



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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SRI LANKA  
IAA reference: IAA19/06426

Date and time of decision: 26 March 2019 17:11:00  
M Oakman, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a Tamil from the Eastern Province, Sri Lanka. He arrived in Australia [in] June 2013 and lodged an application for a Safe Haven Enterprise visa (SHEV) ([Number]) on 31 October 2016. On 26 February 2019 a delegate of the Minister (the delegate) refused to grant the visa.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information has been obtained or received.

### Applicant's claims for protection

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3. The applicant's claims can be summarised as follows.
  - He fears that if forced to return to Sri Lanka he would be seriously harmed because of his ethnicity as a Tamil. He fears that if he is returned to Sri Lanka he will be subjected to serious harm including torture and death. He is afraid of this harm from the Sri Lankan Army (SLA) and the police ;
  - He has already experienced a beating which [caused an injury];
  - He fears that he will be a greater risk of harm because he left Sri Lanka to come to Australia, and that he will be detained at the airport and questioned. When he is questioned he is scared they will beat him and ask him about his brother and why he went to Australia;
  - He fears that he will not be able to relocate safely to any part of Sri Lanka because there are no parts of Sri Lanka that are safe for Tamil people. His mother and brother told him there are still many problems for Tamil people in Sri Lanka and that they live in hiding and aren't able to leave the house often because the situation is so bad; and
  - He is afraid that he would not be protected by the authorities because it is the authorities he fears.

### Factual findings

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#### Receiving country

4. On the basis of the documents and oral evidence given by the applicant, I accept that the applicant is a national of Sri Lanka from the Eastern Province. I find that the applicant's receiving country is Sri Lanka. The applicant has consistently claimed, and I accept, he is Tamil.

#### Background

5. The applicant states he was born in [year] in [Town 1], Western Province, Sri Lanka. He lived in [City 1], Eastern Province, from an early age until he left Sri Lanka, except for a period when he and his family were displaced to [Town 2] in the North Western Province from 2006

to 2010. He is not married and has no children. His father passed away [before] the SHEV interview (held in February 2019) and one of his [siblings] died a long time ago. His mother, [and a number of siblings] reside in [City 1] in Sri Lanka. Of his [other] [siblings], one lives in Sri Lanka and the other lives in Australia. He is in contact with his family in Sri Lanka. He attended school from [year] to [year], up to Year [number]. His SHEV application shows he was supported by his parents in Sri Lanka until he worked as [Occupation 1] in [a certain] industry in [City 1] from January 2010 to May 2013 and he was unemployed in Australia. At the SHEV interview he advised he was now [working].

### **Problems in Sri Lanka**

6. The applicant set out his claims in his SHEV application as follows.
7. The applicant claims that when he was young his family moved from [Town 1] to [City 1]. Although he was young he remembers that in [City 1] his [siblings] faced many problems and told him that the SLA would stop them, interrogate them and beat them, and the SLA shot a lot of people because they were Tamil. In 2004 or 2005 he was on his way to school when he saw about three or four uniformed members of the SLA. One of them gestured for him to come over but he was scared so he didn't go and started running away. He chased the applicant and grabbed him and twisted his arm. This [caused an injury] [details deleted]. He didn't report it to the police because the SLA and police work together and his family told him there was no benefit of reporting it to the police. As he doesn't speak Sinhala he didn't understand what the SLA member said when he [injured him]. His friends told him that members of the SLA would target people who are Tamil for no reason and that the SLA was trying to find and harm people who were connected to the Liberation Tigers of Tamil Eelam (LTTE).
8. The applicant claims he was never involved with the LTTE and was never approached to join the LTTE. One of his cousins [was] involved with the LTTE but he doesn't know exactly what he did for them, but his brothers were very close to him and spent a lot of time with the cousin. His brothers would be regularly stopped at SLA checkpoints and beaten and kicked. He doesn't know exactly how many times this happened but it made his mother and brothers very scared to leave the house because they always felt like they were in danger. In 2006 his brother's son, who was [young] at the time, came home from school with [injuries]. He said that the SLA approached him when was coming home from school, hit him and [injured him]. After this incident his family decided to move to [Town 2], a majority Muslim area, to find safety. There was a lot of fighting between Muslim and Tamil people, it was not safe, so his family moved back to [City 1] in 2010.
9. The applicant claims that around [a number of] months before he left Sri Lanka in 2013 (making it early 2013), he went into [City 1] town and was stopped by some police men in uniform. They asked the applicant whether he was a Tiger, he said he wasn't, but they said that all Tamils are Tigers and said foul words about the Tamil people. Around [a number of] days before he left Sri Lanka in 2013 (making it around early May 2013) his brother was in [a location] of [City 1] when either the SLA or the police captured him and took him to the police station. His brother told him he was beaten very badly and they accused him of leaving town because he was involved with the LTTE and that now he was back they would punish him. His brother was kept in the police station [for some time] and was only released [when] his mother and [another relative] went to the police station and gave them money to release him.

