



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

**Decision and Reasons**

**Referred application**

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SRI LANKA  
IAA reference: IAA21/08895

Date and time of decision: 29 March 2021 11:23:00  
M Anderton, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The applicant claims to be a Tamil Hindu male born in Jaffna, Sri Lanka, but who lived in India since he was a baby. He arrived in Australia by boat in 2013.
2. On 15 August 2017 the applicant applied for a safe haven enterprise visa. The applicant claimed he had 2 paternal uncles who were LTTE (Liberation Tigers of Tamil Eelam) and feared he would suffer retribution because members of his family were LTTE. He feared he was at risk as a result of the political activity of his uncles and that he would be beaten and detained upon return. The applicant claimed he had no family or community network in Sri Lanka and so did not feel he would have any support or protection from risk of harm and was scared to return to Sri Lanka as he did not know it.
3. On 17 February 2021 the delegate refused the application. The delegate accepted the applicant had two LTTE uncles but did not accept that he faced a real chance of serious harm upon return or that not having any family or a community network to return to in Sri Lanka amounted to significant harm.

### Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. On 15 March 2021 the applicant's representative sought an extension of time of a further 21 days to provide submissions and information because the applicant had been unrepresented, was illiterate and did not understand English. The IAA granted an extension of time until 21 March 2021, noting the applicant had been provided with information in Tamil to act quickly and within 21 days. I do not accept the applicant is not educated either as he attended school to grade 11 in India, and studied English and tertiary courses in Australia.
6. On 18 March 2021 the applicant's representative provided submissions and new information and sought another extension of time until the 26 March restating the grounds in the email of 15 March but adding that he now wished to provide medical certificates. The applicant's statement also indicated a cause for the delay was due to lack of understanding and finances and requested more time.
7. I consider the applicant has had plenty of time to provide any further information or submissions. The applicant was informed by the IAA in Tamil (and English) to act quickly and he has had more than 21 days to provide the information. The information was provided to the applicant (in both Tamil and English) on 22 February by post and email and set out the requirements for making a submission and providing new information. The correspondence also advised the applicant to contact the IAA if he had any questions, but he did not. Further, I considered the applicant is educated as he left school in grade 11 in India, studied English in Australia and also studied tertiary courses in English in Australia. Further, I note the applicant worked full time in Australia. I do not accept the representative needed more time to transcribe the protection interview as the recording was clear, relatively short and in English and Tamil. I note also that the representative speaks English and Tamil.

8. I do not accept the applicant's delay was due to lack of understanding and finances. I note the applicant was employed and educated, and it was evident he understood proceedings at interview, the importance of providing all his information and could articulate his claims.
9. Even though the applicant was unrepresented at the protection interview, I did not consider it was necessary that the applicant be interviewed by the IAA. Having listened to the protection interview I am not satisfied that the applicant was not able to present his claims or that he had any difficulty in doing so. I note also that the applicant was schooled until grade 11 in India, attended English classes and tertiary courses in Australia. I do not accept the applicant was uneducated or in any hampered in being able to present his own claims. Further, the applicant is now represented and has had the opportunity to provide submissions and new information to the IAA. I do not consider that an interview is necessary as I consider the applicant has had plenty of meaningful opportunity to provide his claims in his statements and interviews before the delegate. I note at the protection interview the applicant was informed a number of times of the importance of providing all his claims information and evidence. I consider the applicant was well aware of the need to provide all the information to the delegate.
10. In addition to the material and submissions sent on 18 March, further submissions and new country information was provided on 24 March, which I have considered.
11. While the representative referred to the applicant being in the process of consulting doctors for psychological assessment and obtaining medical certificates there was no evidence as to the timing of that or that the applicant had consulted even a GP about that or been referred. The applicant had not advised the delegate of any mental health issues or that he had sought treatment previously or been previously treated. I note in later correspondence of 24 March the representative referred to the applicant not being able to attend a psychologist in the time allowed. However, it did not appear that the applicant had sought any medical treatment from a GP, or counsellor or psychologist or sought GP referral to anyone previously, including since the delegate's decision or that any appointment had been made as no dates of any had been advised. Further and in any event, I accept that the applicant may be anxious and not want to return to Sri Lanka as this is not unusual. I note nothing further was provided on 26 March either. In the circumstances, I do not consider it unreasonable to proceed.

