



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA20/08791

Date and time of decision: 5 January 2021 15:46:00
M Wei, 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 national of Sri Lanka. He arrived in Australia in March 2013 and lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790 in May 2017. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 2 December 2020. The delegate found that the applicant did not have a well-founded fear of persecution and that there was not a real risk of significant harm upon his return to Sri Lanka.

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).

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - He was born in Jaffna, Northern Province of Sri Lanka, in [year]. He is a Tamil and Catholic.
 - He lived with his aunt and her husband (his uncle) in Vanni, an area then controlled by the Liberation Tigers of Tamil Eelam (LTTE) in the Northern Province, from 2006 to 2009 and they were displaced during the war. They experienced extreme hardship including hunger.
 - Towards the end of the war, in April 2009, he, his aunt and his uncle were detained by the army in a camp because they were living in a LTTE controlled area.
 - He was very ill while being detained and was taken to a [hospital in Town 1], where he stayed for 3 days before escaping to his family's home in Jaffna.
 - Two days after he arrived home, the army and the Criminal Investigation Department (CID) took him from his parent's house to a torture house, where he was beaten. They suspected that he was a LTTE supporter because his aunt and uncle were supporters of the LTTE and they wanted to know everything about his aunt and uncle's activities in the LTTE.
 - He was kept for two days. He was released only after his family paid a sum of money to the Eelam People's Democratic Party (EPDP).
 - He was harassed and assaulted by the EPDP while he was attending a Catholic high school. The EPDP forced him to distribute their newspapers. He parents were concerned and took him out of school.
 - At some point in 2009, his uncle and aunt were released from the camp and returned home.
 - Two other families who used to visit his aunt and uncle were kidnapped or taken by the CID and armed forces. His uncle and aunt became scared and left the village. The CID and armed forces then came to his parent's house seeking information about his aunt and uncle.
 - Out of fear his parents sent him to Colombo in November 2012, where he stayed with a family friend for a few days before he took a flight from Colombo to [Country 1] using his

passport. His parents paid a travel agent more than the costs of the flight to ensure that there were no issues departing the airport.

- He was registered with the UNHCR in [Country 1]. From [Country 1] he came to Australia as he feared he would be returned to Sri Lanka.
- He fears that the EPDP would forcibly recruit him. He fears harm from the EPDP, the CID, the Sri Lankan army and the navy because of his connection with his aunt and uncle, his leaving Sri Lanka without through proper channels and his lack of documentation on arrival returning as an asylum seeker from Australia. He also fears harm due to his Catholic religion in light of the 2019 Easter Sunday attack.

Factual findings

4. The information before me indicates that the applicant arrived in Australia [in] March 2013. An entry interview took place on 25 March 2013. The applicant lodged his SHEV application on 3 May 2017 and attended the SHEV interview by phone on 30 September 2020.
5. The applicant claims that he was born in Jaffna and that he is a Sri Lankan Tamil with Christian (Catholic) faith. The applicant provided a copy of his Sri Lankan birth certificate (with translation), which indicates that he was born in [year] in a Jaffna hospital to his Sri Lankan Tamil parents. Also provided was a certification from a Justice of the Peace dated [in] April 2013 confirming that the applicant's family's residence in Sri Lanka and that the applicant is his father's son. The information provided indicates that the applicant has [specified family members] and some of [these] are overseas. His parents and [specified siblings] are living in Sri Lanka. I accept that the applicant is [an age] years old Catholic Tamil originating from the Northern Province of Sri Lanka. I am satisfied that he is a citizen of Sri Lanka and that Sri Lanka is the receiving country.
6. The applicant essentially claims that he came to the adverse interest of the Sri Lankan authorities because he had lived with his [aunt] and her husband for three years in Vanni, an area controlled by the LTTE and because the authorities suspected that his aunt and uncle were involved in the LTTE. This was the major reason that he left Sri Lanka in late 2012 when he was about [age] years old.
7. The applicant claimed that, although his family and his aunt's family were living in the same village in Jaffna, he was largely brought up by his aunt and his uncle from an early age as they did not have children of their own. From 2006 to 2009 he moved away from his village and his family in Jaffna to live with his aunt and uncle in Vanni and they were displaced during the war. He suffered from starvation and became very ill towards the end of the war when they were displaced. In April 2009, they fled the LTTE controlled area and went to the army controlled area and was detained in an army camp. He claimed that he was taken to a hospital in [Town 1] due to his poor health, and while in hospital he met a man there who advised him to not to return to the camp. As such, after three days, he escaped from the hospital with this man who took him to his parent's home in Jaffna.
8. The applicant claimed that two days after he returned to his family home, the army and the CID took him away and put him in a place that look like a torture chamber, where he was subject to beating. He was only released after the EPDP approached his parent demanding money and his parents paid the EPDP [amount] Sri Lankan rupees. He claimed that his aunt and uncle was released from the army camp at some point in 2009 (he stated in the entry interview this happened in October 2009) and returned to their village in Jaffna. However, they continued to face monitoring from the authorities and were questioned from time to time. His aunt and uncle