10. The applicant claims that his family were very concerned and scared that this could happen to any of them and left Sri Lanka soon after. His mother and brother moved to [Town 2] and have been hiding there from the authorities. His mother and brother still live in [Town 2] and told them that the authorities have visited them in [Town 2] and asked about him and his nephews who are also in Australia and their whereabouts. He doesn't know exactly how many times they have visited or when it was that they last visited.
11. At the SHEV interview the applicant claimed he was born a Hindu but converted to Christianity and he was attending church in Australia; he said he converted when he was about [age] in Sri Lanka, at which time he started attending church with friends in Sri Lanka; but he did not say he held any fears of harm in this regard. He confirmed he lived in [City 1] from an early age until he left Sri Lanka, except for the four or five years he and his family spent in [Town 2] when they were displaced by violence in [City 1]. He said he was on his way home from school one day, about six or seven years before he left Sri Lanka, maybe when he was about [age], when the SLA asked him to stop and when he didn't stop they got him, hit him, [and injured him]. Additionally, when he used to go into town to purchase goods the SLA would sometimes question him and once they found out he was Tamil they would use bad words and accuse him because the SLA is suspicious of all Tamils. He confirmed, that apart from the problems he mentioned, he was never charged, convicted or wanted for any offences in Sri Lanka or elsewhere.
12. At the SHEV interview he confirmed his mother and [siblings] live in [City 1], another [sibling] is in [City 2] and the [another sibling] is in Australia, living near [a location]. He said his brother, who was now about [age], was taken into police custody and tortured; he was not sure of the date but it was prior to his travelling to Australia and was around 2013; his brother was held [at] the police station and then released [when] his mother went and spoke to the police. As far as he knows his brother has not had any other problems in Sri Lanka where he works as a [Occupation 2]. He does not recall any other incidents besides the one in 2013, except that when he was still going to school his brother's son was [injured] in an incident. He confirmed he was not involved in the LTTE nor were any of his family except his cousin (his aunty's son). His cousin was taken by the LTTE and eventually left the LTTE and came back. This occurred while the applicant was small and still going to small school. The cousin was now in [City 1] and he is not aware if the cousin is having any problems because he doesn't talk to him much. He said his mother told him once that the police came looking for him, they asked her where her son was and she said he had gone out somewhere. He can't remember exactly but thinks it was in 2015.
13. The applicant provided supporting documents including identity documents and other certificates, but not all of the certificates had English translations.
14. The UN High Commissioner for Refugees (UNHCR) confirms that post-war, arbitrary detentions were widely reported, as well as reports of detainees being interrogated, with the detainees usually civilians suspected of LTTE links, particularly in the north and east.<sup>1</sup> DFAT reports that incidents of extra-judicial killings, disappearances and kidnapping occurred frequently in Sri Lanka during the war, particularly in the north and east, and assesses that there are credible reports of torture carried out by Sri Lankan security forces both during the war and in its immediate aftermath. Many Tamils, particularly in the north and east, reported being monitored, harassed, arrested or detained by security forces during the war.<sup>2</sup> The Sri

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<sup>1</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", 21 December 2012, UNB0183EA8.

<sup>2</sup> DFAT, "Sri Lanka - Country Information Report", 24 January 2017, CISED50AD105.

Lankan authorities possessed extensive powers to arbitrarily detain and arrest people under the *Emergency Regulations (Sri Lanka)* and under the *Prevention of Terrorism Act 1979 (Sri Lanka)* (PTA), and those powers were in wide use by the authorities during the war and in its aftermath.<sup>3</sup>

