



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

**Decision and Reasons**

**Referred application**

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SRI LANKA  
IAA reference: IAA21/09581

Date and time of decision: 11 October 2021 16:44:00  
D Power, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Tamil Hindu from Sri Lanka. On 24 February 2016 he lodged an application for a Safe Haven Enterprise visa.
2. On 25 October 2016, a delegate of the Minister for Immigration (the delegate) made a decision to refuse to grant the applicant a protection visa. The delegate accepted that the applicant had previously receive adverse attention from the Sri Lankan Army (SLA) during the civil conflict and that he had been involved in working for the Tamil National Alliance (TNA) party in 2012. However, the delegate did not accept that he had been forcibly recruited by the Karuna group. The delegate also did not accept that the applicant faced a real chance or real risk of serious or significant harm on return to Sri Lanka, pointing to the considerable social and political change in Sri Lanka since the applicant's departure. The delegate also accepted that the applicant may be charged with offences related to his travel to Australia but that any resultant fine or brief period of detention would not amount to serious or significant harm. The delegate also found that the applicant did not face a real chance or real risk of serious or significant harm for any other reason including his ethnicity, his family's imputed wealth, or having sought asylum in Australia.
3. On 30 May 2017, the IAA affirmed the delegate's decision on review. However, the IAA's determination was quashed by Federal Circuit Court (FCCA) and remitted for reconsideration.

### 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 28 November 2016, the IAA received a submission from the applicant's migration agent which addresses a number of the delegate's findings. These matters may be regarded as argument rather than information to which I have had regard. The submission also reiterates claims made to the delegate. The agent's submission also contains new information relating to the applicant's pro-Tamil and diaspora activities in Australia. This claim, and the documents lodged in support of it, are discussed further below.
6. The agent's submission includes country information from The International Truth and Justice Report Project (ITJP), the UK Home Office, and a link to a document on the 'Refworld' website. These are all credible sources. However, all the documents pre-date the delegate's decisions and the agent has not explained why this information could not have been put before the delegate.
7. The sources are all credible and, although they are general country information, also contain references to identifiable individuals. They are therefore arguably personal information in the relevant sense. However, the country information listed above is all now more than five years out of date. I have also sourced more recent information on current conditions in Sri Lanka and the situation for Tamils in particular. Given the outdated nature of the country information included with the submission of 28 November 2016, I am not satisfied that there are exceptional circumstances to justify considering this information.
8. Accompanying the agent's submission of 28 November 2016 are five letters from various correspondents in Sri Lanka, [Organisation 1] and a [Fr A]. The applicant's agent has suggested

that these letters could not have been provided earlier because they post-date the delegate's decision or were only recently obtained. However, the letters from Sri Lanka all relate to events that occurred prior to the applicant's arrival in Australia. The agent has not provided any explanation as to why the letters could not have been sought much earlier and provided to the delegate.

9. The letter from [Organisation 1] is dated 7 November 2016, approximately two weeks after the delegate's decision. However, the letter describes the applicant's ongoing involvement in a range of activities with [Organisation 1] and discusses support offered to the applicant after his arrival in Australia. Similarly, the letter from [Fr A] is dated 8 November 2016 but describes how the applicant has been actively involved in various diaspora activities between 2013 and 2015. Although the letters post-date the delegate's decision, the agent has not provided any explanation as to why the letters could not have been sought much earlier and provided to the delegate.
10. The letters all relate to aspects of the applicant's experiences in Sri Lanka or his claimed diaspora activities in Australia and are clearly personal information in the relevant sense. However, the letters are copies only and their provenance is difficult to establish with any certainty. The letters from Sri Lanka concern events which are claimed to have taken place back in Sri Lanka and the applicant's failure to provide any of these letters to the delegate raises concerns as to their credibility. Although some of the letters are prefaced with a phrase such "I know this to be true", the authors do not provide much evidence of a personal relationship with the applicant or indicate how they came to have first-hand knowledge of the applicant's alleged issues in Sri Lanka. In the case of the letters from [Organisation 1] and [Fr A], concerns as to the credibility of these letters is further underscored by the applicant's failure to mention at interview his association with [Organisation 1], [Fr A] or any involvement with diaspora activities in Australia.
11. Given the above, I am not satisfied the s.473DD(b) is met or that there are exceptional circumstances to justify considering this information.
12. The agent has also included a piece of country information specifically rebutting an assertion of the delegate that the Karuna group was not involved in forcibly recruiting children in March 2006, when the applicant claims that he was targeted by the group. The applicant's agent has not explained why this information could not have been put before the delegate. The part of the delegate's decision dealing with forced recruitment by the Karuna group is unclear. However, the delegate appears to refer to a UNICEF report which supports the finding that children were forcibly recruited by Karuna around this time. The portion of the Human Rights Watch report quoted also appears to be general country information, rather than personal information.
13. I am not satisfied that s473DD(b) is met. However, I accept that the Karuna group were involved in the forced recruitment of children and young men at this time, so this country information is not relevant to the current review. At the very least, given that I accept that Karuna Group was involved in the forced recruitment of children and young men around this time, there are not exceptional circumstances to justify considering this information.
14. The agent has also included what purports to be a medical report dated 17 November 2016 from the physician who treated the applicant's brother after he was allegedly attacked in Sri Lanka. I note that the applicant consistently stated that his brother was attacked in 2015. The agent claims that the applicant did not raise this issue at his SHEV interview because he was only recently told about it by his mother. I have considerable difficulty believing that the

