or Australia and did not indicate an intention to do so in the future. I am not satisfied the applicant faces a real chance of harm now or in the reasonably foreseeable future by reason of his origin, ethnicity, scars or past experiences in Sri Lanka.
40. I accept the applicant will be a returning asylum-seeker. DFAT states that the biggest problems facing returnees are bureaucratic inefficiencies and social stigma which can affect a returnee's ability to secure employment and housing and that many have to meet the costs of their boat journey. In his arrival interview the applicant said his uncle paid for his journey to Australia. The applicant completed up to year [level] schooling and has worked in various capacities in the past and there is no credible evidence before me to indicate he would not be able to work on his return. DFAT also notes of reports of returnees to the north being monitored by authorities, although it also notes that evidence of this is only anecdotal. A recent report of an asylum seeker being harassed by authorities on his return to Sri Lanka from Australia indicates he was a former LTTE member.¹⁶ As a Tamil asylum seeker returning to the north the applicant may face some initial reintegration issues but I am not satisfied this amounts to serious harm.
41. I accept the applicant left Sri Lanka illegally. The country information before me¹⁷ indicates that following arrival at the airport, returnees will be processed in a group by a number of government agencies and this process can take several hours. If returning on a temporary travel document, police will undertake further investigations in particular to ensure an individual does not have a criminal or terrorist background or an outstanding court order or arrest warrant. Overall, DFAT understands returnees are not mistreated during processing at the airport. Those who departed illegally by boat may be found to have committed an offence under the *Immigrants and Emigrants Act 1949* (I&E Act). If arrested they will be photographed, fingerprinted, a statement will be taken they will be transported to the closest magistrate's court where the next steps will be determined. If a magistrate is not available, for example on a weekend or public holiday, they may be held for up to two days in an airport holding cell. They must also appear in court when their case is being heard or they are summonsed as a witness in a case. The offence will be heard in, and they must attend, the court closest to the

¹³ Freedom House, *Freedom in the World 2018 - Sri Lanka*, 5 April 2018.

¹⁴ UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826.

¹⁵ Ibid.

¹⁶ The Guardian, *Tamil asylum seeker deported by Australia 'harassed by Sri Lankan security forces'*, 1 March 2018.

¹⁷ DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064; UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826.

occurrence of the offence which involves legal and transportation costs. Cases are only heard when all members of a people smuggling venture have been located, which can result in long delays. Penalties can technically include imprisonment however no mere passenger has been given a custodial sentence and the fines are relatively low (starting at 3,000 rupees) and able to be paid in instalments. A fine will generally be issued and the person will be free to go immediately, if they plead guilty. If not pleading guilty they will likely be granted bail on the basis of personal surety or guarantee by a family member and so will have to wait for a family member to pick them up. DFAT also notes that the cumulative costs for returnees associated with the court process can be high.

42. There is no credible evidence before me that suggests the applicant has a criminal or terrorist background or outstanding court orders or arrest warrants or is otherwise wanted by the authorities. He has not said he was anything other than a passenger on the people smuggling boat that took him to Australia. Based on the country information above I accept the applicant may be detained at the airport for processing and may be briefly (up to two days) held in a holding cell if a Magistrate is not available, as part of the usual procedures for those who left illegally but I am not satisfied there is a real chance he would be otherwise detained. If the applicant pleads guilty, he has not indicated he would do otherwise, after being issued with a fine he will be free to leave immediately. Given his family support in Sri Lanka, his ability to work and option to pay the fine in instalments I am not satisfied that he would not be able to pay the fine or that there is a real chance this would threaten his capacity to subsist. If he does not plead guilty he would likely be granted bail on certain condition, such as personal surety or guarantee by a family member and would be released once one of his [family] picked him up, and the evidence before me does not indicate one of these would be unable to unwilling to do this if required. While he may have to meet costs associated with the court process given his family support and ability to work I am not satisfied there is a real chance this would threaten his capacity to subsist or would otherwise amount to serious harm.
43. I accept the applicant, as a consequence of his illegal departure, may be interviewed, charged, briefly held, fined, and may possibly have to attend court appearances and meet costs associated with this, but I do not accept these experiences would amount to 'serious harm'. Furthermore, I am not satisfied that the relevant laws and procedures dealing with those who depart Sri Lanka illegally are discriminatory, or intended to apply or are applied or enforced in a discriminatory manner.
44. I am not satisfied the applicant faces a real chance of persecution because of his illegal departure.
45. I am not satisfied the applicant has a well-founded fear of persecution.

Refugee: conclusion

46. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

47. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a

necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

48. Under s.36(2A), a person will suffer 'significant harm' if:

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

49. For the reasons already discussed, I accept the applicant may be interviewed, charged, briefly held, fined, and may possibly have to attend court appearances and meet costs associated with this. However, I am not satisfied that these circumstances amount to 'significant harm' as defined for the purposes of s.36(2A). There is not a real risk the applicant would be arbitrarily deprived of his life or subject to the death penalty on his return or be subject to torture. Furthermore, the evidence before me does not support a conclusion that there is an intention to inflict severe pain or suffering, pain or suffering that is cruel or inhuman in nature or to cause extreme humiliation. I am not satisfied the applicant faces a real risk of significant harm as a consequence of his illegal departure.

50. I accept that the applicant may face some initial reintegration issues and social stigma. I am not satisfied that these circumstances, even when coupled with what he may experience for having departed Sri Lanka illegally, would amount to 'significant harm'. The harm does not include deprivation of life, the death penalty, or torture; nor am I satisfied he will be subject to cruel, inhuman or degrading treatment or punishment, as defined.

51. In considering the applicant's refugee status, I have otherwise concluded that there was no 'real chance' the applicant would suffer harm on his return to Sri Lanka for the other reasons claimed. 'Real chance' and 'real risk' involve the same standard.¹⁸ For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

Complementary protection: conclusion

52. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

¹⁸ *MIAC v SZQRB* [2013] 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.