15. In assessing the applicant's evidence I have taken into account the difficulties of recall over time, the scope for misunderstanding in interpreted material, cross cultural communication issues, and the problems a person who has suffered trauma may have in providing a cohesive narrative. The applicant demonstrated a poor recall for dates at the SHEV interview but was otherwise generally consistent in his claims in his SHEV application and at the SHEV interview, as well as about his residential, education, work and family history. His claims are also generally consistent with the country information. I accept the applicant's claims and his residential, education, work and family history as set out in his SHEV application and at the SHEV interview, except as discussed below.
16. The applicant claimed in his SHEV application that, after the police detained, tortured and released his brother, his mother and brother moved to [Town 2] and went into hiding. He also stated the authorities visited his mother and brother in [Town 2], questioned them about him and his nephews and their whereabouts, and that he does not know exactly how many times the authorities visited or when they last visited. At the SHEV interview he claimed that after he had left Sri Lanka the police had come once, he thought it was in 2015, to ask his mother where he was and she told them he had gone out somewhere. He also confirmed that his mother and brother were living in [City 1]. Neither claim appears to be credible. I do not consider it credible that, as the authorities had detained and beaten his brother in 2013 and not him, that they would suddenly become interested in the applicant after they released his brother, particularly as the applicant said at the SHEV interview that his brother had not had any other problems in Sri Lanka. I do not consider it credible, if it was true that his mother and brother were in hiding in [Town 2], that the authorities would be able to track them down in [Town 2] and would then just ask after the applicant and his nephews, without taking any further interest in or action against the brother. I also do not consider it credible, if the authorities were suddenly interested in the applicant's whereabouts in around 2015, that they would make a visit to his mother to enquire after his whereabouts but apparently be satisfied with an answer from her that he had gone out, such that they never bothered to return. In view of these credibility issues, I am satisfied that the applicant has exaggerated this part of his evidence in order to boost his claims for protection. I reject his claims that his mother and brother were in hiding in [Town 2] after his brother was released; and that the authorities made any enquiries about the applicant or his whereabouts, or those of his nephews, after he left Sri Lanka in 2013.

### **Returned Asylum seeker**

17. The applicant claims he departed Sri Lanka in May 2013 to travel to Australia as a passenger in a boat organised by a smuggler. I find that, if the applicant was to return to Sri Lanka, he may be considered a returned asylum seeker who departed illegally by the Sri Lankan authorities.

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<sup>3</sup> Danish Immigration Service "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345; and US Department of State (USDOS), "Country Reports on Human Rights Practices for 2017 - Sri Lanka", 20 April 2018, OGD95BE927333.

## Refugee assessment

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18. 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

19. 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.

### *Tamil ethnicity, LTTE links and imputed political opinions*

20. Country information indicates that Tamils maintained they were subject to longstanding, systematic discrimination in university education, government employment, housing, health services, language laws and naturalisation procedures.<sup>4</sup> However, there have been a number of significant changes since the 2015 election of the Sirisena government. The new government quickly abolished surveillance and censorship of media and civil society groups, embarked on constitutional reforms to restrict executive powers, and took steps to restore the independence of the judiciary. In contrast to the approach of the previous Rajapaksa government, it also initiated a new, more open dialogue with the international community, including human rights organisations, and signalled its willingness to address long-standing allegations of past human rights abuses and violations.<sup>5</sup>
21. The Sirisena government has implemented a number of confidence-building measures to address grievances of the Tamil community. It has replaced military governors with civilians in the Northern and Eastern Provinces. The Office of National Unity and Reconciliation continues to coordinate government reconciliation efforts, promoting social integration, securing language rights for all Sri Lankans and supporting a healing process through a proposed Commission. During 2017 the Tamil National Alliance and the Defence Ministry initiated a formal dialogue on returning military held lands, and the army chief publicly committed to the military prosecuting personnel who committed criminal acts during and

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<sup>4</sup> USDOS, "Country Reports on Human Rights Practices for 2017 - Sri Lanka", 20 April 2018, OGD95BE927333.

<sup>5</sup> UK Home Office (UKHO), "Country Policy and Information Note Sri Lanka: Tamil separatism Version 5.0", 15 June 2017, OG6E7028826.

after the war.<sup>6</sup> The United Nations High Commissioner for Human Rights observed in February 2016 that one of the most important long-term achievements in the past year had been the restoration of the legitimacy and independence of the Sri Lanka's Human Rights Commission (HRCSL). The UN noted in 2016 that the Sirisena government has created a political environment conducive to reforms, significant momentum had been achieved in the process of constitutional reform and it had taken important symbolic steps towards reconciliation and changing the majoritarian political culture.<sup>7</sup> The US Department of State (USDOS) notes in its recent report that the HRCSL generally operated independently of, and with a lack of interference from, the Sri Lankan government.<sup>8</sup>