*New information*

12. On 18 and 24 March the representative provided submissions and new information. The new information included the applicant's parent's death certificates, the applicant statement and letter from the applicant's uncle, [Mr A], with his Australian citizenship letter. The new information also included country information such as UNHCR, amnesty reports and media articles. To the extent that these submissions and applicant's statement are reiteration of the applicant's claims and argument I have considered the information as it is not new information.
13. I consider the death certificates could have been provided prior to the delegate's decision as they predated the delegate's decisions. The death certificates are credible personal information. However, I am not satisfied about the death certificates might have affected the consideration of the applicant's claim as the delegate (as do I) accepted that the applicant's parents were deceased. I do not consider that the parents' death certificates take the matter any further. For similar reasons, I am not satisfied that there are exceptional circumstances that justify consideration. I am not satisfied as to section 473DD(a) and (b).
14. I have not considered the information.

15. Essentially the applicant's new information was that as he was unable to say his final goodbyes to his mother and fulfil her last rights duties as her eldest son which leaves him heartbroken. The main reason that his parents suffered direct persecution in Sri Lanka was because his mother and father's families were suspected as supporters and members of the LTTE. The whole family was targeted as LTTE supporters and according to his uncle [Mr A] this is well known amongst the area. He is mortally scared to imagine what the future holds for him as he will be homeless, hopeless, targeted and without any job or finances.
16. According to uncle [Mr A]'s letter he is the younger brother of the applicant's deceased mother and he along with his sister cared for the applicant from his young age. He reiterates that the applicant and his family fled to India due to military tensions and persecution suffered by the family due to the family LTTE connexion. The uncle (author of letter) fled Sri Lanka and arrived in Australia in 2001, sought asylum and was granted refugee status in Australia and is a citizen. The uncle has cared for the applicant since the applicant's arrival by boat in Australia in 2013. The letter indicated that due to the applicant's extreme trauma he was quiet and anxious. The applicant had not received mental health assistance. It stated the applicant's mental health (which he described as rapidly deteriorating) and having grown up in a suppressed environment limited his ability to share personal information with others which resulted in the uncle being unaware of the applicant's current situation fully until recently. The uncle reiterates the applicant's fear of returning to Sri Lanka as several members of the family were involved with the LTTE. The uncle believed that because of the close LTTE connexion and the applicant's young age that he would face specific attention and difficulties from and be targeted by the authorities if returned. He stated the Sri Lankan government pay special attention to returning youngsters from overseas with Tamil ethnicity and to failed asylum claimants and is fearful of expatriates due to a significant population of Tamils and live outside Sri Lanka. He will be stranded and destitute if forced to return with no help or assistance.
17. The uncle's letter post-dates the delegates decision and could not have been provided prior to the delegates of decision. I am satisfied as to s.473DD(b)(i). The information on its face is provided as corroboration the applicant's claims. Given the applicant's statement post-dated the delegate's decision it could not have been provided to the delegate. However, it could be argued that the information contained therein could have been provided earlier as it relates to past events and information. In any event the information in the applicant's statement is on its face credible personal information which may have affected the consideration of the applicant's claims. Taken together with the uncle's letter and its intended corroboration, I am satisfied that there are exceptional circumstances that justify consideration of the applicant's statement and his uncle's letter. I have considered the information.
18. I am satisfied as to s.473DD regarding country information that post-dated the delegate's decision as it is more recent relevant information about the situation in Sri Lanka. In respect of information that predated the delegate's decision, it is largely general country information, but it does refer to identifiable individuals, is from credible sources and provides a recent commentary on the situation in Sri Lanka. I am satisfied as to s473DD(b) (i). The information is pertinent and very recent. I am also satisfied that there are exceptional circumstances to consider the country information. I have considered the information.