applicant's mother decided to withhold this information from the applicant throughout his protection visa process with the Department, up to and including the applicant's interview with the delegate in May 2016 and the five months that followed before the delegate's decision on 25 October 2016, but would reveal it to the applicant in time for him to seek out the doctor and obtain a letter from him just a few weeks later (17 November 2016). The report is from a traditional ayurvedic healer. It is very light on medical details regarding the brother's broken [Body Part 1] or how it was treated and is mostly taken up with reporting what the applicant's brother related about the alleged attack. Even taken at face value, the report only relays the brother's comments regarding the attack and the author does not claim to have any first-hand knowledge of the alleged incident. The report also makes no medical conclusions as to how the injuries were received or whether they are consistent with an attack. It therefore has limited probative value in any case. Given the above, I am not satisfied the s.473DD(b) is met or that there are exceptional circumstances to justify considering this information.

15. On 10 August 2021, the applicant's agent submitted a further two letters to the IAA. The applicant also provided a brief submission outlining the new information and arguing why it should be considered. I consider that his submission is argument rather than information to which I have had regard. However, the letters are new information.
16. The first letter from Grama Niladhari's Office is dated 9 August 2021. It briefly re-states the applicant's claimed reasons for departing the country and says that an armed group continue to come to the applicant's family home and threaten his parents. It post-dates the delegate's decision but also refers to alleged (and ongoing) threats of harm that took place after the delegate's decision. I am satisfied that s.473DD(b)(i) is met.
17. However, again, the letter's provenance is difficult to establish with any certainty. The author's relationship with the applicant is not set out in any detail nor does the letter provide any meaningful detail about the threats received or even the persons allegedly making the threats. Given its very limited probative value, I am not satisfied that this letter may have affected the consideration of the applicant's claims met or that there are exceptional circumstances to justify considering this information.
18. The second letter is from [Organisation 2] and is dated 6 August 2021. It claims that the applicant has been involved with the group since 2016. The letter does not specify when in 2016 the applicant commenced his involvement with the group. However, in the submission accompanying the letters, the agent states that the applicant now "realises that he should have informed the delegate that he was also actively involved in Tamil Diaspora activities in Sydney". I do not consider that this sufficiently justifies the failure of the applicant to obtain such a letter and provide it to the delegate (or even raise the issue with him) and I am not satisfied that s.473DD(b)(i) is met.
19. The letter states that the applicant has "delivered vital contributions in pro-Tamil Community activities and events..." but does not detail what these are. The applicant also previously submitted a letter from a group called [Organisation 1] that also claimed the applicant "actively participated and volunteered in organising events...". However, despite this alleged extensive involvement in pro-Tamil activities dating back to 2013 with [Organisation 1] and from 2016 onwards with [Organisation 2], the applicant has not provided any other evidence by way of photos, social media activity or personal testimonies from other colleagues. There is also the matter, noted above, of the applicant failing to mention any involvement with [Organisation 1], diaspora activities at interview or in the five months that followed prior to the delegate's decision. I note that the applicant's former representative provided a submission on 14 May 2016, in which the agent noted in general terms the Sri Lankan government's suspicion with

the Tamil diaspora in Australia. However, that submission failed to mention the applicant's personal involvement in any such activities or indicate any involvement on his part with diaspora groups.

