



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA19/06825

Date and time of decision: 6 August 2019 16:06:00
N Becke, 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 referred applicant (the applicant) claims to be a Tamil from the Northern Province of Sri Lanka. On 28 July 2017 he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 9 July 2019 a delegate of the Minister for Immigration (the delegate) refused to grant this 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).
3. On 30 July 2019 the IAA received a submission from the applicant's representative ('the IAA submission'). The IAA submission reiterates claims made to the delegate that are contained in the review material. It also contains arguments in relation to issues before the delegate, which I have noted and considered.
4. Attached to the IAA submission is a new medical report from [Medical imaging provider], dated 22 July 2019, detailing the results of x-rays of the applicant. The report notes the applicant's clinical history as "War injury in 2009 in Sri Lanka" and concludes that the applicant has multiple foreign bodies lodged in his [body].
5. Given the date of the report itself, I am satisfied that the document could not have been provided before the delegate's decision; however the IAA submission does not explain, and it is not otherwise apparent, why the applicant, who I note was unrepresented at his SHEV interview, did not seek such a report earlier, if it was relevant to his application for protection. While I am also satisfied that the report constitutes credible, personal information about the applicant, I am not satisfied that it would have affected consideration of his claims. In her decision the delegate appears to accept the applicant's claim to have received extensive shrapnel wounds in 2009, and for the reasons discussed below, I am also satisfied that he suffered these injuries as claimed. I consider that this new report does not add anything further in this regard. Given the circumstances overall, I am not satisfied exceptional circumstances exist to justify consideration of the new medical report.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - In 1985 his father became a Liberation Tigers of Tamil Eelam (LTTE) intelligence officer.
 - In 1988 his father was shot and killed by the Sri Lankan authorities.
 - In [year] he was born in Jaffna District, Northern Province.
 - In 1995 he moved to the LTTE-controlled [District], Northern Province, to live with his uncle and his mother remarried.
 - In March 2009 the LTTE forcibly recruited him. He underwent one month of training during which he learnt how to use different types of firearms and other military skills.
 - After the training he was forced to participate in a battle. His role was to administer first aid for wounded LTTE combatants, transport weapons and assist the regiment leader. He did not kill anyone.

- After the battle he stood guard some distance away while a group of five LTTE cadres buried the weapons they had used.
- While returning to their LTTE base the group was hit by Sri Lankan Army (SLA) artillery fire. Only he and one other cadre survived. He still has extensive shrapnel injuries to his [body] and has visible scars.
- In May 2009 he was reunited with his family and they entered the Internally Displaced Persons (IDP) camp in the SLA-controlled zone at [Location], Vavuniya District.
- An informer at the IDP camp identified him as being involved with the burying of the LTTE weapons. The Criminal Investigation Department (CID) took his photo, interrogated, and seriously mistreated him. He was taken to a rehabilitation centre for former LTTE cadres
- For the next two and a half years he was held at five different rehabilitation centres. On 30 to 40 occasions the CID interrogated and tortured him regarding the hidden weapons, his family history, and his own LTTE involvement.
- In late 2011/early 2012 the CID released him but warned that they would continue to monitor and interrogate him.
- Around one month later the Vavuniya CID came to his mother's house, and took him to their office. They held him for two to three days, took him to various sites where the weapons could have been hidden, and seriously mistreated him. His mother paid a bribe and he was released.
- He then relocated to his uncle's house in Jaffna. One month later the Jaffna CID detained him at their base for two to three days, interrogated and seriously mistreated him. His uncle paid a bribe and he was released.
- He then resided with relatives in different parts of the Northern Province to avoid the CID, while an agent arranged his passport and airline tickets.
- In June 2012 he departed Sri Lanka by plane, and travelled to [Country 1], and then [Country 2]. In May 2013 he arrived in Australia by boat.
- Since his departure from Sri Lanka the CID have frequently visited his mother to get information about his whereabouts. They believe he is still hiding in the country. The CID last visited her in mid-2018, six months prior to the SHEV interview.
- He fears the Sri Lankan authorities will detain, interrogate, torture or kill him because: he is a Tamil from the formerly LTTE-controlled north; he is imputed to be an LTTE member and supporter because of his familial LTTE links and own role with the LTTE; they believe he knows where LTTE weapons are buried; he left Sri Lanka while he was a person of interest to the CID; and he sought asylum in Australia.