### **Applicant's claims for protection**

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19. The applicant's claims can be summarised as follows:

- He is a Tamil Hindu male born in Jaffna, who grew up and lived in [Location] camp, Tamil Nadu, India. He understood his family travelled by boat from Sri Lanka to India. He has never had a passport.
- Two of his paternal uncles were part of the Tamil Tigers (LTTE) and that is why his family fled to India when the applicant was a baby. They feared the army might harm the applicant's father as punishment for his brothers being part of the LTTE.
- If forced to return to Sri Lanka he will suffer retribution because members of his family were part of the LTTE and fears he will be at risk of harm as a result of his uncles' political activity. The applicant fears he will be beaten and detained. He is fearful that the authorities will harm him because his uncles were in the LTTE.
- He has no family or community network in Sri Lanka and so does not feel that he would have any support or protection from this risk. He was scared to return to Sri Lanka as he did not know it, having left it when a baby.

### **Refugee assessment**

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20. 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**

21. 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.
22. I accept the applicant is a Tamil Hindu male born in Jaffna. He claims, and based on his account and birth certificate, I accept, he is a Sri Lankan citizen and I find the receiving country is Sri Lanka.
23. Based on the refugee card, I accept that the applicant and his family fled to India in [Year] due to the conflict in Sri Lanka.

24. Having listened to the applicant's protection interview I consider the applicant's evidence changed, was not forthcoming, and lacked details.
25. In his statement, the applicant claimed that his family fled Sri Lanka as his father was fearful the authorities would harm him as punishment for his brothers being LTTE. His statement said his father had two brothers who were Tamil Tigers who were killed by authorities.
26. However at the protection interview when asked about the family difficulties which led them to flee Sri Lanka in [Year], the applicant initially claimed his uncles had been killed by bombing and the family thought they would be also killed by bombing and shelling also so the applicant's father went to India first and the applicant's mother came a few months later when the applicant was [Age 1] months old.
27. When asked about the circumstances of his uncles' deaths, the applicant said he was told that it was during shelling, but knew no more than that.
28. It was not until the delegate specifically put the applicant's claim that the uncles were LTTE that the applicant said they were in the LTTE and killed. The applicant then said he did not know how the uncles were killed.
29. I consider the applicant changed his account about the circumstance of his uncles' deaths and reasons for leaving Sri Lanka from departing due to bombing and shelling deaths of his uncles to his uncles being LTTE and not knowing how they were killed.
30. When the delegate put to the applicant the claims from his statement that his father feared punishment for the brothers' LTTE connection, the applicant said his mother had told him his father's brothers were killed and involved in the LTTE and his father was scared he would be killed in Sri Lanka also.
31. I note the applicant's initial oral account of the reasons the family left and the uncles' situation did not mention the LTTE but rather their deaths from general bombing and shelling. It was not until the delegate specifically put the statement claims about the LTTE uncles, that the applicant mentioned that the uncles were LTTE and killed.
32. The applicant's account of his uncles' LTTE involvement or any political activity also was limited. When asked about his uncle's LTTE involvement the applicant said he did not know anything about their involvement as he was a baby and whatever he had heard he has told.
33. I appreciate the applicant would not have personal knowledge of the reasons for Sri Lanka departure or his uncles' LTTE involvement given he was a baby when he left Sri Lanka. The applicant also said that his father did not tell him about it and he only heard it from his mother, after his father's death in 2012 (approximately [Number] years after their departure to Sri Lanka).
34. However, I find it difficult to believe that the applicant would not have found out more from his mother (or other family) about the situation and the family's fear and reasons for departure and the uncle's claimed LTTE involvement, particularly given his claims revolved around fear of harm on the basis of his uncle's LTTE connection and his father's fear of harm.
35. I note also that the applicant's evidence at the protection interview was at odds with some other claims in his arrival interview. For instance, in his arrival interview the applicant claimed his father was in protests, in jail, beaten and this was part of the cause of his death in 2012. However, at the protection interview the applicant said his father was not involved in protests

and his death was due to suicide. The delegate put this difference in accounts to the applicant. The applicant indicated his father may have attended meetings and there were enquiries about this, but he made it clear that his father was not involved in protests. The applicant said his father committed suicide shortly after the father's younger brother had died in Sri Lanka, but he did not know why his father committed suicide.