22. The UK Home Office's (UKHO) fact finding visit to Sri Lanka in July 2016 identified a number of ongoing concerns for the Tamil population in relation to human rights and other issues, but a number of the sources they consulted conceded that there had been improvements for Tamils since the change of government in 2015.<sup>9</sup> DFAT has indicated in its two most recent reports that Sri Lankans of all backgrounds face a low risk of official or societal discrimination based on ethnicity, including in relation to access to education, employment or housing. Some members of the Tamil community report discrimination in employment, particularly in relation to public sector employment. However, DFAT assesses that the limited Tamil appointments are a result of a number of factors including disrupted education because of the war and language constraints. DFAT states that Tamils have a substantial level of political influence and their inclusion in the political dialogue has increased under the Sirisena government. DFAT understands that Tamils do not receive unwarranted attention from the authorities because of their political involvement, and assesses that there are no barriers to Tamil political participation. As discussed above, many Tamils in the north and east reported being monitored, harassed, arrested or detained by security forces under the Rajapaksa government. Members of the Tamil community in the north and east continue to claim the authorities monitor public gatherings and protests, and practise targeted surveillance and questioning of individuals and groups. DFAT assesses that the monitoring of Tamils in day to day life has decreased significantly under the Sirisena government, but surveillance of Tamils in the north and east continues, particularly for those associated with politically sensitive issues.<sup>10</sup> The government no longer restricts travel to the north and east, it has removed military checkpoints on major roads in 2015, and military involvement in civilian life has diminished, although the military continues to be involved in some civilian activities in the north.<sup>11</sup>
23. In summary, this country information indicates that although some monitoring still occurs, overall the monitoring and harassment of Tamils in the north and east has significantly decreased, there have been significant positive developments for Tamils in the country's politics and the situation for Tamils generally has substantially improved.
24. I am not satisfied that the applicant's fear of harm on account of his Tamil ethnicity, for any LTTE links or any imputed political opinions is well-founded. DFAT confirms<sup>12</sup> that the Sri Lankan authorities remain sensitive to the potential re-emergence of the LTTE and collect and

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<sup>6</sup> USDOS, "Country Reports on Human Rights Practices for 2017 - Sri Lanka", 20 April 2018, OGD95BE927333.

<sup>7</sup> UKHO, "Country Policy and Information Note Sri Lanka: Tamil separatism Version 5.0", 15 June 2017, OG6E7028826.

<sup>8</sup> USDOS, "Country Reports on Human Rights Practices for 2017 - Sri Lanka", 20 April 2018, OGD95BE927333.

<sup>9</sup> UKHO, "Report of a Home Office Fact-Finding Mission Sri Lanka: treatment of Tamils and people who have a real or perceived association with the former Liberation Tigers of Tamil Eelam (LTTE)", 31 March 2017, OGD7C848D112.

<sup>10</sup> DFAT, "Sri Lanka - Country Information Report", 24 January 2017, CISED50AD105; and DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

<sup>11</sup> DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

<sup>12</sup> Ibid.

maintain sophisticated intelligence, including electronic stop and watch databases, on former members and supporters of the LTTE. While the UKHO 2017 report also notes that persons with an actual or perceived significant involvement with the LTTE or in post-conflict Tamil separatism may be at risk, in its view simply being a Tamil does not give rise to protection claims nor, in general, does a person's past membership or connection to the LTTE.<sup>13</sup>

25. As discussed above, country information indicates that Tamils were routinely subjected to monitoring and harassment during the war and under the Rajapaksa government, there are credible reports of torture being carried out by the Sri Lankan authorities during the war and its immediate aftermath, but there has been a marked improvement in the general situation and country conditions for Tamils in Sri Lanka since the change of government in 2015.
26. There are still reports of torture occurring in Sri Lanka since the change of government, including from the UN Special Rapporteur on Torture, the HRCSL, and other sources,<sup>14</sup> although DFAT is unable to verify allegations of torture in Sri Lanka in 2016 and 2017.<sup>15</sup> The risk of torture has decreased since the war, the number of torture complaints has greatly reduced, white van abductions are seldom reported, arbitrary arrests have reduced and although there are reports of the use of excessive force against civilians by the police and security forces, such incidents are rare and the civilian authorities generally maintain effective control over the military.<sup>16</sup> DFAT assesses that irrespective of religion, ethnicity, geographic location, or other identity, Sri Lankans face a low risk of mistreatment that can amount to torture.<sup>17</sup>
27. I accept that the applicant and his family lived in areas that were controlled by the LTTE at times during the war. I accept that the applicant's cousin was a member of the LTTE, after he was taken away by the LTTE, and later left the LTTE, while the applicant was small. I accept that the applicant's family faced problems in [City 1] prior to 2006, with his brothers being stopped, interrogated and beaten by the SLA, including at checkpoints, on a number of occasions; the applicant was beaten and [was injured] when he failed to stop at the request of the SLA in about 2005; and his nephew was hit and [injured] by the SLA in 2006. I accept that in early 2013 the police stopped the applicant, questioned him and said foul things about Tamils. I also accept that around early May 2013 the applicant's brother was taken from [a location] of [City 1] by the SLA / police; he was very badly beaten and accused of being involved with the LTTE; and he was held for [some time] before he was released after his family paid some money.
28. Having regard to the information before me, I am not satisfied the applicant faces a real chance of harm now or in the reasonably foreseeable future, for a number of reasons.
29. First, as reports note, residence in a former LTTE controlled area or being Tamil does not give rise to a need for protection. The applicant was never involved with the LTTE. Although his cousin was a LTTE member, the applicant doesn't claim that he or his immediate family have