became scared and left the village after they found out other people in the village (he stated in the visa application that they were other families who used to visit his aunt and uncle and he stated in the SHEV interview that it was one family member of the families who returned to the village from the army camp with his aunt and uncle). The applicant claimed the authorities then came to his parent's house seeking information about his aunt and uncle. The applicant claimed this led to that his parents sent him to Colombo and from there he later left Sri Lanka for [Country 1] in November 2012.

9. At the SHEV interview, the delegate asked the applicant why his parents would have let him to live with his aunt and uncle and even allowed him to move to Vanni with them considering [his family composition]. The applicant said that he was very close to his aunt and uncle from a young age. He said his uncle was a fisherman and went to Vanni for work. The applicant also stated that he was not told at that time that he would be in Vanni for three years. The applicant explained at the SHEV interview that the army camp he referred to was one of those temporarily built for people from the war zone areas and people in those areas had no option but to get to the army-controlled area in order to save their lives, which suggests that the camp was for Internally Displaced Persons (IDP). Country information indicates a ceasefire between the Sri Lankan government and the LTTE signed in 2002 broken down in 2005 and internationally mediated peace talks collapsed in 2006. Government forces re-took the eastern part of the country from the LTTE in July 2007 and in January 2008 launched a major offensive to capture remaining LTTE-controlled areas in the north culminating in the surrender of the LTTE in May 2009. It was estimated that the Sri Lankan civil war has displaced over 900,000 people. Many fled the conflict areas and surrendered to the Sri Lankan army.¹ While I do question that the applicant's parents would have allowed [this] son to move to Vanni given the deteriorating situation at the time, I am willing to give his evidence its face value and accept that he moved with his aunt and uncle to the Vanni in 2006 and surrendered to the army after escaping from Vanni towards the final stage of the war in April 2009 and were placed in an army controlled IDP camp. I also accept his evidence that they were displaced several times in the early 2009 due to the war.
10. The applicant claimed that he was taken to a [Town 1] hospital from the army camp due to his poor health as result of starvation during displacement. It is plausible and I accept this. The applicant claimed that a man he met in the hospital took him on a van from the hospital in [Town 1] to his parent's house in Jaffna travelling about [distance] kilometres. His evidence was that he took this man's advice to escape from the hospital as this man told him that he would be very much at risk if he returned to the camp as [an age] years old because it was common for army to torture and otherwise harm anyone in the camp. When he was asked at the SHEV interview if the man helped him was a patient, he said that it was hard to tell whether this man was a patient or a worker in the hospital. I do not find this recent evidence convincing that he could not tell if this man who helped him and travelled with him from [Town 1] to Jaffna on a [distance] kilometres journey was a patient or worker, noting he stated in the visa application that this man was a patient in the hospital. Also his evidence in the visa application was that this man he met in the hospital told him that it was common for army members to torture and harm anyone in the camp and that the applicant would be at a risk if he returned to the camp, yet, he told the delegate at the SHEV that he witnessed in the camp that some people were being attacked by the army and that his aunt and uncle were immediately detained upon arrival at the camp and he could have been beaten had he not been in a poor health condition. Country information also indicates that towards the end of the war, government security forces arrested and detained a large number of LTTE members. Most were sent to government-run rehabilitation centres. A

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report – Sri Lanka", 4 November 2019, 20191104135244

smaller number were prosecuted through Sri Lanka's court system. Security forces also questioned or monitored many civilians for possible LTTE activity.² Despite of some inconsistencies in his evidence, I am prepared to accept that his aunt and uncle were detained when they arrived at the army camp and that the applicant travelled to Jaffna with a man he met in the hospital. The applicant's evidence does not suggest that the authorities considered him to be of particular interest given he was taken a hospital for treatment and was not immediately questioned when he was getting better in the hospital and that he was able to 'escape' from the hospital.