36. I note also while the applicant initially claimed he had to sign at camp going to school, which made them late, at the protection interview the applicant said as students they did not have to sign to leave the camp, it was only those going to work outside who had to sign.
37. I am mindful of the observations in *MZJJO v MIBP* [2014] FCAFC 80 about reliance on entry interviews. Further, I note the applicant was only [Age 2] years old at the time of the arrival interview and the notation that he appeared to have difficulty with the questions. Given this I place little weight on the applicant's statements in the arrival interview and no adverse weight on the difference in that account.
38. However, by the time of the protection interview the applicant was nearly [Age 3] years of age, he had been in regular contact with his family (albeit his mother had died in 2017). He had left school in year 11 to come to Australia. He completed English study and some tertiary courses and worked as [an Occupation 1] and [Occupation 2] in Australia. The applicant's account of his claims lacked details. I acknowledge his account could only be based on what his family had told him as he was a baby when he left Sri Lanka. However, as discussed above, I find it difficult to believe that he would not have made some enquiry from his mother about the problems and fears in Sri Lanka. This is particularly so given the decision to leave India to Australia, rather than return to Sri Lanka in 2013 and his protection claims revolved around this claim.
39. Further, that the applicant did not initially mention his uncles' LTTE connection until specifically prompted in the protection interview and that he changed his account of what he knew about the circumstances of their deaths leads me to doubt the credibility of the applicant's claims.
40. I have considered the applicants statement and maternal uncle's letter provided to the IAA, which reiterate and add to his claims. The applicant added that his mother's relatives were also LTTE and that the whole family were targeted as suspected LTTE supporters.
41. The applicant's uncle's letter indicated that the uncle had been granted refugee status in Australia after he fled Sri Lanka in 2001. It reiterated that the applicant and his family fled to India due to military tensions and persecution suffered by the family due to the family LTTE connection. It reiterated the applicant's fear of returning to Sri Lanka as several members of the family were involved with the LTTE. The uncle believed that because of the close LTTE connexion and the applicant's young age that the applicant would face specific attention and difficulties from and be targeted by the authorities if returned. It stated the Sri Lankan government pay special attention to returning youngsters from overseas with Tamil ethnicity and failed asylum claimants and is fearful of expatriates due to a significant population of Tamils and live outside Sri Lanka.
42. I note the applicant's uncle stated that he cared for the applicant with the applicant's mother from a young age. However, the uncle left Sri Lanka for Australia in 2001 and the applicant was born in [Year]. [Number] months later the applicant went to India, where he stayed with his parents until his departure in 2013. So, at most the uncle could have only cared for him as a young child for those first [Age 1] months of his life. Though I accept the applicant has been living with his uncle since 2013 in Australia. I accept the applicant's uncle is an Australian citizen who came to Australia in 2001 as a refugee.

43. I consider the applicant has added to his claims. The applicant had not previously claimed that that the whole family were targeted as LTTE supporters or that his maternal uncles were also LTTE.
44. I consider the applicant had plenty of opportunity to mention such critical factors in his statement and to the delegate. I find it difficult to believe that he would not have mentioned such an important factor if that were true. The whole premise of the applicant's fear related only to his connection to his paternal uncles' LTTE connection and his father's fear in [Year] of punishment from authorities because of that, not that the family were LTTE supporters or targeted because they were LTTE supporters (or suspected).
45. Further, there was no mention of maternal LTTE uncles in his application or at the protection interview. In the protection interview, the applicant made it very clear that he feared harm because of his connection to his two paternal LTTE uncles. I note the applicant said he received his information about his paternal uncles from his mother. If his mother's brothers were also involved, it is difficult to believe that she would not have told him about that too. Further, while the applicant mentioned his maternal uncles came to Australia (one with him and one 30 years ago), he made no mention of them being LTTE or having any fear due to his connection to them. Having listened to the interview I do not accept the applicant had any difficulty in understanding questions asked of him, or in responding. I consider there was plenty of opportunity at interview to mention the maternal uncle LTTE connection. I find it difficult to believe that he would not have mentioned that earlier, if that were true.
46. I do not accept the applicant could not have provided this new information until now because his uncle did not know about the applicant's proceedings. Even if the applicant is anxious and quiet with a suppressed upbringing it is not credible that the applicant would not have conferred with his uncle or that the uncle was not aware of the applicant's situation and protection visa application.
47. Given the circumstances of the applicant's arrival in Australia, it is not credible that the uncle would not know of the applicant's circumstances. Further, according to the applicant's uncle, he cared for the applicant from a young age and they lived together in Australia since 2013. The uncle had also fled Sri Lanka in 2001 arrived in Australia under similar circumstances. Given the circumstances of both their arrivals and their close relationship and the applicant's claims based on the family uncles claims, it is not credible they would not have discussed the applicant's situation until recently. Further, it is not credible that the uncle would not know of the applicant's claims or circumstances as on their evidence the applicant's claims were based on the same family LTTE connection claims. I do not accept the explanations as credible.
48. Even if the applicant had become anxious or distressed about his return since delegate's refusal, it is not credible that his situation had not been discussed with his uncle with whom he lived since 2013. Further, I am not satisfied that the applicant has suffered extreme trauma or that his mental health is rapidly deteriorating. Further, on the evidence before me, I am not satisfied that the applicant suffers a mental illness or that his mental health affected his ability to discuss his claims with his uncle or the delegate or his representatives. I do not accept the applicant's and uncle's explanations.
49. Given the applicant's changing account at interview and after the delegate's decision, and lack of credibility of the applicant and uncle's explanations, I consider the applicant has exaggerated and embellished his claims.