20. When weighed against the lack of any other evidence of the applicant's involvement in diaspora activities, lack of any evidence that the applicant has achieved any sort of public profile in association with these activities, and his failure to mention such activities at interview despite purporting to have participated in them since 2013, I do not accept this letter as credible evidence that the applicant has been intimately involved in diaspora activities or pro-Tamil activities in Australia. Given its very limited probative value, and the other issue mentioned above, I am also not satisfied that this letter may have affected the consideration of the applicant's claims or that there are exceptional circumstances to justify considering this information or the associated claim that the applicant has been active in diaspora or pro-Tamil activities in Australia.
21. As noted above, I have obtained the following more recent country information:
  - Country of Origin Information Services Section (COISS), "Sri Lanka - Common Claims - August 2021", 27 August 2021
  - UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020
  - US Department of State, "Country Reports on Human Rights Practices for 2020 - Sri Lanka", 30 March 2021
  - 'DFAT Country Information Report Sri Lanka', Department of Foreign Affairs and Trade, 4 November 2019
22. These reports contain recent and comprehensive information on the human rights situation in Sri Lanka and the situation for Tamils in particular, as well as other relevant aspects such as treatment of returnees to Sri Lanka.
23. I consider that these sources provide much more recent (and comprehensive) information on political and human rights issues in Sri Lanka than that available to the delegate (or submitted to the IAA) and are authoritative sources. I am also satisfied that there are exceptional circumstances to justify their consideration.
24. The country information reports listed above, with a summary of their relevance to the applicant's claims, were sent to the applicant for comment in a letter dated 7 September 2021.
25. On 21 September 2021, the applicant's agent sent a response to the letter. The applicant's agent has already put forward a submission that met the total allowable length set out in the Practice Direction. The additional submission dated 21 September 2021 contains some argument but primarily consists of responses to the invitation to comment letter sent to the applicant. I have exercised my discretion to accept this submission.
26. The submission also contains new information. These include references to articles from The Hindu newspaper<sup>1</sup>, the SL Times, and Civicus.org. However, the references made to these articles are all very brief and it is difficult to gauge from those brief excerpts what is actually contained in the country information put forward or to put it in any sort of context.

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<sup>1</sup><https://www.thehindu.com/news/international/courts-ban-remembrance-events-for-ltte-cadre-on-heroes-day/article33195748.ece>

27. In any case, the applicant was sent a copy of Practice Direction 1 on 30 July 2021 setting out the requirements to be met when submitting new information to the IAA. Practice Direction 1 states that if new country information or media articles are being put forward, a copy of the relevant information must be provided, and the date and source of the information must be identified. It further states that lists of publicly available documents or hyperlinks to publicly available documents are not acceptable. The applicant has not provided copies of the relevant documents and, but for the SL Times article, the date of the information is not identified. The submission was prepared with the assistance of a registered migration agent ([company name]), and the applicant was also made aware of the requirements for making submissions or presenting new information in the correspondence sent to him by the IAA. Given all of the above, and as per s.473FB(5), I am not prepared to accept this information.

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

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

- The applicant is of Tamil ethnicity and was born on [date] in [Location 1], in Eastern Province.
- The applicant fears harm because of his Tamil ethnicity and as a Tamil who resided in areas controlled by the Liberation Tigers of Tamil Eelam (LTTE). The Karuna Group continually targeted him while he was in Sri Lanka and will harm him on return.
- In March 2006 the Karuna Group forced both he and his father into a training camp to prepare them for fighting. After three weeks he escaped from the camp and hid at his Aunt's home while the Karuna Group searched for him.
- At the end of the war, the Sri Lankan Army (SLA) conducted round ups in his area. He and other Tamil males were accused of being LTTE and beaten.
- The applicant claims that in 2008 or 2009, a group of SLA personnel demanded that he climb a coconut tree to get coconuts for them. When he refused, he was taken to an SLA camp where he was beaten with a gun and kicked
- The family still had a farm in [Location 1]. The family were relatively well off and people would regularly come and demands for money or help themselves to farm equipment. The applicant did not know what group they were from. This continued until the family had almost nothing left.
- In June 2012, he was going home from the fields of his farm when he was intercepted by four men on motor bikes and beaten unconscious. He claims that his father was told that he was beaten because the family did not give any money.
- In 2012 he decided to support the Tamil National Alliance (TNA) candidate in the upcoming provincial election. He canvassed voters in the area and put up posters. He claims that people from the government warned him to stop his support for the TNA and threatened to shoot him.
- On 10 September 2012, just after the electoral victory of the TNA candidate, people came to his family home looking for him. The applicant was at a friend's home at the time. The people beat his father. His father sent him a message not to come home and he went to his aunt's home.
- The people, whom the applicant thinks were government party members, came to his aunt's home looking for him. He escaped to another aunt's home and then to a church

in the town of [Town 1]. With the assistance of a priest, he remained in hiding there until he left Sri Lanka for Australia.

- The Sinhalese people still want to destroy all Tamil people. He is afraid the Karuna group will harm because he is a Tamil and assisted a TNA candidate in the election. The Army also want to harm Tamil people and will not assist him. The police will also not protect him because the Karuna group and the police are working together.

At interview, the applicant gave the following additional information:

- The applicant claims that his [Body Part 2] was broken in the June 2012 attack near his farm.
- The applicant claims that since leaving Sri Lanka illegally by boat, his family has had inquiries from the Sri Lankan authorities regarding his whereabouts. He claims that the authorities may believe that he is still in Sri Lanka because they have accused his mother of hiding him. They have made threats to shoot the applicant if they find him.
- His brother was attacked by persons unknown who demanded to know the applicant's whereabouts. They broke his brother's [Body Part 1].
- The applicant claims that he has a fear of returning to Sri Lanka because the Criminal Investigation Department (CID) have his details and will know about his previous problems with the authorities and Karuna Group. He states that he also fears the Karuna Group who will shoot him because of the past problems. As a Tamil, he will be victimised by Buddhist teachings and the Sinhalese who want to destroy the Tamil people.
- The applicant claims that he cannot be relocated with safety anywhere in Sri Lanka because the authorities will know where he has moved. He states that the authorities will ask questions about him and they will learn about his problems. He claims that he cannot gain protection in Sri Lanka because the Karuna Group and the Police are now both the same and they are with the government.
- The applicant claims that he will suffer harm as a returned failed asylum seeker. He claims that the authorities will question him and beat him. Because he is a Tamil who left the country illegally, they will need little reason to shoot him.