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<sup>13</sup> UKHO, "Country Policy and Information Note Sri Lanka: Tamil separatism Version 5.0", 15 June 2017, OGD6E7028826.

<sup>14</sup> United Nations, "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", 22 December 2016, CIS38A80123313; USDOS, "Country Reports on Human Rights Practices for 2017 - Sri Lanka", 20 April 2018, OGD95BE927333; and DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

<sup>15</sup> DFAT, "UN Special Rapporteur (Ben Emmerson) on human rights and terrorism in Sri Lanka", 14 August 2017, CISED50AD5239; and DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

<sup>16</sup> USDOS, "Country Reports on Human Rights Practices for 2017 - Sri Lanka", 20 April 2018, OGD95BE927333; and UKHO, "Country Policy and Information Note Sri Lanka: Tamil separatism Version 5.0", 15 June 2017, OGD6E7028826.

<sup>17</sup> DFAT, "Sri Lanka - Country Information Report", 24 January 2017, CISED50AD105; and DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.



ever been questioned about the cousin, and his cousin remains in Sri Lanka without, as far as the applicant is aware, any further problems with the authorities. Secondly, although the applicant, his brothers and his nephew suffered mistreated and some harassment from the SLA in [City 1] in or before 2006 and he was harassed in [City 1] in early 2013 by the police, they were released on each of those occasions without being charged, taken to court, sent to rehabilitation or imprisoned by the Sri Lankan authorities under the PTA or otherwise. Similarly, although his brother was detained in early May 2013, accused of LTTE involvement and very badly beaten, he was released after about a day, albeit after the payment of a bribe, without being charged, taken to court, sent to rehabilitation or imprisoned by the Sri Lankan authorities under the PTA or otherwise. Following his release, the applicant's brother has remained in Sri Lanka where he works as a [Occupation 2] and without any further problems with the authorities. The country information discussed above indicates the general monitoring and harassment of Tamils was, unfortunately, routine in the north and east at the time. Given the nature of the incidents described by the applicant, together with him and his family members always being released afterwards, together with the lack of any follow up by the authorities in relation to his brother's 2013 detention, I am satisfied that the incidents experienced by the applicant and his brothers and nephew are consistent with the country information about the routine or common harassment and monitoring experienced by Tamils at that time and not as the result of any personal interest in the applicant. Thirdly, it has been almost six years since the applicant left Sri Lanka and during that time the Sirisena government came to power, the general situation and country conditions for Tamils in Sri Lanka have improved substantially and, on my findings, the authorities have not questioned his family about his whereabouts or shown any other interest in him or his family. Additionally, as the UKHO 2017 report notes, a person's past LTTE membership or connections no longer generally gives rise to a need for protection.