50. Given the country information about the conflict, the LTTE and many Tamils fleeing to India at the relevant time I accept that it is plausible that the applicant has some uncles who may have been LTTE and had family who may have been killed as a result of the bombing and shelling in the war. However, I consider the applicant has exaggerated and embellished his claims to include more LTTE relatives and suggest that the immediate family are known as LTTE supporters and known by authorities. I do not accept the family are or known as or suspected LTTE or LTTE supporters. I do not accept he had maternal LTTE links.
51. While I accept his uncle [Mr A] came to Australia as a refugee in 2001, I do not accept that means the applicant also faces a real chance of harm. Whatever the circumstances were regarding the uncle, his refugee status was granted in 2001, 20 years ago. Further, I do not accept the applicant faces a real chance of any harm due to his connection to his uncle or his uncle's circumstances.
52. I acknowledge the country information that many thousands fled Sri Lanka during the conflict for Tamil Nadu and that many Tamils were LTTE and many Tamils were killed during the conflict. I accept the applicant's family fled to India during the conflict and out of fear of harm given the conflict. It maybe that his uncles were killed during the conflict. However, this was many years ago before the applicant was born ([Year]) and in the context of a civil conflict that ended in 2009. I do not accept that the applicant's father's fear he may have had in [Year] and reasons for departure from Sri Lanka in [Year] continue to exist or mean the applicant faces a real chance of harm upon return to Sri Lanka.
53. Even if on the benefit of the doubt the applicant's deceased uncles were LTTE, I am not satisfied the applicant faces a real chance of any harm upon return as it occurred more than 25 years ago in the context of the then conflict, and the applicant was not even born at the time. Further, while the uncles may have been killed during the conflict, given the paucity of evidence about the uncles' circumstances and LTTE association, I am not satisfied as to the reasons for the deaths.
54. On the evidence, I am not satisfied that the applicant's uncles were high profile LTTE or that they were specifically targeted or killed. Further, given the significant passage of time since [Year] and the context of the conflict which ended in 2009 and that the applicant was not born when his uncles were killed, I am not satisfied that the applicant faces a real chance of any harm or adverse interest from authorities due to his deceased uncles' circumstances.
55. I do not accept the applicant has been or that there is a real chance he will be imputed with any LTTE links or anti-government political activity or associations himself or through the family. I do not accept the applicant has any political profile or of adverse interest to authorities now or upon return to Sri Lanka. I do not accept the applicant faces retribution, will be beaten or detained upon return.
56. Further, I do not accept the applicant's father protested, was beaten or detained in India or that anyone had an interest in the applicant's father in India or Sri Lanka or that his death was related in any way to a claimed detention or that they had problems with Q Branch in India.
57. I accept the applicant is a young Tamil male from the North, who has lived nearly all of his life outside Sri Lanka would return without family. His parents are deceased.
58. I have considered the country information about treatment of Tamils. I accept Tamils suffered disproportionately during the conflict and shortly thereafter. I acknowledge the country information refers to ill-treatment of LTTE persons or those with LTTE connections after the

end of the war. Towards the end of the war many thousands of LTTE were arrested and detained, most of which were sent to rehabilitation centres. High profile leadership LTTE faced monitoring, arrest, detention or prosecution. Some low profile were also monitored to guard against LTTE re-emergence, although that has become less extensive and depended on their former seniority, or ongoing involvement in politically sensitive issues.