On 14 May 2016, the delegate received a written submission from the applicant's representative. The representative made the following points:

- The applicant is an ethnic minority persecuted by authorities due to the historical conflict between the Government of Sri Lanka and the LTTE.
- The applicant is at risk of being imputed with a pro-Tamil independence political opinion should he be forced to return to Sri Lanka. He is at risk of being targeted by political opponents because he is young, educated, comes from an LTTE controlled area, and was active and influential in his area.
- Many of the incidents that happened to the applicant took place when he was a minor and had a significant impact on him. As a result, he is fearful of authorities even in Australia.
- The Tamil diaspora has been accused by the Sri Lankan government of opposing the current regime and being pro-LTTE and pro-Tamil independence. The regime of

President Sirisena has become paranoid about the 're-grouping' of pro-Tamil separatists.

## Refugee assessment

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29. 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

30. 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.

31. The applicant is a Tamil Hindu from Batticaloa District in Eastern Province. The applicant has given a consistent account of his identity and provided several documents in support of that identity. He provided consistent information on his religious affiliation and ethnicity and his interview with the Department was conducted in Tamil. I accept that his identity, ethnicity and nationality are as claimed, that he is a national of Sri Lanka, and that Sri Lanka is his receiving country for the purposes of this decision.

32. The applicant was born and grew up in Batticaloa District in Eastern Province. His family still reside in Batticaloa. The applicant spent his entire life living in Batticaloa or other places in Eastern Province. I consider that Eastern Province is the area to which the applicant would very likely return if he went back to Sri Lanka.

33. As noted above, the applicant was born and grew up in Batticaloa in Eastern Province. In 1983, the LTTE began an armed insurgency against the Sri Lankan government in pursuit of a separate Tamil state<sup>2</sup>. The civil conflict that followed is estimated to have cost 100,000 lives

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<sup>2</sup> Department of Foreign Affairs (DFAT), "DFAT Country Information Report Sri Lanka", Department of Foreign Affairs and Trade, 4 November 2019, 20191104135244



and displaced 900,000 more. The LTTE surrendered in May 2009 but not before atrocities on both sides that may have cost the lives of 40,000 civilians<sup>3</sup>.

34. The applicant has claimed that he was harassed, intimidated and physically harmed by the Sri Lankan Army and the Karuna group from the time he was a teenager.
35. He says that in March 2006, he was taken from his parents and forced to train with the Karuna group. The Karuna group were a paramilitary group aligned with the Sri Lankan government during the civil conflict<sup>4</sup>. He says that when he escaped from the training and fled to an aunt's house, the Karuna group came looking for him.
36. In 2007, the Army took over the area. Sometime in 2008 or 2009, some soldiers asked the applicant to climb a tree and get some coconuts for them. The applicant refused because he did not know how to climb a coconut tree and his father had also warned him against doing so. The applicant claims that the army then detained him for 1 ½ days and beat him. They subsequently detained him again for one day and again beat him. His family then decided to move to [Location 2], also in Batticaloa district, and stay with an aunt.
37. When the family returned home to [Town 2], the family were repeatedly targeted for extortion. In June 2012, the applicant claims that he was intercepted by a group of armed men and beaten unconscious. Afterwards, the group allegedly told the applicant's father that they had beaten the applicant because they had not been paid any money. The applicant claims that he was in the care of an orthopaedic surgeon for a month.
38. In September 2012, the applicant decided to a Tamil National Alliance (TNA) candidate in the upcoming election. After the TNA candidate won the election, the Karuna group again came looking for the applicant. The applicant was not at home at the time. He claims that his father was able to warn him not to return home. He ended up again fleeing to an Aunt's house but was tracked down by the Karuna. He fled to his other aunt in [Location 3] but was again tracked down by Karuna. He once again avoided being apprehended by them and fled to a place called [Town 1], where he was sheltered by a local priest. On 3 October, fearing harm from the Karuna group, he departed Sri Lanka.
39. There are some issues with the applicant's account.
40. The applicant claims that as a result of absconding from training, he was continually targeted by the Karuna group. He claimed that he was then later detained twice by the Army for failing to fetch coconuts. It is unclear why the applicant was singled out for such close attention over an extended period of time. He never had any involvement with the LTTE, nor was his family involved with the LTTE. Given the conditions that existed at the time, the country information supports the view that persons of the applicant's profile may have been targeted for recruitment by or subject to harassment by the Karuna group or the SLA<sup>5</sup>. However, it is much less clear why the Karuna group would spend so much time and resources attempting to locate the applicant, a young non-combatant that had briefly trained with them before absconding.
41. Nonetheless, it is possible such harassment did take place, given the conditions in Eastern Province at the time, and the ongoing civil conflict. However, the applicant also claims that the family continued to receive adverse attention from the Karuna group after the civil conflict