Refugee assessment

7. 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

8. 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.

9. The applicant has been consistent in stating his identity since his arrival in Australia. In support he provided a copy of his Sri Lankan birth certificate with an English translation, an untranslated copy of his national identity card, his biological father's death certificate and untranslated copies of his mother's and step-father's national identity cards. The applicant has also provided a series of untranslated documents, and family photos with his SHEV application. I am satisfied the applicant's identity is as claimed and that Sri Lanka is the receiving country for the purposes of this assessment.

10. I accept the applicant was born in Jaffna District, Northern Province, which although primarily under the control of the Sri Lankan military authorities, was an LTTE active area during the civil war (1983-2009) and that as a child he moved to the LTTE-controlled [District]. Country information before the delegate indicates that during the civil war the LTTE maintained control over significant portions of the Northern Province, and that the majority of Tamil civilians in these areas had some degree of contact with the LTTE in their daily lives. This included undergoing self-defence and combat training with the LTTE, or providing the organisation with material support. Historically many Tamils, particularly in the north and east of Sri Lanka, reported being monitored, harassed, arrested and detained by security forces under the former Rajapaksa government.¹

11. I accept the applicant's claim that his biological father was [an Occupation], who also assisted the LTTE. In his written SHEV statement the applicant claims that in 1988 the Sri Lankan authorities came to the family home, asked for his father and then shot him. The applicant further claims that he is aware of these details because his aunt, who was present during his father's shooting, told him what had happened. The applicant's written SHEV statement provides quite a detailed account of his father's shooting, and refers to his grandmother and aunt being present, and their immediate reactions, but does not mention his mother. However, his father's death certificate, which indicates the cause of death as "shooting", records the informant's name as his wife (the applicant's mother) and notes that she was present during the death. While the difference between the written SHEV statement and death

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064

certificate does not preclude the possibility that both the applicant's mother and aunt were present, I find this discrepancy unusual.