11. The applicant stated the following in the visa application: two days after he arrived at his parent's house in Jaffna after he escaped from the hospital, the army and the CID came and said that he had escaped from the camp where his aunt and uncle were. They asked him why it was that if he was brought up by his uncle and aunt and that he was not with them in the camp. They took him to a place that looked like a torture chamber in a house where he was beaten all over his body including his private parts. He stated that they suspected that he was a supporter of the LTTE because his uncle and aunt were supporters of and involved in the LTTE and that CID wanted to know whether they were still active in the LTTE and wanted to know everything about their activities in the LTTE. He stated that he told them that he was only young and knew nothing about their activities, but the CID responded that the applicant was clearly aware of (of his aunt and uncle's activities) and that he was not telling the truth. He was being kept for two days without food and questioned about people he had never heard of. While he was being detained, the EPDP approached his parents demanding them to pay [amount] rupees or handed them over one of the applicant's [siblings] otherwise the applicant would not be released and would ultimately be killed. He was released after his parents made the payment to the EPDP. These matters were discussed at the SHEV interview. The applicant asked the reasons for his arrest, to which he responded that he was arrested because they suspected him of having LTTE involvement and they wanted more information about his uncle and aunt. He added that he 'felt that' but they never told him. When asked why it was the EPDP not the CID who approached his family for money, he responded that he believed the CID informed the EPDP to do this.
12. I consider applicant's evidence about his aunt/uncle's involvement in the LTTE has been superficial overall. The applicant's evidence was that he attended school during the approximately three years when he was in Vanni. When he was asked what he knew about his uncle/aunt's LTTE involvement at the SHEV interview, his evidence was that he was of a young age and was attending school at the time and he did not know of and it was difficult to tell his uncle/aunt's specific involvement with the LTTE but he thought they had some relationship and were doing some work for the LTTE as he saw some people in the LTTE uniforms having visited his uncle/aunt's house. The delegate asked the applicant at the SHEV interview why his aunt/uncle would have gone to an army camp rather than stay in Vanni to help the LTTE if they were involved in the LTTE. He answered that the people in those area had no other option as they had to save their lives. His evidence was also that his aunt/uncle was released from the camp and returned to their village in Jaffna at some point in 2009 (he stated in the entry interview it was in October 2009). He claimed that his aunt/uncle faced ongoing monitoring from the authorities who continued to question them regularly and had taken them back to the camp (he did not specify how many times this happened). When asked at the SHEV interview, the applicant said that up to 'today' he had no idea of his uncle/aunt's involvement in the LTTE because he had not seen them since he left the camp and his family cut ties with his uncle/aunt after they returned to their village as his parents blamed them for what happened to the applicant.

² Ibid.

13. Country information indicates that Lankan government prioritised security considerations over humanitarian needs and the wellbeing of Internally Displaced Persons (IDPs). The authorities would strip search virtually all civilians and screen them for suspected LTTE associations. People, including many women and children, would be lured into identifying themselves and surrendering on the promise of vocational training and employment abroad. As the testimony of Freedom from Torture's clients... once identified, suspected LTTE were removed from the IDP camps to separate, often unknown, locations generally referred to as "rehabilitation centres". This "screening process" resulted in cases of executions, disappearances, rape and sexual violence. Thousands of individuals with suspected LTTE ties were detained in extra-legal detention centres, unmonitored and without access to legal counsel or protection agencies, their loved ones not knowing their whereabouts.³ Country information also indicates that the Sri Lankan Government has managed a large-scale rehabilitation process for former LTTE members since the end of the war. The government established 24 rehabilitation centres in the Northern, Eastern and Western provinces for former LTTE members who surrendered in the final stages of the war. The Bureau of the Commissioner General of Rehabilitation used a 'three pronged approach' to manage arrested LTTE members: (1) those to be investigated and prosecuted under normal court of law; (2) those to be rehabilitated; and (3) those to be released upon confirmation by intelligence agencies of their peripheral involvement in the war. Sources told DFAT that those targeted for rehabilitation included not just former combatants, but also those who performed non-combat functions for the LTTE as part of its civilian administration in Tamil-populated areas. Rehabilitation is typically a one-year program, extended to up to two years for those assessed as highly radical. Former LTTE members undergoing rehabilitation are permitted to make multiple visits to their family and receive family visits during their rehabilitation process.⁴
14. It is plausible and I accept that the authorities would very likely to screen the applicant's uncle and aunt, among many other IDPs who had fled the conflict areas, for suspected LTTE involvement. The applicant does not claim that his aunt or uncle were sent to rehabilitation or was otherwise charged or jailed before they were released by the authorities and before they returned to their village. Given the screen processes as noted above, I consider their release from the camp and they were allowed to return to Jaffna indicates that the authorities did not consider them to be of persons of interest. His evidence as to the ongoing harassment faced by his aunt and uncle and the circumstances under which they left the village also lack convincing details, noting he and his family had no direct contact with his aunt and uncle during that period. I am not satisfied that that the applicant's aunt and uncle had involvement in the LTTE or the authorities considered them to have had LTTE involvement or that they faced ongoing monitoring or harassment following their returning to their village from the camp in 2009 or that the authorities came to his parents' home looking for his aunt and uncle in 2012.
15. It is plausible and I am willing to accept that the applicant was questioned by the CID/army about his or his aunt and uncle's suspected LTTE involvement after returning to his home in Jaffna if he were absent for about three years and if he left the hospital without notifying his aunt and uncle who were still in the camp. However, given at that time his aunt and uncle were still in the army controlled camp in [Town 1] and the applicant was about [age range] years of age and attended school during his time in Vanni, I hold serious doubts that the CID had assaulted the applicant in the manner described in order to find out whether his aunt and uncle was still active in the LTTE or their past activities. The applicant's evidence was that he was questioned about people he never heard of, suggesting that the authorities held information about his uncle and his aunt's

³ UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism (version 5.0)", 15 June 2017, OG6E7028826

⁴ DFAT, "Country Information Report – Sri Lanka", 4 November 2019, 20191104135244

LTTE involvement, which also does not sit well with his other evidence that his uncle and aunt were able to be released from the IDP camp in 2009. I consider the applicant has largely embellished his claim as to the extent of the mistreatment he was subjected to in the hands of the CID or that he was detained for up to two days, or that his parents had to pay the EPDP who approached his parents two days after his arrest.

16. The applicant claimed that six months after he was released by the CID in 2009, he started to attend a Catholic high school in the local area and he was often harassed by the EPDP on his way to school. He was made to distribute newspapers for the EPDP and he was assaulted when he refused to help. In his visa application, the applicant stated that the EPDP would often ask him to do illegal things like robbery or assault or even murder. Because of this, his parents took him out of school after one to two months. At the SHEV interview, the applicant clarified that he was not asked and was not involved in any illegal activities such as kidnapping, robbery or murder but he and his parents were afraid that the EPDP might ask him to be involved in such activities if he continued to have any involvement with them, which was the reason that his mother took him out of school.
17. Country information notes that the EPDP, a former Tamil paramilitary group, who operates largely in the north, was aligned with the government during the war. The EPDP and other paramilitary groups have been accused of committing serious human rights violations both during and after the war, including unlawful killings and enforced disappearances of suspected LTTE members, attacked and kidnapped civilians, and recruited children during the war. Post-war, the TMVP has been accused of harassing and intimidating suspected former members of the LTTE and supporters of the TNA and UNP, its political rivals.⁵
18. I accept that the applicant could have been harassed by the EPDP as [a] boy while attending the local high school for a short period for one to two months, especially if there were an EPDP camp on his way to school. I accept that the applicant was made to distribute EPDP newspapers and was beaten when he refused. I am however do not accept that he had any other involvement in the EPDP apart from delivering newspapers for a brief period. I am not satisfied that the applicant was targeted for recruitment by the EPDP. Noting the timeline as per his evidence, he would have left high school in [year range]. After he stopped attending school, he continued to live in the village with his family until he left for Colombo in November 2012. Despite the EPDP operated in the local area, the applicant does not claim and provided no probative evidence to indicate that the EPDP sought to harass him or his family or sought to forcibly recruit him in the [time] period after he stopped attending school and before he left his Jaffna for Colombo.
19. I have regard to the letter of support from Father "P" of the [named] Church dated 23 March 2017, which was provided with his SHEV application said to support his character. The author states that the applicant is well known to him, the applicant 'is a youngster who is very service minded. He had been actively taking part in all activities held in the village. He had been serving the marginalized and the war affected people. His social involvement and his commitment made room for suspicion to the security personnel. His movements were noted...He underwent untold hardships and tribulations...'. I consider that Father P's letter is very vague and general as to problems the applicant faced. The letter appears to suggest that the applicant came to the adverse attention of the authorities due to his social involvement in serving the marginalised and the war affected people in his village (no details given). Yet, the applicant does not claim that he had took part in any activities in the village that led him to trouble. The letter makes no reference to the applicant's arrest or detention because of his time in Vanni with his aunt and uncle or the applicant's problem with EPDP. Neither does this letter mention that the applicant

⁵ Ibid.

faced any problem because of his Catholic religion. I consider this letter has little corroborative value in support of the applicant's claims for protection and hence give it little weight in this respect.