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<sup>3</sup> DFAT, "DFAT Country Information Report Sri Lanka", 4 November 2019, 20191104135244

<sup>4</sup> Ibid

<sup>5</sup> 'Recurring Nightmare: State Responsibility for 'Disappearances' and Abductions in Sri Lanka', Human Rights Watch, Human Rights Watch, 01 March 2008, CIS15722

ended. The Karuna group targeted the family at their family farm, making demands for money and equipment. He stated that his father initially refused to pay. Because of this, he claims that in June 2012 he was beaten on his way home from the farming fields.

42. The applicant stated in his written claims that he was beaten so badly in the June 2012 attack that he spent a month in the care of an orthopaedic surgeon. He mentioned the orthopaedic surgeon at interview, stating that he woke up there after his beating in 2012. He also claimed in the interview that his [Body Part 2] was broken in this encounter. However, later in the interview he stated that he was actually taken to a village doctor who treated him with herbs.
43. The applicant also claimed that despite being savagely beaten in June 2012 and spending a month being treated by an orthopaedic surgeon, he became involved in canvassing for a local Tamil National Alliance Candidate prior to the 9 September 2012 election. Given that the applicant claims that he was still receiving treatment for broken bones and other serious injuries in July that year, it is remarkable that he was both willing and able to canvass for a TNA candidate in the run-up to an election held in early September.
44. The applicant also raised claims at interview that were not in his written claims. He said that the family had purchased a new heavy vehicle. The Karuna group came and demanded the heavy vehicle. His father initially refused, so the Karuna group put a gun in the applicant's mouth and said they would shoot him. The applicant claimed at interview that he did not raise this claim before because his father had immediately sold the heavy vehicle and he did not have any evidence.
45. It is not clear why the fact that the father had immediately sold the heavy vehicle would prevent the applicant raising this claim, nor did the applicant explain why he now felt able to raise the claim when he was constrained from doing so before. Given the manner in which this claim was introduced, and the nature of the applicant's explanation for not raising it earlier, I do not accept that such an event occurred.
46. I note that despite a continuing series of alleged extortion attempts that went on for years and involved considerable violence, the family continue to farm the same land. The applicant has not indicated that they ever considered selling the land and moving elsewhere. The applicant also claims that if he returns the same people will target him in an attempt to get more money. However, if there were actually people who wished to extract money from the family, it does not seem plausible that they would wait for distant prospect of the applicant's possible return rather than targeting his parents or other siblings who are currently in Sri Lanka and in charge of the farm.
47. The applicant later provided a medical report purporting to be from the doctor who treated him. The report is dated 19 September 2012. I find it difficult to accept that a traditional ayurvedic healer could treat something as serious as a broken bone and the other extensive injuries the applicant claimed to receive. The document is only a copy and its provenance is difficult to establish with any certainty. I have considered this medical report. However, when weighed against the other issues with the applicant's account, I consider that it does little to overcome the significant credibility concerns that I have with the applicant's account.
48. In regard to his work for the TNA, the applicant claimed that he and the candidate in question both belonged to the same [sport] club. He claimed that although he was not a member of the TNA, he decided to help him during the election. The applicant claimed that he knew the candidate in question personally through a [sport] club to which they both belonged.