59. DFAT assessed that while monitoring of Tamils had decreased significantly, surveillance of Tamils in the North and East continues, particularly those associated with politically sensitive issues. According to DFAT and UK Home office authorities have sophisticated intelligence on former LTTE members, including stop and watch lists for those who have extant court orders, arrests warrants of those suspected of separatist or criminal activities.
60. However, the applicant does not fit such a profile and I do not accept he will be imputed with such a profile. Even having deceased LTTE uncles, I do not accept that the applicant will be imputed with such a profile, of adverse interest or that authorities would seek retribution of the applicant. As discussed above, the applicant's LTTE uncles died before the applicant was born in the context of a civil conflict before [Year]. I do not accept the applicant's connection to them means he faces a real chance of harm or adverse interest upon return. Further, I do not accept the applicant will be monitored as I do not accept the applicant will be involved in politically sensitive issues upon return.
61. The applicant's uncle indicated the applicant would be a target due to his age also because the authorities pay special attention to returning youngsters from overseas with Tamil ethnicity and failed asylum claimants and are fearful of expatriates due to a significant population of Tamils live outside Sri Lanka.
62. I accept he is a young Tamil male who has lived nearly all of his life outside Sri Lanka. I accept he will return as a failed asylum seeker also. However, the applicant left Sri Lanka as an infant and lived his life in India until 2013 and he has a record of that. Country information indicates many thousands of Tamils fled to Tamil Nadu as refugees during the conflict and have returned without harm. There are many Tamils living overseas also. As discussed above the country information is that the authorities have sophisticated intelligence and those of interest are former LTTE and advocates for a separate Tamil state.
63. I do not accept that as a young Tamil male expatriate, returning as a failed asylum seeker or his residence overseas (including circumstances of departure from Sri Lanka, India or residence in India and Australia, whether as a refugee or seeking asylum) gives rise to any (or suspected) anti-government, pro LTTE or Tamil separatist suspicions, perception or interest. Even if his deceased uncles were LTTE, and as a young Tamil male asylum seeker, returning without family, I do not accept that authorities or anyone would suspect or impute the applicant with LTTE involvement or as Tamil separatist or anti-government.
64. On the evidence before me I accept the applicant will return to Sri Lanka as a failed asylum seeker. It may be that he departed Sri Lanka with his mother illegally as a baby in [Year], though it was not claimed and the applicant expressed no concerns or fears upon return in that regard.
65. In any event, I have had regard to country information in DFAT report. Firstly, I am not satisfied the applicant faces any harm as an illegal departee from Sri Lanka as he would have been a child ( he was [Age 1] months old) and no charges are imposed against children who were younger than 12 at the time of the illegal departure offence. Further, it was many years ago and in the context of the civil conflict when many thousands fled to Tamil Nadu.