12. Furthermore, in the applicant's written SHEV statement he indicates that his father's assailants were dressed in casual clothes, and he does not specify how his family knew that they belonged to the SLA or CID. The applicant also claims in his written SHEV statement that his neighbours observed that "officers" had surrounded the perimeter of the house during the shooting, but does not indicate how the neighbours knew they were officers. However, during the SHEV interview the applicant claimed that the two men, who came to the door, arrived in an army vehicle and the men who surrounded the perimeter of the house were in army uniform. I find it unusual that these apparently key facts are not included in the applicant's otherwise detailed written SHEV statement. Furthermore, I note in the applicant's arrival interview, he claimed that his father had been shot before his birth but did not indicate the Sri Lankan authorities were responsible; yet later in the same interview he readily spoke in detail of his own adverse encounters with them. While I accept the applicant had not yet been born at the time of his father's death, overall I do not consider the evidence he has provided regarding this matter to be convincing.
13. Furthermore, the applicant's written SHEV statement describes his deceased father as an "LTTE intelligence operative", and outlines a number of his father's "intelligence" activities for the LTTE, but during the SHEV interview he did not refer to his father as such and only advised the delegate that his father used to hide [weapons]. Given the applicant's description of his father's activities, I consider he was a civilian LTTE sympathiser who provided the LTTE with basic, logistical support and that in 1988 he was shot. On the evidence before me I am not satisfied the Sri Lankan authorities were responsible for his death.
14. The delegate asked the applicant if any other members of his family had been involved with the LTTE, and he responded that his uncle had also been involved, but that he didn't know how he was involved, just that he observed LTTE people visiting him. When asked if his uncle had a profile with the Sri Lankan authorities, the applicant responded that he did not. Overall I am prepared to accept that the applicant's uncle may have been a civilian LTTE sympathiser and had LTTE connections, but I am not satisfied his uncle provided the organisation with any type of support, or that he was known to the Sri Lankan authorities.
15. In contrast, I consider the applicant's evidence in relation to his own LTTE involvement was detailed, consistent with his written SHEV statement, and commensurate with someone recalling a personal experience. I accept that in early 2009, during the final stage of the civil war, the LTTE forcibly recruited the applicant and he underwent one month of training, during which he learnt basic military skills. I accept that after the training finished, the applicant was assigned to a regiment which took part in a battle against the Sri Lankan Army (SLA). I accept the applicant's evidence that he worked behind the combat troops to provide first aid, help escort wounded combatants off the field, and provide logistical support to the leader of the regiment. I accept the applicant's evidence to the delegate that he didn't kill anybody, that he didn't have an LTTE rank, and that he was only known within his regiment.
16. I accept that after the fighting ended the applicant was ordered to undertake sentry duty while five other combatants buried the weapons they had used. I accept the applicant's evidence that he does not know where the weapons were buried because it was done at night and he was stationed at least one hundred metres away from the others. I accept that on the group's return journey to their base, they were hit by SLA artillery fire and that three of them were killed. I accept the applicant received a number of serious shrapnel injuries, including on his [body], from which he still bears scars, and was subsequently discharged by the leader of his

regiment. I accept the applicant's evidence that he did not mention these events in initial interviews after his arrival in Australia, because he feared he would be sent back to Sri Lanka if he admitted that he had had LTTE involvement.

17. I accept that after his discharge from the LTTE, the applicant was able to re-join his family and when the war ended a short time later, they entered the IDP camp inside SLA-controlled territory at [Location], Vavuniya. Country information before the delegate indicates that civilians from LTTE-controlled areas, who entered the government-run IDP camps, were subjected to extensive interrogation upon arrival with those who were suspected of being LTTE supporters, or members, being detained in separate camps to the general IDP population before being sent for rehabilitation.
18. In the applicant's written SHEV statement he claims that he observed former LTTE cadres at the camp, working with the Sri Lankan authorities to screen the civilians, and believing he would be identified anyway, he revealed his LTTE involvement. While the applicant was waiting in a queue for former LTTE cadres, a former member of his regiment identified him as responsible for burying a cache of weapons, and the CID took him out of the queue and to a nearby building for questioning. However, at the SHEV interview the applicant gave a different account to the delegate, claiming that the CID approached him at the camp and that he initially denied he had been an LTTE cadre, but they told him that they knew he had been involved with the burying of weapons, and other matters. The applicant did not refer to his written claims that he had already joined the queue to register as a former LTTE cadre, or that he saw an informer from his old regiment working with the CID.
19. Furthermore, during the SHEV interview the applicant admitted that he didn't know how he had been identified at the IDP camp because the weapons had been buried at night, and the only person who had seen them was the checkpoint guard who had allowed them to pass into the area. I am prepared to accept that the applicant identified himself to the authorities at the IDP camp as a former LTTE cadre, and was interrogated, seriously mistreated and the next day transferred to a rehabilitation centre, and I have had regard to his evidence that he still had recent, extensive shrapnel injuries at this time, which I consider may have drawn the authorities' attention. However, given the discrepancies in the applicant's account of what occurred at the IDP camp, I do not accept an informer told the CID he had been involved with burial of weapons.
20. The applicant claims that he was transferred to a further four rehabilitation camps over the course of the next two and a half years. The applicant further claims that the International Committee of the Red Cross (ICRC) registered his presence in the rehabilitation camp network, and that they gave him a registration card and delivered a duplicate to his mother in Vavuniya.
21. The applicant has provided a number of documents relating to his time in the rehabilitation camps, such as his ICRC 'Detention Attestation Notice', which confirms ICRC delegates visited him [in] June 2009 and that he was released [in] September 2011; a 'Certificate of Completion' of workshops in "Co-Counselling, Know Thyself, Psychosocial Issues, Community Development, Cognitive Behaviour Therapy and The Way Forward" (August 2011); and a 'Reintegration Certificate' ([September] 2011), which confirms he was reintegrated to an address in Vavuniya. Both the Certificate of Completion and Reintegration Certificate were issued by the Bureau of the Commissioner General of Rehabilitation Sri Lanka. I have also had regard to the applicant's evidence that during his time in rehabilitation he was able to complete more of his high school education, which had been disrupted by the civil war