49. The applicant claimed that he worked in his village telling people about the candidate, putting up posters, and canvassing for votes. Karuna were also present canvassing for votes but the applicant said that no-one voted for them. The applicant claimed that because of his work for the TNA candidate, a group of Karuna people stopped his van one day and threatened to shoot him if he did not stop working for the TNA. The applicant complained about their behaviour to the TNA candidate. The TNA candidate said that he would talk to the police. The applicant claimed that he then continued to work for the TNA, and nothing further happened prior to the election.
50. However, after the election, the applicant claims that members of the Karuna group came to his family home searching for him. The applicant claimed that the Karuna people told his father that they held the applicant responsible for not getting any votes in their village. Fortunately, the applicant was not at home at the time and his family were able to warn him not to return. He then fled to an aunt's house.
51. It is not clear why the Karuna group would wait until after the election to target the applicant if they really considered that he was effective in garnering votes, rather than prior to the result when the election was still in the balance. The applicant also claimed a personal relationship with the TNA candidate, who he claims later won the election. However, he did not indicate that he ever approached (or considered approaching) the candidate when the Karuna group confronted him after the election.
52. The applicant also claims that despite fleeing to an aunt's house, he was found by the Karuna group. When he fled to another aunt's house, Karuna allegedly found him again. When asked how they knew where he was, the applicant claimed that they had all his details and the details of all his relatives. It is difficult to believe that they could track the applicant down to his family home and then locate him at each of his aunt's houses, but despite this detailed knowledge of the applicant's family and his movements, fail each time to apprehend him.
53. I note that the applicant has supplied a letter purporting to be from the TNA candidate during the election. The letter is remarkably brief and impersonal and states only that the applicant is "well known" to the candidate. It does not mention the [sport] club to which they both allegedly belonged or provide any personal details about the applicant. It also states that the applicant was threatened by "unknown persons". It otherwise offers very little by way of meaningful detail about the issues he allegedly faced during the election.
54. The applicant has provided a number of other letters purporting to be from various correspondents in Sri Lanka. However, the letters are copies only and their provenance is also difficult to establish with any certainty. Though some of the letters are prefaced with a phrase stating the applicant is well known to the author (or something similar), the authors do not otherwise indicate how they have first-hand information on what allegedly befell the applicant in Sri Lanka. The letter from the priest who allegedly gave the applicant shelter in 2012 is notably brief and impersonal. The letters provide little detail beyond restating in very brief terms that the applicant was attacked by "unknown persons" or "unidentified groups". I consider that these letters have limited probative value, and do not overcome the other concerns I have with the applicant's account.
55. As noted above, the applicant's family continues to reside in [Location 1]. They also continue to farm the land that was allegedly the subject of repeated extortion attempts. I note that when asked if anything had happened to his family recently, the applicant indicated that his family did not tell him everything that was happening.

56. The applicant did claim that his brother was stopped by unknown persons who demanded to know the applicant's whereabouts. His brother's [Body Part 1] was allegedly broken in the encounter. He claims that neither his mother or brother told him about the incident where the brother's [Body Part 1] was broken and instead was only told by a friend in [country]. I do not accept that his family would not tell the applicant about ongoing threats to his life if such threats existed, or that he would not seek to gain further information from friends or relatives about his family's situation if he felt they were genuinely in danger.
57. I note that the applicant provided the death certificates for three uncles who were allegedly killed by government forces, although these deaths occurred in the 1985/6 and 1997. In any case, I accept that the applicant had a genuine fear of Karuna and government forces during the civil conflict. Given the conditions that prevailed at the time, I also accept that the applicant may have received adverse attention from elements of the SLA and the Karuna group during and in the period immediately following the civil conflict. However, for the reasons set out above, I do not accept that the applicant was later continuously targeted by the Karuna group, the SLA or any other actors in the manner described.
58. In any event, things have changed considerably in Sri Lanka since the applicant's departure. Country information indicates that the situation for Tamil political parties has changed significantly during the time that the applicant has been in Australia. Country information confirms that Tamils have a "substantial level of political influence", and even former LTTE members were able to openly run for office in the 2015 Parliamentary elections<sup>6</sup>.
59. I accept that the former Karuna Group was active in the applicant's area at one time. There are also allegations that during the civil conflict, the group were responsible for serious crimes<sup>7</sup>. However, the Karuna Group have now disarmed and officially registered their own political party, Tamil Makkal Viduthalai Pulikal (TMVP), in 2007<sup>8</sup>. In March 2009, Karuna himself became the Minister for National Integration under the Rajapaksa government<sup>9</sup>. Nothing in the information before me supports the view that the group represent anything other than a political force in Sri Lanka at present.
60. In the submission of 21 September 2021, the applicant's agent contended that "there is evidence that supports that Karuna/TMVP still pose a threat to the applicant if he were returned today". However, no such evidence has been included with the submission. As set out above, I do not consider that the available country evidence indicates that the Karuna group or its political predecessor, The TMVP, pose a risk to the applicant or to Tamils in general.
61. While it is true that the run up to elections have been volatile periods in the past, reports of political violence have declined since the 2015<sup>10</sup>. Independent election monitors recorded fewer violent incidents in the February 2018 local government elections compared to previous elections. Regarding the August 2020 parliamentary elections that occurred after the Rajapaksa brothers returned to power in Sri Lanka, the US Department of State noted that they "were conducted peacefully, with few reported violations, no violence, and public health guidelines largely adhered to by voters"<sup>11</sup>.