66. Secondly, DFAT indicates that thousands of Tamils have been returned to Sri Lanka since the end of the Sri Lankan civil war, including from Australia, after claiming asylum. Although there have been reported instances of returnees being harmed, the information before me suggests those were people with substantial links to the LTTE or outstanding warrants. I do not accept that the applicant would be targeted or upon questioning be identified as LTTE or anti-government, or activist. I do not accept that the applicant has such a profile or would be perceived as such. Even with his deceased uncles' connection, I have not accepted that he is or will be of interest to Sri Lankan authorities. Credible country information in the DFAT reports and review material before me indicates that there is no mistreatment of returnees upon arrival or questioning at the airport and all returnees are treated the same regardless of their ethnicity and religion. Further, DFAT is not aware of returnees, including failed asylum seekers, being treated in such a way that endangers their safety and security. Tamils who had failed to secure asylum in Australia and since returned to the Northern Province told DFAT they had no protection concerns and had not experienced harassment by the authorities, nor received monitoring visits. There is nothing before me that indicates this has changed.
67. Even considering his residence in India as a refugee and period in Australia and his uncle's refugee status, I do not accept the applicant faces a real chance of harm as a failed asylum seeker or returnee. I do not accept the uncle's claims that the applicant will be targeted upon return or suspected LTTE or of adverse interest as a young Tamil male returning as a failed asylum seeker or expatriate.
68. Based on the country information and the applicant's circumstances, I do not accept the applicant faces a real chance of, mistreatment on arrival in Sri Lanka or during the questioning process to establish his identity and any criminal history or as a failed asylum seeker. I have not accepted he was or will be of adverse interest to authorities or anyone. Further, I do not accept he faces a real chance of any harm upon return to his home. I do not accept there is a real chance of any harm as a failed asylum seeker, even having regard to his young age, ethnicity and family connections.
69. Further, the overall security for Tamils has significantly improved since the end of the conflict. The country information indicates the situation improved after the conflict for Tamils and particularly so with President Sirisena coming to power in 2015 to November 2019. There was also some constitutional reform, establishment of office of missing persons and reconciliation efforts.
70. I note the change of government in November 2019 and consolidation of the Rajapaksa family in power and that this has caused some concern among ethnic minorities, particularly Tamils that there will be a return to the practices of the war years. While there are reports of targeting of some individuals, the information does not support that Tamils such as the applicant face a real chance of persecution.
71. I have considered the recent Amnesty, UNHCHR information and media articles provided by the applicant. I note Amnesty's report that continued deterioration of the human rights situation on the ground, including: increased attacks on human rights organizations, media, and members of the Muslim community; backsliding on the limited progress made on the implementation of HRC resolution 30/1, including on accountability and the announcement of disengaging from the 30/1 process altogether.
72. The UNHCHR report referred to increased militarisation with the appointments of ex-military to government posts and the UN commissioner's concern about increased use of ethnonationalist and majoritarian rhetoric. There were reports of recent deaths in police

custody. While by no means condoned, this was in the context of police encounters with criminal gang and I do not accept the applicant faces any real chance of such harm as he is not a criminal or of adverse police or other interest.

73. I note reports of recent protests in Sri Lanka and Europe against government actions, such as the removal of massacre memorial and other grievances. There is no evidence the applicant has been or will be involved in such protests or action. and I do not accept he faces a real chance of harm as a result of such protests or tensions.
74. The information referred to restrictions on Muslim burial practices due to the government's covid 19 response, but the applicant is not Muslim. In any event, I am not satisfied the applicant faces any harm due the government's covid 19 response.
75. I acknowledge the concerns about backsliding on accountability and disengagement from UN resolution 31. However, I do not accept that has or will have an impact upon the applicant upon return. The country information in the review material and provided by the applicant indicates that persons (including Tamils) with certain profiles such as political activists, journalists, groups advocating for disappeared individuals or LTTE commemorative events may attract attention. However, I do not consider the applicant faces a real chance of harm either as I do not accept he has or will have any such profile or interest to authorities. I do not accept he faces monitoring or surveillance or will be of adverse interest. Even considering the applicant's LTTE deceased uncles, and as a young Tamil from the North without family, his residence in India and overseas, I do not accept the applicant will be of any adverse interest to authorities.
76. Further, the present government has been in power now for over a year and the evidence before me does not indicate a return to civil conflict or harm to someone with the applicant's profile, circumstances including as a Tamil from the North, who has lived his life in India and has deceased LTTE uncles. Even considering the change in government and present political landscape I am not satisfied the applicant faces a real chance of harm from authorities or anyone.

*Other*

77. The applicant said he practised his Hindu faith and sometimes went to Christian churches with his friends. There was no claim that he had converted or planned to. The applicant made no claims to fear harm on the basis of religion and the evidence before me does not support that he faces a real chance of harm on this basis.
78. Further, while not claimed, I do not consider the applicant's residence in India means he faces a real chance of harm upon return to Sri Lanka as many thousands fled Sri Lanka during the conflict and have returned without harm. I note also DFAT stated 90% of returnees from Tamil Nadu felt either generally or completely safe in Sri Lanka and credible sources were not aware of returnees being subjected to monitoring or harassment by authorities.
79. While not claimed, I do not consider that the applicant having family in Canada and India and none in Sri Lanka and uncles in Australia ( including one granted refugee status in 2011 or the one who travelled with the applicant to Australia) means the applicant faces a real chance of harm either. Country information is that there are many Tamils who live and travel overseas. As discussed above I do not accept his uncle's refugee status or circumstances means the applicant is at any risk of harm or that he faces a real chance of harm upon return.