30. The Sri Lankan authorities remain sensitive to the potential re-emergence of the LTTE.<sup>18</sup> The UKHO 2017 report indicates that although the Sri Lankan authorities may monitor overseas activities, they are only interested in significant involvement in pro-Tamil separatist diaspora activities and activity such as attending demonstrations overseas is not in itself evidence that a person will attract interest from the Sri Lankan authorities.<sup>19</sup> DFAT states that high profile leaders of pro-LTTE diaspora groups may come to the attention of the Sri Lankan authorities for taking part in demonstrations and assesses that the authorities may monitor members of the Tamil diaspora returning to Sri Lanka depending on their risk profile and that returnees may be subject to surveillance. A UN High Commissioner for Refugees (UNHCR) survey from 2015 reported that 49 per cent of refugee returnees in the north had received a visit at their homes for a purpose other than registration, with almost half of those visits from the police. However the UNHCR also interviewed refugee returnees in 2016 and only 0.3 per cent indicated they had any security concerns following their return. DFAT's 2018 report also notes that although the Sri Lankan government has reportedly decreased systematic surveillance of returnees, it is aware of anecdotal evidence of regular visits or phone calls by the CID to failed asylum seekers in the north as recently as 2017.<sup>20</sup>
31. The applicant does not claim he has had significant involvement, or any involvement, in activities that might be considered as, or perceived to be, pro-Tamil separatist or pro-LTTE diaspora activities in Australia. I am not satisfied that the applicant's profile, which as discussed above is not one that places him at a real chance of harm, will be increased by the fact that the applicant has spent almost six years outside of Sri Lanka and claimed asylum in

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<sup>18</sup> DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

<sup>19</sup> UKHO, "Country Policy and Information Note Sri Lanka: Tamil separatism Version 5.0", 15 June 2017, OG6E7028826.

<sup>20</sup> DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

Australia. Nor am I satisfied, given his profile, there is a real chance that he will be monitored or subject to surveillance because of his time in Australia and/or as a Tamil asylum seeker, if returned.

32. The applicant does not have a profile that country information suggests he faces a real chance of harm, now or in the reasonably foreseeable future, for any real or perceived LTTE links, for any imputed political views and/or because of his Tamil ethnicity. I do not consider that the Sri Lankan authorities had any adverse interest in the applicant other than as part of the former Rajapaksa government's then general harassment and monitoring of Tamils, in the north and east around the time he left Sri Lanka, nor, given that the Sri Lankan authorities have not made any further enquiries about the applicant's whereabouts since he left Sri Lanka, and the harassment and monitoring of Tamils has significantly decreased under the Sirisena government, together with a person's past LTTE involvement no longer generally being of interest, that he would be of any adverse interest to the Sri Lankan authorities, or that he faces a real chance of suffering harm, if he returned to Sri Lanka. I am not satisfied he faces a real chance of harm for reason of his ethnicity, background and links to the LTTE.
33. I am satisfied that the applicant will not face a real chance of persecution on the basis of any links to the LTTE, for any imputed political opinions, and/or because of his Tamil ethnicity, if returned to Sri Lanka, now or in the reasonably foreseeable future.

#### *Returning asylum seeker and illegal departure from Sri Lanka*

34. I accept that, on his return to Sri Lanka, the applicant may be identified by the authorities as an asylum seeker who departed Sri Lanka illegally.
35. Entry and exit from Sri Lanka is governed by the *Immigrants and Emigrants Act 1949* (Sri Lanka) (IE Act). Under the IE Act it is an offence to depart other than from an approved port of departure. Penalties for leaving Sri Lanka illegally include imprisonment of up to five years and a fine of up to 200,000 Sri Lankan rupees. DFAT has been advised by the Sri Lankan government, but cannot verify, that no mere passenger on a boat has been given a custodial sentence. A guilty plea attracts a fine, which can be paid by instalments. If a passenger pleads not guilty the magistrate will usually grant bail on a personal surety or guarantee by a family member. Where a guarantor is required, the returnees may have to wait for the guarantor to come to court. Anecdotally, most passengers may spend years on bail and most are free to go after paying a fine. Although fines are often low, the cumulative costs of attending court over a protected period of time can be high.<sup>21</sup>
36. Advice from DFAT is that upon arrival in Sri Lanka, involuntary returnees are processed by agencies including the Department of Immigration and Emigration, the State Intelligence Service, the Criminal Investigation Department (CID) and, at times the Terrorism Investigation Department, who check returnees' travel documents and identity information against immigration databases, intelligence databases and the records of outstanding criminal matters. Returnees are processed as a group and individuals have to remain until all returnees are processed.<sup>22</sup>
37. For returnees travelling on temporary travel documents, police undertake an investigation to confirm the person's identity, to see whether someone was trying to conceal their identity due to a criminal or terrorist background or trying to avoid court orders or arrest warrants.