22. Country information indicates that following the end of the civil conflict the Sri Lankan government established 24 rehabilitation centres for approximately 12,000 former LTTE members. Under Regulation 22 of Sri Lanka's Emergency Regulations (2005) administrative detention in rehabilitation centres or elsewhere was possible for up to two years without judicial review or access to legal representation.² The Sri Lankan authorities used the rehabilitation process to screen and profile LTTE members through interviews, informants and other relevant information to assess individuals' depth of involvement, period of involvement and activities. The Bureau of the Commissioner General of Rehabilitation used a 'three pronged approach' to manage the detained LTTE members: those to be investigated and prosecuted under a normal court of law; those to be rehabilitated; and those to be released upon confirmation by intelligence agencies of their peripheral involvement in the conflict. Personal files assess the progress of former LTTE in terms of rehabilitation and de-radicalisation.³ While DFAT describes rehabilitation is typically a one-year program, extended to up to two years for those considered to be highly radicalised, the UK Border Agency also notes that thousands of former LTTE affiliates spent two years or more in detention for no specific reason.⁴
23. The applicant claims that during the two and half years he was held at the rehabilitation camps, the CID frequently interrogated him about the buried weapons and seriously mistreated him. In his written SHEV statement the applicant estimates that this occurred on 30 to 40 occasions, and at interview he told the delegate that it occurred on 40 to 50 occasions. The applicant also claims that he was not released until late 2011/early 2012 because the CID were trying (unsuccessfully) to obtain information about the buried weapons from him during their interrogation sessions, yet his ICRC Detention Attestation Notice, and his Reintegration Certificate, both indicate his date of release as [September] 2011 (a period of just under two and a half years). Furthermore, I note that on three occasions in the applicant's arrival interview he indicated he had been released from rehabilitation in September 2011.
24. The applicant also claims that he was only released from rehabilitation because he was known to the ICRC and registered with that organisation. I consider this at odds with the applicant's claim that the Sri Lankan authorities purportedly held him for at least another three months after the release date they had specified on his reintegration certificate, and of which they notified the ICRC.
25. For the reasons given above in relation to the applicant's claimed experiences at the IDP camp at [Location], I am not satisfied the Sri Lankan authorities were informed that he had been involved with burying weapons. Even if the CID later had reason to believe the applicant knew where a cache of LTTE weapons had been buried, I do not consider it credible that they would interrogate him up to 50 times in two and a half years, and then release him into the community having failed to obtain the information they wanted. There is also no credible reason before me as to why the CID would issue a reintegration certificate [in] September 2011, yet extend the applicant's detention to the end of that year/early 2012 as claimed. Given the evidence overall, I am satisfied the applicant was released [in] September 2011. Given the country information I am not satisfied that the length of the applicant's detention in the rehabilitation camp system indicates that the CID had a particular interest in him.

² Ibid.

³ Ibid.