20. Have regard to the information before me, noting his SHEV claims were broadly consistent with his claims made during the entry interview, I accept the applicant might have been questioned by the authorities for leaving the hospital without authority and for not returning to his aunt and uncle in the camp, or that he was questioned about his or his aunt and uncle's possible LTTE involvement. However, I am not satisfied that he was detained for up to two days and mistreated in the manner claimed or he was only released after his parents paid the EPDP. Even I were to accept that he was detained for two days and the family paid the EPDP (which I do not find not to be credible), I consider that the applicant was released because the authorities did not consider him to be a person of interest. This is particular so, despite claiming he faced harassment from the EPDP for the one or two months while he attended the high school, he was not again arrested or questioned by the CID or authorities about his or his aunt or uncle's LTTE involvement for about three years while living in the same village and residing in the same family home.
21. I am not satisfied that the applicant was of ongoing adverse interest to the authorities since he was released by the CID/army in 2009. I am not satisfied that the applicant was of ongoing interest to the EPDP since he left school in late 2009 or early 2010. I am not satisfied that the applicant was of ongoing adverse interest to the authorities, the EPDP or anyone else when he left Sri Lanka in November 2012. I do not accept that the applicant's departure from Jaffna to Colombo in 2012 was because the authorities made enquires with his family about his aunt or uncle and that the authorities would after him in order to seek information about his aunt or uncle.
22. While it is possible that his family arranged his travel to [Country 1] through an agent, I am not satisfied that the applicant was only able to depart from the airport without facing any problem because the securities at the airport took bribes from his agent. On his evidence, he obtained his passport in 2012 and travelled on his passport when he left Sri Lanka in November 2012. I consider that the applicant was able to obtain a passport and depart Sri Lanka on his own passport because he was not a person of ongoing interest to the Sri Lankan authorities. I find that the applicant legally departed Sri Lanka in 2012.

Refugee assessment

23. 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

24. 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.

25. Country information indicates that the majority Tamil civilian populations of the areas controlled by the LTTE during the conflict were required to interact with the LTTE as a matter of course. It has now been over ten years since the end of the war and about seven years since the applicant left Sri Lanka for Australia. The country situation for Tamils has improved significantly since the end of the conflict and in recent years. Although the Sri Lankan authorities remain sensitive to LTTE's potential re-emergence, those facing a real risk of adverse treatment has considerably diminished. Country information before me indicates that Tamil ethnicity and past membership or familial connection to the LTTE would not give rise to perceived links to the LTTE or any other anti-government or adverse profile, unless the person has, or is perceived to have had, a significant role in the LTTE in the past or considered to have engaged in post conflict separatist activities or otherwise considered to have engaged in anti-government conduct, or otherwise viewed as activists or dissidents including some journalists.⁶

26. While Tamils accounts for 15.3 percent of the whole population as the second largest ethnic group in Sri Lanka, Tamils comprise 93.8 percent of the population in the Northern Province. Tamils have a substantial level of political influence. DFAT considers that non-Muslim Sri Lankans, including Tamils, face a 'low risk' (i.e. 'DFAT is aware of incidents but has insufficient evidence to conclude they form a pattern') of official or societal discrimination based on ethnicity or caste, including in their ability to access education, employment or housing. DAFT assesses there is no official discrimination on the basis of ethnicity in public sector employment. Rather, Tamil's under representation is largely the result of language constraints and disrupted education because of the war. DFAT also considers that the risk of torture perpetrated by security forces has decreased since the end of the war and is no longer state-sponsored, and that Sri Lankans, irrespective of ethnicity, face a low risk of torture. The country information is also that the surveillance in the north and east is targeted at those associated with politically sensitive issues and that the monitoring and harassment of Tamils in general has decreased significantly since the end of the war. I also note the concerns raised due to the election of the Rajapaksa government in late 2019, however, I consider that the country information before me does not support that Tamils in general who do not have a profile of concern to the authorities are targeted.⁷