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

This often involves interviewing the returning passenger and contacting their claimed home suburb or town.<sup>23</sup>

38. Where an illegal departure is suspected, the returnees are charged and arrested under the IE Act. As part of this process, most returnees will be fingerprinted, photographed and have a statement taken by the police. If former LTTE members, the police will further enquire about their activities abroad. They are transported by police to the nearest Magistrates Court at the first available opportunity once investigations are completed, after which custody and responsibility for the individual shifts to the courts or prison services. Those arrested can remain in police custody at the CID Airport Office for up to 24 hours after arrival and should a magistrate not be available before this time, for example because of a weekend or public holiday, those charged may be detained for up to two days in an airport holding cell.<sup>24</sup>
39. I accept that the applicant may be considered a failed Tamil asylum seeker from Australia on his return. DFAT states that all returnees are treated according to the standard procedures, regardless of their ethnicity and religion, and understands they are not subject to mistreatment during processing at the airport. There is country information containing reports of some returnees being tortured.<sup>25</sup> DFAT does not suggest that there is no risk and those other reports provide some examples of incidents of mistreatment. I accept that some asylum seekers with significant actual or perceived links to the LTTE may still be at risk of harm when processed at the airport. However, as discussed above, on my findings, the applicant is not such a person.
40. Taking into account my findings about his profile and the country information, I do not accept that the applicant will be at risk of adverse attention or that he faces a real chance of harm from the Sri Lankan authorities when scrutinised on his return to Sri Lanka, whether at the airport or on his return home.
41. The Sri Lankan authorities may monitor members of the Tamil diaspora returning to Sri Lanka depending on their risk profile. I have found that the applicant's profile is not one that places him at a real chance of suffering harm. The applicant is from [City 1] in the Eastern Province, where his mother, [and siblings] still live, and I am satisfied that this is the applicant's home area to which he will return. As discussed above, I am not satisfied, given his profile, there is a real chance that he will be monitored or subject to surveillance because of his absence from Sri Lanka, or as a failed Tamil asylum seeker from Australia, if returned.
42. DFAT reports that refugees and failed asylum seekers face practical challenges to successful return to Sri Lanka. Many face difficulty in finding suitable employment and reliable housing, and refugees and failed asylum seekers have reported social stigma from their communities on return. DFAT assesses that returnees may face some societal discrimination upon return

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Including 'LKA106007.E Sri Lanka: entry and exit procedures at international airports, including security screening and documents required for citizens to enter and leave the country; treatment of returnees upon arrival at international airports, including failed asylum seekers and people who exited the country illegally; factors affecting the treatment, including ethnicity and religion (2015-November 2017)', Immigration and Refugee Board of Canada, 10 November 2017, OG020B81694; UKHO, "Report of a Home Office Fact-Finding Mission Sri Lanka: treatment of Tamils and people who have a real or perceived association with the former Liberation Tigers of Tamil Eelam (LTTE)", 31 March 2017, OGD7C848D112; "Unstopped: 2016/17 Torture in Sri Lanka", International Truth & Justice Project (ITJP), 14 July 2017, CISED50AD4849; ITJP, "Silenced: survivors of torture and sexual violence in 2015", 7 January 2016, CIS38A801275; Freedom from Torture, "Sri Lanka - Update on torture since 2009", 6 May 2016, CIS38A8012881; "Sri Lanka: COI Compilation", Austrian Centre for Country of Origin & Asylum Research and Documentation, 31 December 2016, CIS38A80123251; and "TID arrests another Tamil man on return from abroad – VIDEO", Ceylon News, 19 May 2016, CX6A26A6E4702.

to their communities, and that continued surveillance of returnees contributes to a sense of mistrust.<sup>26</sup>

43. The applicant has experience working in [a certain industry] as a [Occupation 1] in Sri Lanka and [working] in Australia. He has shown himself to be resourceful and resilient by adapting to life in Australia. The applicant will be returning to his home area where some of his immediate family reside and he has another [sibling] living in [City 2], also in the Eastern Province. He has remained in contact with his family in Sri Lanka. He was previously supported by his family in Sri Lanka, when not [working]. He does not claim that his family have been unable to support themselves in Sri Lanka since he has been in Australia or otherwise had difficulty in subsisting. Given those factors, I am satisfied that the applicant will be able to re-establish himself in [City 1] without suffering harm in relation to any housing and employment difficulties that he may encounter. I accept that he may face some social stigma on his return as a returned/failed asylum seeker. However, although social stigma, whether in the form of negative attitudes, a level of social isolation or otherwise, may be hurtful, I am not satisfied it amounts to significant ill treatment or any other type of harm that may be regarded as serious harm.
44. I am not satisfied that there is a real chance that the applicant would face serious harm as a returned Tamil asylum seeker from Australia. I accept that the applicant may be processed under the IE Act at the airport and may face court action and a fine under the IE Act as well. The country information states that all persons who depart Sri Lanka illegally are subject to the IE Act on return. That law is not discriminatory on its terms. Case law states that a generally applicable law will not ordinarily constitute persecution because the application of such a law does not amount to discrimination.<sup>27</sup> In this case, the evidence does not support a conclusion that the law is selectively enforced or that it is applied in a discriminatory manner. I find that the processing, investigation, prosecution and punishment of the applicant under the IE Act would be the result of a law of general application and does not amount to persecution for the purpose of ss.5H(1) and 5J(1) of the Act.
45. I am not satisfied that the applicant faces a real chance of persecution on the basis of being a returned Tamil asylum seeker from Australia who departed Sri Lanka illegally, now or in the reasonably foreseeable future.
46. Having considered the applicant's circumstances and profile as a whole, in the context of the country conditions in Sri Lanka I am not satisfied that the applicant faces a real chance of persecution now or in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