⁴ DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064; UK Border Agency, "Country of Origin Information (COI) Report", 7 March 2012, CIS29709

26. The applicant claims that when he was released the CID warned him that he could not leave his home area without permission, that they would continue to monitor him and that their treatment of him would be worse than what he had experienced in the rehabilitation camps. The applicant claims that approximately a month after his release, CID officers from Vavuniya, who had his information, detained him for two or three days and interrogated and seriously mistreated him about the buried weapons, until his mother paid a bribe for his release. The applicant claims that the following month, in March 2012, he relocated to his uncle's house in Jaffna to re-commence his studies, believing this would lessen the attention on him. The applicant claims one month after his arrival the Jaffna CID detained him, interrogated him about the buried weapons, seriously mistreated him, and then released him when his uncle paid a bribe.
27. Country information before the delegate indicates that following the 25 year civil war, the Sri Lankan authorities continued to closely monitor the northern Tamil population through the mandatory registration of each Tamil household and its inhabitants, restriction of the free movement of Tamils between villages and districts, and a nightly curfew. They also regularly interrogated Tamil civilians regarding matters such as their family composition and any previous LTTE involvement.⁵ Furthermore, country information does indicate that the Sri Lankan authorities subjected former rehabilitation camp detainees to frequent and arbitrary questioning following their resettlement in the community.⁶
28. However, I also have serious doubts regarding the veracity of the applicant's claims in this regard. The applicant has given evidence that he was interrogated and seriously mistreated about the missing weapons on average twice a month during the two and a half years he was in the rehabilitation camps. I do not find it credible that if the CID had been unsuccessful in getting the information they wanted from the applicant on multiple occasions while he was in rehabilitation, that they would have decided to release him, and delegated further interrogations to the CID in Vavuniya and Jaffna. I also consider it significant that he was not required to report to the Sri Lankan authorities following his release, which the UK Border Agency indicates was a common requirement for those released from rehabilitation, but instead the CID took approximately a month to purportedly approach him at his mother's home in Vavuniya.⁷
29. Given the country information, I am prepared to accept that the CID may have briefly interrogated the applicant on two occasions after his release, because of his profile as a young Tamil man who had recently been released from rehabilitation. However, I do not accept he was detained for several days on each occasion, interrogated about the buried weapons, or physically mistreated. On the basis of the documentary evidence he has provided, indicating he was released [in] September 2011, I am satisfied that the first incident occurred in October 2011, approximately one month after his release from rehabilitation, and the second incident in November 2011.
30. The applicant has claimed that following his second detention by the CID in Jaffna, he began to change his location frequently and stayed with different relatives in the Northern Province to avoid the CID. I do not consider it credible that if the CID from the rehabilitation camp network, and Vavuniya and Jaffna districts were working together to interrogate him as claimed, that he could have successfully avoided them for a six month period (from late 2011 until his departure from Sri Lanka in June 2012). I also note that the applicant's national identity card was issued

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

⁶ International Crisis Group, "Human Rights in Sri Lanka in the Post Conflict Period", 6 December 2010, CX257473

⁷ UK Border Agency, "Country of Origin Information (COI) Report", 7 March 2012, CIS29709

in April 2012, indicating that he was willing to approach the authorities during the same period of time he claims to have been in hiding from them. When the delegate asked the applicant how he was able to travel from the Northern Province to Colombo, without being detected at security checkpoints along the way, he did not answer the question and instead spoke of the bribe his uncle was purportedly required to pay to secure his release from CID custody following the second incident.