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<sup>6</sup> DFAT, "DFAT Country Information Report Sri Lanka", 4 November 2019, 20191104135244

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> 'Country Reports on Human Rights Practices for 2020 - Sri Lanka', US Department of State, 30 March 2021, 20210401122412

62. COISS currently assesses that, with the exception of hard-line Tamil groups, Tamil political parties are generally able to operate and contest elections freely<sup>12</sup>. In regard to the TNA party specifically, COISS states that there have been “few reports of political violence against party members in recent years”<sup>13</sup>.
63. The applicant claimed at interview that even to this day, people associated with the Karuna group come to his family’s home and threaten to kill him. This is despite the fact that his last purported contact with the Karuna group was related to an election in 2012, during the election in question he was neither a candidate nor a party member, he has been absent from the country for almost a decade, and despite country information that the Karuna group has disbanded and no longer maintains an armed wing. I consider this claim to be entirely fanciful.
64. Given the country information cited above, I do not consider that there is a real chance that Karuna, the TMVP, or any related group would pose any threat to the applicant (or his family) on return to Sri Lanka.
65. As noted above, I do not accept the applicant’s claims that he and his family were continuously persecuted by the government authorities, the Karuna group or anyone associated with them. The applicant also did not claim to have formally joined the LTTE or taken on a combat role himself. However, I accept that the applicant is a Tamil male and that he resided in Eastern province during the civil conflict. I have therefore considered whether he would face harm on that account on return to Sri Lanka, or on account of his ethnicity and background more generally.
66. In a submission to the delegate dated 14 May 2016, the applicant’s previous agent made the point that the Prevention of Terrorism Act (PTA) was disproportionately used against the Tamil minority and is therefore arguably not a law of general application. This was certainly true in the past. Abuses under the PTA have been documented by the Office of the High Commissioner for Human Rights (OHCHR) and other reliable sources<sup>14</sup> and I do not discount the terrible toll such treatment must have taken on the individuals themselves and the Tamil community.
67. However, I do not accept that persons with the applicant’s profile and attributes are currently subject to detention or torture by the government.
68. Although the PTA remains in force, its use was “effectively suspended” between 2016 and April 2019<sup>15</sup>. While it was still used sporadically during that time, there were just five known instances which all related to very serious crimes – assassination plots against politicians and cases involving the seizure of explosives and drugs<sup>16</sup>. Notably, one of the instances involved the arrests of those plotting the assassination of the spokesperson for the Tamil National Alliance (TNA). Detentions after that time appear to relate exclusively to arrests made in connection with the 2019 Easter Sunday terrorist attacks<sup>17</sup>. The UK Home Office also notes that a “large number of Muslims” were arrested after the Easter Sunday attacks, but does not indicate that

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<sup>12</sup> Country of Origin Information Services Section (COISS), “Sri Lanka - Common Claims - August 2021”, 27 August 2021, 20210827172808

<sup>13</sup> Ibid

<sup>14</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 4 November 2019, 20191104135244; US Department of State, “Country Reports on Human Rights Practices for 2020 - Sri Lanka”, 30 March 2021, 20210401122412

<sup>15</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 4 November 2019, 20191104135244

<sup>16</sup> Ibid

<sup>17</sup> Ibid

Tamils were targeted at the time and notes that there were “hardly any complaints of torture”<sup>18</sup>.

69. DFAT notes that sources in Sri Lanka “including Tamils, say mistreatment and torture by police continues to occur, but is primarily due to outdated policing methods and is not ethnically-based”<sup>19</sup>. As noted above, I do not accept that the applicant was of adverse interest to the Sri Lankan authorities on his departure from Sri Lanka. I do not consider that there is any reason he would face arrest on return. Although he may face a brief period of detention on return to Sri Lanka in regard to his illegal departure, as discussed further below, these are standard procedures carried out “regardless of ethnicity and religion” and DFAT’s understanding is that detainees do not face mistreatment during processing at the airport<sup>20</sup>.
70. There were reports during the civil conflict of Tamils being forcibly detained or disappeared through what were known as “white van abductions”<sup>21</sup>. This practice, in which Tamils (and others) were abducted by unknown perpetrators using unmarked vehicles, was prevalent during the civil conflict (and for some time afterwards)<sup>22</sup>. DFAT notes a small number of reports in 2016 and 2017 of such abductions but states that they were likely instances of police failing to follow protocols during arrests and considers that such disappearances are “no longer common”<sup>23</sup>. In a 2021 report issued after the return of the Rajapaksa brothers to national office, the USDOS states that during 2020 there “were no reports of disappearances by or on behalf of government authorities”<sup>24</sup>. A recent UK Home Office report stated that “All sources consulted stated that there had been no recent reports of white van abductions”.<sup>25</sup>
71. DFAT has stated that the government no longer restricts travel to the North and East, and security checkpoints on major roads were removed in 2015<sup>26</sup>. Even those checkpoints briefly re-established in the wake of the 2019 Easter Sunday attacks, a major terrorist event unrelated to the LTTE, have since been removed<sup>27</sup>.
72. DFAT acknowledges that some monitoring continues but that it is more subtle and much less pervasive than before. Some direct and indirect questioning of former LTTE members was reported by some local sources but this “did not involve violence”<sup>28</sup>. DFAT does not note any instances of direct visits to failed asylum seekers, even in the North, after 2017<sup>29</sup>. The Human Rights Commission of Sri Lanka (HRCSL), which deals with reports of monitoring and harassment of former LTTE members, received “few such complaints” in 2018<sup>30</sup>. USDOS reports that Tamils have complained about monitoring and harassment of their community, but no specific sources or examples are provided<sup>31</sup>. As noted above, Tamils parties continue to wield political influence, and even former LTTE members openly participated in the 2015