⁶ UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism (version 5.0)", 15 June 2007, OG6E7028826; UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928; DFAT, "Country Information Report –Sri Lanka", 4 November 2019, 20191104135244

⁷ DFAT, "Country Information Report –Sri Lanka", 4 November 2019, 20191104135244; UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism (version 5.0)", 15 June 2007, OG6E7028826; UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928; Eurasia Review, "Sri Lanka: Presidential Election and Tamil Politics – OpEd", 27 November 2019, 20191128103208; The Economist, "A polarising figure becomes president of Sri Lanka", 23 November 2019, 20191122115336; Colombo Page, "National Peace Council urges government to continue reconciliation policies set in 2015", Colombo Page, 28 December 2019, 20191230111859.

27. In respect of returnees, country information is that entry and exit from Sri Lanka is governed by the Immigrants and Emigrants Act (I&E Act). All returnees to Sri Lanka are processed at the airport on arrival by various governmental agencies, including the Department of Immigration and Emigration and the CID. These agencies check travel documents and identity information against the immigration databases, intelligence databases and records of outstanding criminal matters. For returnees travelling on temporary travel documents, police undertake an investigative process to confirm identity, which would identify someone trying to conceal a criminal or terrorist background, or trying to avoid court orders or arrest warrants. This often involves interviewing the returning passenger, contacting police in their claimed hometown, contacting claimed neighbours and family, and checking criminal and court records. All returnees are subject to these standard procedures, regardless of ethnicity and religion. DFAT understands detainees are not subject to mistreatment during processing at the airport.⁸
28. According to DFAT, between 2010-11 and 2018-19, 3,716 Sri Lankan nationals returned from the Australian community or were removed from Australian onshore immigration detention centres to their country or origin or a third country. Many others returned from the US, Canada, the UK and other European countries. Most returnees are Tamil. Although individual experiences vary, many Tamil returnees choose to return to the north, either because it is their place of origin and they have existing family links, or because of the relatively lower cost of living compared to the south. DFAT understands that some returnees, including returnees in the north and east with suspected LTTE links, have been the subject of monitoring by the authorities. DFAT also states that most returnees, including failed asylum seekers, are not actively monitored on an ongoing basis, and that, some Tamil returnees who had failed to secure asylum in Australia and since returned to the north had told DFAT they had not experienced harassment by the authorities or received monitoring visits.⁹ I also take note of the UK Home Office's most recent report which refers to the statement of a human right activist that certain Tamils returning from abroad may be monitored and this was not the case for all Tamils.¹⁰
29. DFAT also note that refugees and failed asylum seekers face practical challenges to successful return to Sri Lanka including difficulty in finding suitable employment and reliable housing on return and that failed asylum seekers receive limited reintegration assistance. DFAT assesses that reintegration issues are not due to failure to obtain asylum, but rather due to the employment and accommodation difficulties they may face. Despite the challenges they may face, some Tamils who had failed to secure asylum in Australia and since returned to the Northern Province told DFAT they were able to reintegrate into their communities and find employment. DFAT reports that some returning failed asylum seekers reported social stigma from their communities including for being beneficiaries of financial reintegration assistance but understands that societal discrimination is not a major concern for returnees, including failed asylum seekers. Some Tamil failed asylum seekers returned to the north had told DFAT that they had not experienced societal discrimination following their return.¹¹
30. I consider there is a lack of recent reporting overall to support that Tamil returning asylum seekers in general who have sought asylum abroad and have lived abroad such as Australia for some or extended time but who otherwise do not have a profile of concern are imputed with an adverse profile, or otherwise are of adverse interest to the authorities for this reason.
31. In the applicant's case, despite the past arrest and mistreatment he claimed to have been subjected to, I found above that the applicant and his aunt and uncle had been cleared of any

⁸ DFAT, "Country Information Report –Sri Lanka", 4 November 2019, 20191104135244

⁹ Ibid.

¹⁰ UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928;

¹¹ DFAT, "Country Information Report –Sri Lanka", 4 November 2019, 20191104135244

involvement with the LTTE. I am not satisfied that the applicant was of any ongoing adverse interest to the authorities before he left Sri Lanka for Australia. I note that the applicant was registered with the UNHCR in [Country 1]. The applicant has not been involved in any activities overseas which would lead to him of being imputed with an adverse profile. I consider that the chance is remote that the applicant in his profile would face monitoring of some sort upon return. Although the applicant may not have a passport on return, he holds a Sri Lankan birth certificate. The information before me does not indicate that returning on a temporary document or without a passport itself would be an issue or amounts to an offence. The applicant left Sri Lanka legally and would not be charged for the offence of illegal departure under the I&E Act.