31. The applicant has claimed that in June 2012 his uncle paid an agent to obtain a Sri Lankan passport for him, and told the delegate that all he gave his uncle was his photo, that he was not required to fill in an application form, and that the agent only handed him his passport when he was about to approach a specific counter, at a specific time, at Colombo airport on the day of his departure. The applicant indicated that he left Sri Lanka with a group organised by the same agent, but has not claimed that he departed Sri Lanka under a different identity. According to the transcript of an interview with Departmental officers in May 2013, shortly after the applicant's arrival in Australia, he confirmed that his passport was genuine and that he was able to enter [Country 1] without any problems, from where he travelled overland to [Country 2]. In a second interview in July 2013 he claimed that his passport was issued in his name; but in his 2017 SHEV application he has claimed that he is "not sure" if his passport was fraudulent or not and, "I heard that my family paid the agent a large sum of money to get me out of the country".
32. At the time the applicant departed Sri Lanka, the following procedures were in place at Colombo airport. In order to enter the 'Departures' terminal, individuals had to show their airline ticket and/or their passport, their airport staff ID card, or an airport day pass. Airline tickets, passports, and the validity of any visas for the destination country were then scrutinised again at the check-in desk, and again at the Department of Immigration & Emigration (I&E) area, where an immigration officer scanned the details page of the passport to the I&E database, and verified it under different lights to see if it had been forged or tampered with in any way. If a court decided to impound a suspect's passport, or an arrest warrant was issued for an individual, their details were placed on an I&E alert or "wanted list". If the airport authorities suspected a document was a forgery that person would undergo extended questioning and possible detention.⁸
33. While this country information does not preclude the existence of corrupt practices at Colombo airport, given the several layers of verification a departing passenger was subjected to, I do not find it plausible the applicant could have evaded detection in the manner he has claimed. Furthermore, country information indicates that after completion of the rehabilitation program former LTTE cadres were allowed to apply for passports and leave the country.⁹
34. Given the evidence overall, I do not accept that the applicant departed Sri Lanka using a fraudulent passport because he was a person of adverse interest to the Sri Lankan authorities. I do accept however that the applicant registered as an asylum seeker with the United Nations High Commission for Refugees (UNHCR) in [Country 2], and received a card from them (a copy of which is included with his SHEV application), but that he left [Country 2] prior to his scheduled interview with them.
35. The applicant has claimed that since his departure from Sri Lanka the CID have frequently visited his mother searching for him, including as recently as mid-2018, and that they believe

⁸ UK Border Agency, "Country of Origin Information (COI) Report", 7 March 2012, CIS29709

⁹ DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064

he is still hiding in the country. I have found that the applicant departed Sri Lanka legally, and I do not consider it credible that the CID would be unaware of this and would still be searching for him in the country six years after his departure. I also note that in his arrival interview the applicant indicated that the CID knew he had been in [Country 2], which is at odds with his evidence at SHEV interview that they believe he is still hiding in Sri Lanka.

36. Overall I consider the applicant's evidence regarding the nature of his interactions with the Sri Lankan authorities at the rehabilitation camps, and his purported interactions with them after his release, lack credibility. I accept the applicant was forcibly recruited by the LTTE for a period of several months, and that when the civil war ended he (along with thousands of other Tamils) was held in various rehabilitation camps. However, I do not accept that the Sri Lankan authorities believed that the applicant knew where the LTTE had buried a cache of weapons, or that this matter was ever raised with him. On the evidence overall, I am not satisfied the applicant was interrogated and seriously mistreated up to 50 times during the two and a half years he was in rehabilitation, because of the matter of the buried weapons or for any other reason. I do not accept the length of the applicant's detention indicates the CID had a particular adverse interest in him.
37. While I am prepared to accept the CID visited the applicant in October 2011 after his release from the rehabilitation camp, and again in November 2011 after he moved to Jaffna to live with his uncle, I do not accept that they detained him, seriously mistreated him, or that his family were forced to pay bribes to secure his release. On the evidence before me I am satisfied the applicant was not a person of interest to the Sri Lankan authorities at the time of his departure from Sri Lanka in June 2012. At the end of the SHEV interview the applicant also claimed that the Karuna Group paramilitary would be looking for him in Sri Lanka in relation to the buried weapons; however given my finding that the applicant is not of adverse interest to the Sri Lankan authorities for this reason, and given the timing with which this claim regarding the Karuna Group was raised, I consider that it lacks credibility.
38. The 2012 UNHCR Guidelines, issued the year of the applicant's departure from Sri Lanka, identified persons with certain links to the LTTE, and their family members, as potentially in need of protection at that time, although it did not specify individuals of Tamil race as requiring protection, for that reason alone. Furthermore, in the UNHCR's opinion, individuals originating from an area which had been under LTTE control, such as the applicant, did not require protection solely on that basis unless there were additional, relevant factors which may have given rise to a profile of risk.¹⁰ During the SHEV interview the applicant told the delegate that while he was in rehabilitation the CID questioned him about his family, and they knew the circumstances of his father's death, and that they suspected that he planned to continue his father's activities with the LTTE. Given the country information cited above regarding screening processes and personal files at the rehabilitation camps, it is plausible, and I accept, that the Sri Lankan authorities would have obtained information from the applicant about his family composition, including that his father had provided the LTTE with basic, logistical support, and that his uncle was an LTTE supporter. However, for the reasons discussed above, I am not satisfied the applicant's father was an LTTE intelligence operative as claimed, that the CID were responsible for his death in 1988 or that his uncle had a profile with the Sri Lankan authorities.
39. I am also prepared to accept the Sri Lankan authorities knew that from 1995 the applicant had resided with his uncle in the LTTE-controlled [district] (as his mother had re-married). At the end of the SHEV interview the applicant added that because the LTTE used to issue him a pass