80. I am not satisfied the applicant faces a real chance of harm on the basis of his ethnicity, religion, any imputed political opinion, background, family connections or past circumstances.
81. The applicant also was scared to return to Sri Lanka as he had no family or community network in Sri Lanka and so would not have support or protection from a risk of harm. At interview the applicant said he did not know Sri Lanka as he had left as a baby and he would be scared to return. His parents were deceased. His sisters were in Canada (having gone as minors and one married) and his brother was studying in India. To the IAA the applicant claimed to fear return and was in mental agony as he would be homeless, hopeless, without any job or finances and destitute (uncle's letter). I accept he may be anxious and scared about returning given his unfamiliarity with Sri Lanka and lack of family.
82. While I accept the applicant may not have family upon return to Sri Lanka, I do not accept that he faces a real risk of harm from authorities and so would not need the protection of a family or network to protect him from a risk of harm as he claims. I do not accept he would be targeted either as young Tamil male without family.
83. I accept the applicant does not know Sri Lanka as he was brought up in India since he was a baby and is anxious and scared about return to Sri Lanka. He may face some adjustment difficulties in that regard, but I am not satisfied that amounts to harm. Further, and in any event, I note on the evidence that the applicant has been educated, including with some tertiary courses in [Subject 1] and [Subject 2] and has worked as [an Occupation 2] in Australia. I note when he arrived in Australia, he had the support of his uncles. When he arrived in Australia, he was [Age 2] years old. He is now more mature and [Age 3] years old, educated and employed. I do not accept he will be destitute, without finance, homeless or hopeless or targeted. Given his maturity, education and skills, I am not satisfied that he would not be able to provide for himself upon return and find accommodation. I am not satisfied that the applicant faces a real chance of harm or any harm for s.5J reasons.
84. I have had regard to all of the evidence before me and the totality of the personal circumstances of the applicant. I am not satisfied the applicant has a well-founded fear of persecution from anyone for reason or combination of reasons in s.5J(1)(a), now or in the reasonably foreseeable future, if he returns to Sri Lanka.
85. I am not satisfied the applicant has a well-founded fear of persecution for any reason.

#### **Refugee: conclusion**

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

#### **Complementary protection assessment**

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87. 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

88. 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.
89. 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.
90. I have considered the applicant's return to Sri Lanka without family or community network support. As discussed above, I do not accept he needs such to protect him from the risk of harm as I do not accept that he faces a real risk of harm as claimed. I accept he does not know Sri Lanka as he was brought up in India and is scared about return to Sri Lanka. While he may face some adjustment difficulties, as discussed above, given the applicant's maturity, education and skills I am not satisfied that he could not look after himself and subsist. Even considering his lack of support, familiarity with Sri Lanka and no family in Sri Lanka, I am not satisfied that the applicant faces real risk of significant harm upon return. I am not satisfied there is a real risk the death penalty will be carried out, that he will be arbitrarily deprived of his life or tortured. Moreover, I am not satisfied that that any adjustment difficulties and challenges amount to severe pain or suffering, pain or suffering that can be reasonably regarded as cruel or inhuman in nature, or extreme humiliation or that they are the result of any intention to inflict the same.
91. As discussed above, I have not accepted the applicant faces a real risk of any charges being imposed or harm for illegal departure as a baby in [Year].
92. Further, I do not accept he faces a real risk of any harm as a failed young Tamil asylum seeker or returnee or expatriate who resided in India as a refugee (and Australia). Further, as to any questioning upon return to establish identity or any treatment upon return as a failed asylum seeker or returnee, I am not satisfied the applicant faces a real risk of significant harm (as defined).
93. In relation to the remainder of applicant's claims, which I have accepted, I have found that the applicant does not have a real chance of harm on any of these bases. For the same reasons and applying the authority in *MIAC v SZQRB* [2013] FCAFC 33, I am not satisfied the applicant will face a real risk of any harm, including significant harm on any of those bases if removed to Sri Lanka.

## Complementary protection: conclusion

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

**Decision**

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

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

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

...

#### **5H Meaning of refugee**

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

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

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



...

### 5J Meaning of well-founded fear of persecution

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

### 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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

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

...

#### *Protection obligations*

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

#### *Determining nationality*

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