#### **Refugee: conclusion**

47. 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**

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48. 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

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<sup>26</sup> DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

<sup>27</sup> *Chen Shi Hai v MIMA* (2000) 201 CLR 293; and *Applicant A v MIEA* (1997) 190 CLR 225.

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

49. 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.
50. I accept that, if he returns to Sri Lanka, while re-integrating the applicant may face some level of societal discrimination as a returned Tamil asylum seeker from Australia, in the form of social stigma. As acknowledged above social stigma may at times be hurtful, however, I am not satisfied on the evidence that any hurt he may suffer from social stigma will amount to severe pain or suffering, or pain and suffering that could reasonably be considered as cruel or inhuman in nature. Similarly, social stigma may be hurtful or harassing but it does not amount to extreme humiliation. I am not satisfied that it amounts to the death penalty, arbitrary deprivation of life or torture. I am not satisfied that any social stigma suffered by the applicant as a returned asylum seeker from Australia amounts to significant harm as defined in ss.36(2A) and 5 of the Act.
51. I have found that there is not a real chance of harm to the applicant, now or in the reasonably foreseeable future, for any LTTE links, for any imputed political opinions, because of his Tamil ethnicity, or a combination of these. As 'real chance' and 'real risk' involve the same standard,<sup>28</sup> it follows that I am also satisfied that there is no real risk of significant harm if he is returned to Sri Lanka.
52. I accept that the applicant may be subject to investigation and processing under the IE Act at the airport and may also face possible action under the IE Act for his illegal departure. DFAT advises that, once a person is found to have departed illegally, they will be arrested by the police at the airport, have their fingerprints taken and be photographed. Returnees may be questioned for up to 24 hours at the airport and, subject to the unavailability of a Magistrate over a weekend or on a public holiday, may be detained in the airport holding cells for up to two days before they are taken to court. At court he may be subject to a bail surety or the magistrate may require a bail guarantor, in which case he may have to wait for a relative to attend court. If on bail the applicant may have to attend court on a number of occasions over time. A fine may be imposed. DFAT states that all returnees are treated according to the standard procedures, regardless of their ethnicity and religion, and understands they are not subject to mistreatment during processing at the airport and assesses that irrespective of religion, ethnicity, geographic location, or other identity, Sri Lankans face a low risk of mistreatment that can amount to torture. I am not satisfied the applicant will suffer the death penalty, arbitrary deprivation of life, or torture as a consequence of his illegal departure. The evidence does not suggest that the treatment and penalties the applicant may be subject to because of his illegal departure are intended to inflict pain or suffering, severe pain or suffering, or are intended to cause extreme humiliation, as required in the definitions

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<sup>28</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

of cruel or inhuman treatment or punishment or degrading treatment or punishment. I am not satisfied there is a real risk of significant harm on this basis, or when considered in combination with any treatment he may experience as a returned Tamil asylum seeker from Australia.

53. There is no suggestion that the applicant faces the death penalty for any reason. I do not accept that there is a real risk that the applicant would face being arbitrarily deprived of life or tortured for any reason as a returned Tamil asylum seeker from Australia, for any links to the LTTE, for any imputed political opinions, because of his Tamil ethnicity, or any combination of these. Nor do I accept that there is a real risk that he would be subjected to pain or suffering, severe pain or suffering or extreme humiliation intentionally inflicted, or caused. I am not satisfied that there is a real risk that the applicant will suffer significant harm.
54. Having considered the applicant's circumstances individually and cumulatively, I am not satisfied he faces a real risk of significant harm.

#### **Complementary protection: conclusion**

55. 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**

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

## Applicable law

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### ***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.