¹⁰ United Nations High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8

to visit his mother in Jaffna, the CID suspected he had been smuggling weapons during the war and had been involved with the burial of other caches of weapons. However, I consider this at odds with the applicant's evidence that the Sri Lankan authorities knew from his school records that he had only joined the LTTE several months before the end of the war in 2009 and do not accept that this was ever raised with him.

40. DFAT currently assesses that high-profile individuals with links to the LTTE would continue to be of interest to the Sri Lankan authorities (the vast majority having already come to the attention of the authorities). Aside from the LTTE leadership, former members who had committed terrorist or serious criminal acts during the conflict, or who provided weapons or explosives to the LTTE, may be considered high-profile.¹¹ While I accept the applicant handled weapons during his training with the LTTE, transferred weapons between LTTE combatants during the battle he participated in, and stood watch on one occasion while other LTTE combatants buried weapons, I do not accept that he would be considered as someone who had provided weapons to that organisation. Nor, for the reasons given above, do I accept that the Sri Lankan authorities were aware of, or ever interrogated him, about the buried weapons as he has claimed.
41. DFAT also assesses that former low-profile LTTE members (such as combatants and persons employed in administrative roles) who have since come to the attention of the Sri Lankan authorities would still be detained and may be sent to the remaining rehabilitation centre.¹² The applicant has also claimed that his scars would draw the adverse attention of the Sri Lankan authorities upon return, however DFAT assesses that there is no recent evidence of people being detained for this reason.¹³ Given the applicant has claimed to have already served a significant period of rehabilitation, I am satisfied he would not be detained again upon return to Sri Lanka because of his LTTE involvement, even when considered against his scars.
42. The applicant has not claimed to fear discrimination in Sri Lanka because of his previous LTTE involvement, or the time he spent in rehabilitation, and DFAT indicates that most former LTTE members released from rehabilitation have been accepted back into their communities in the north and east, despite some suspicion that they may act as informants for Sri Lankan authorities. Tamil populations in these areas understand that many people were forced to participate in LTTE activities, and DFAT assesses that societal discrimination against low profile LTTE members is low, although some have faced difficulty finding employment, as some potential employers are concerned about increased police and military attention.¹⁴ At the end of the SHEV interview the applicant used his phone to show the delegate social media videos, the subject of which he claims is the mistreatment of former LTTE members by the Sri Lankan authorities. The applicant did not specify when these videos were recorded or provide further detail about their context.
43. Seven years have now passed since the publication of the UNHCR Guidelines and the country information before me indicates the situation for Tamils in Sri Lanka has continued to improve markedly. The monitoring and harassment of Tamils in the north and east of the country, while still occurring, has reduced significantly and some members of the Tamil community reported they felt more empowered to question monitoring activities.¹⁵ There are no restrictions on freedom of movement throughout the entire country, and significant military checkpoints in