32. In light of the information discussed above and considering his profile as a whole including his history, I am not satisfied there is a real chance that the applicant would be subject to mistreatment during the process at the airport on arrival. I am not satisfied his returning as a failed asylum seeker without a passport, his time abroad, or any process on arrival would lead to a real chance of him to be of adverse interest to the Sri Lanka authorities. I consider the chance is remote that the applicant would be imputed with an adverse profile in his situation. The applicant is from a Tamil majority Northern Province. The applicant provided no credible evidence that his family members in Sri Lanka are now facing any problems. While the 2019 Easter Sunday attacks on Christian churches undoubtedly created fear among Christians, the government has claimed that it has killed or apprehended all of those directly involved in the Easter Sunday attacks and diminished the capability of Islamic extremists to carry out future mass casualty attacks. DFAT, having had regard to the 2019 Easter Sunday terrorist attacks, assesses that Christians in Sri Lanka face a low risk of official discrimination and mainstream Christian denominations face a low risk of societal discrimination. DFAT also considers that Christians face a low threat of violence from homegrown Islamic extremist groups.¹² I am not satisfied that the applicant faces a real chance of official or social discrimination on account of his Tamil ethnicity and/or his religion. Even I were to accept there might be some stigma attached to some returnees, the information before me does not support that the stigma, if any, the applicant might face, taking into account my consideration below, amounts to serious harm as defined in the Act.
33. According to DFAT, the influence of the EPDP has waned considerably since 2015 and they no longer maintain armed wings and there were no reports of violence attributed to it. According to local sources, while some Tamils, particularly those with past links to the LTTE, continue to fear the EPDP, it no longer poses a major concern.¹³ I have found above that the EPDP has no ongoing interest in the applicant or his family since he stopped attending school in late 2009 or early 2010. I have also found that the Sri Lankan authorities including the army and the CID has no ongoing interest in the applicant when he left Sri Lanka and there is nothing that would bring the applicant to the adverse attention of authorities since he left Sri Lanka. Neither is there credible evidence to suggest that the applicant's family in Sri Lanka faces harassment from the EPDP or the authorities since he left Sri Lanka. I am not satisfied the applicant faces a real chance of any harm from the Sri Lankan authorities, the EPDP, the Sinhalese, Muslims or anyone else if he were to return to Sri Lanka, now or in the reasonably foreseeable future.
34. I accept that the applicant would likely face some challenges as a returnee after a long period of absence. Despite he had not worked while he was in Sri Lanka due to his then young age, the applicant is returning as [an age] years old young man. I am not satisfied that he would be prevented from obtaining employment, accommodation and integrating, noting his parents and

¹² Ibid.

¹³ Ibid.

some siblings are still living in Sri Lanka. I am not satisfied that there is a real chance that the applicant's capacity to subsist will be threatened. I am not satisfied that the applicant faces a real chance of serious harm due to any difficulties or treatment or practical challenges (including social stigma, if any) for resettling in Sri Lanka.

35. In light of my consideration of the above, I am not satisfied the applicant faces a real chance of persecution for any of the reasons claimed, if he were to return to Sri Lanka now or in the reasonably foreseeable future.

Refugee: conclusion

36. 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

37. 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

38. 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.

39. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

40. I accept that the applicant, as a returning asylum seeker, may face some challenges in resettling Sri Lanka. I am however not satisfied that the treatment or challenge (including social stigma, if any) would amount to significant harm. I am not satisfied that it amounts to the death penalty, arbitrary deprivation of life or torture as defined in the Act. I am also not satisfied that it amounts to pain or suffering that could be reasonably regarded as cruel or inhuman in nature, severe pain or suffering, or extreme humiliation for the purpose of the definition of cruel or inhuman treatment or punishment or degrading treatment or punishment.

41. I have otherwise concluded that there is a not real chance the applicant would face any harm. As real chance and real risk involve the same threshold, I am not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to Sri Lanka, there is a real risk that the applicant will suffer harm, including significant harm.

Complementary protection: conclusion

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

Decision

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

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.