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

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

the north have been dismantled, with troops now largely confined to barracks, reducing their impact on civilian life.¹⁶

44. Furthermore in 2017 the UK Home Office noted that being of Tamil ethnicity does not in itself warrant international protection.¹⁷ I have also considered recent country information from DFAT and the US Department of State which indicate that Tamils are not being systematically targeted and subjected to serious harm because of their race, or based on their prior place of residence.¹⁸
45. For reasons already stated, I am not satisfied that the applicant faces a real chance of harm in Sri Lanka because of his status as a Tamil with scars from a formerly LTTE-controlled area in the north, his or his family's LTTE connections and involvement, or the period of time he spent in rehabilitation camps.

Returning Asylum Seeker

46. I accept that, on his return to Sri Lanka, the applicant may be considered by the authorities to be a returning asylum seeker. For the reasons discussed above, I am satisfied the applicant departed Sri Lanka legally, using a genuine passport issued in his own name; however I accept he may be returned involuntarily to Sri Lanka.
47. As the delegate noted, upon arrival in Sri Lanka, involuntary returnees, including those on charter flights from Australia, are processed by different agencies that check travel documents and identity information against the immigration databases, intelligence databases and the records of outstanding criminal matters. Returnees are also processed en masse, and individuals cannot exit the airport until all returnees have been processed, which may take several hours due to administrative processes and staffing constraints at the airport.¹⁹
48. For returnees travelling on temporary travel documents, police undertake an investigative process to confirm the person's identity, to address whether someone was trying to conceal their identity due to a criminal or terrorist background or trying to avoid court orders or arrest warrants. This often involves interviewing the returning passenger, contacting the person's claimed home suburb or town police, contacting the person's claimed neighbours and family and checking criminal and court records. While I accept the applicant's period of internment in the rehabilitation camp system would be noted by the Sri Lankan authorities upon his return, there is no credible evidence before me that he is of adverse interest to the Sri Lankan authorities. The applicant has served time in the rehabilitation system from which he was released without significant conditions being imposed on him, and he was able to depart the country legally less than a year later.
49. There is no credible evidence before me to suggest he would now be imputed with LTTE involvement, or with an anti-Sri Lankan government political opinion including because he has spent a significant period of time outside the country seeking asylum in [Country 2] and Australia. Returnees are treated according to these standard procedures, regardless of their ethnicity and religion, and I am not satisfied that the applicant would face greater questioning

¹⁶ Ibid.

¹⁷ UK Home Office, "Sri Lanka: Tamil separatism Version 5.0", June 2017, OG6E7028826

¹⁸ DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064; US Department of State, "Sri Lanka Human Rights Report 2017", 20 April 2018, OGD95BE927333

¹⁹ DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064

than other returnees.²⁰ I am not satisfied that returning Tamil asylum seekers, such as the applicant, face a real chance of serious harm.

Refugee: conclusion

50. 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

51. 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

52. 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.
53. I have concluded that the applicant does not face a real chance of harm as a Tamil with scars from a formerly LTTE-controlled area in the north, because of his or his family's LTTE connections and involvement, or the period of time he spent in rehabilitation camps. Based on the same information, I am not satisfied that the applicant has a real risk of suffering significant harm.
54. I am satisfied the applicant departed Sri Lanka legally; nonetheless I accept he may be identified as a returning asylum seeker and be subject to processing at the airport on return. DFAT has reported that returnees are not subject to mistreatment during such processing,²¹ and I am not satisfied this processing would amount to significant harm as defined. I am not satisfied the applicant faces a real risk of significant harm as a returning asylum seeker.

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).

²⁰ Ibid.

²¹ Ibid.

Decision

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

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.