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<sup>18</sup> UK Home Office, “Report of a Home Office fact-finding mission to Sri Lanka”, 20 January 2020, 20200123162928

<sup>19</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 4 November 2019, 20191104135244

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> US Department of State, “Country Reports on Human Rights Practices for 2020 - Sri Lanka”, 30 March 2021, 20210401122412

<sup>25</sup> UK Home Office, “Report of a Home Office fact-finding mission to Sri Lanka”, 20 January 2020, 20200123162928

<sup>26</sup> DFAT, “DFAT Country Information Report Sri Lanka”, Department of Foreign Affairs and Trade, 4 November 2019, 20191104135244

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> US Department of State, “Country Reports on Human Rights Practices for 2020 - Sri Lanka”, 30 March 2021, 20210401122412

Parliamentary elections<sup>32</sup>. DFAT now assesses that “Tamils, including those with imputed links to the LTTE, are no longer considered vulnerable to mistreatment and torture by virtue of their ethnicity or LTTE links”<sup>33</sup>. The UK Home Office notes that Tamil returnees with actual or perceived links to the LTTE may face questioning on return but does not indicate that mistreatment occurs, and notes that even high-profile returnees may face additional questioning but would not necessarily be detained<sup>34</sup>. It also states quotes the Attorney General’s Department and the Criminal Investigation Department as stating that “mere membership of the LTTE would not make someone of interest”, and notes that this was also confirmed by an NGO<sup>35</sup>.

73. Although some returnees reported social stigma on return, particularly where they had benefited from financial reintegration assistance, DFAT assesses societal discrimination is not a major concern for returnees or former asylum seekers<sup>36</sup>. Tamils who went back to Northern Province stated that they did not experience societal discrimination on return, and there is nothing to suggest that the situation is different for those returning to Eastern Province<sup>37</sup>. The applicant stated at interview that he is in regular contact with his family. He has not indicated any reason why he could not again reside with his family on return to Sri Lanka or that he would not have their support while he transitions back into the community, nor has he made any claim that he would suffer stigma on return. I am not satisfied that there is a real chance the applicant would suffer stigma or similar harm on return to Sri Lanka.
74. The applicant’s agent has said that there is a clear distinction to be drawn between the previous Sirisena government and the attitude of the Rajapaksa government regarding their treatment of the Tamil minority. Other sources, including DFAT and the UK Home Office, have pointed to issues such as a tightening in the latitude given to civil society actors, targeting of journalists, and lack of progress towards reconciliation and accountability for actions carried out during the civil war. The agent has stated that there is evidence of the Rajapaksa’s allegedly authoritarian governing style, their anti-Tamil sentiments, and moves to walk back commitments to international human rights bodies concerning crimes committed during the war.
75. It is understandable that the revival of the Rajapaksa political fortunes would make many Tamils nervous who lived through the civil conflict. It is also understandable that some might raise concerns as to whether those who may have committed crimes during the civil conflict under Mahinda Rajapaksa’s previous term in office will be brought to justice by any government led by a Rajapaksa or with which they are closely involved. However, despite much speculation about their governing style, there is little evidence in the country information before me that the Rajapaksas have sought to actively harm the Tamil minority since retaking office.
76. The applicant has been out of Sri Lanka for almost a decade. He is not a journalist, nor do I accept that he has acquired any sort of public profile during his time in Australia. I do not accept that he was of interest to the authorities before he departed. Outside of the cases involving individuals with a known profile, there is little evidence that Tamils in general, even those with past LTTE links, are being targeted or directly harmed. While the concerns raised by the agent are noted, there is little evidence that the current Rajapaksa government has

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<sup>32</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 4 November 2019, 20191104135244

<sup>33</sup> Ibid

<sup>34</sup> UK Home Office, “Report of a Home Office fact-finding mission to Sri Lanka”, 20 January 2020, 20200123162928

<sup>35</sup> Ibid

<sup>36</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 4 November 2019, 20191104135244

<sup>37</sup> Ibid

instigated any tangible measures that would add to the risk of harm for a person of the applicant's profile.

77. Taking into account the available country information, the applicant's personal circumstances and lack of any profile, I am not satisfied that he would suffer harm from the Sri Lankan authorities or any other person due to his Tamil ethnicity, his imputed support of the LTTE, or due to his background or personal circumstances.
78. In the wake of post-war reconstruction, the Sri Lankan economy grew at an average rate of 5.8 per cent between 2010 and 2017<sup>38</sup>. While growth has now slowed somewhat, the IMF still predicts a healthy growth rate of 3.5 in 2019 and 4 per cent in 2020<sup>39</sup>. At 6 per cent per cent, unemployment in Eastern Province is higher than the national average, but still relatively low. DFAT notes that the government announced economic support packages for the north and east. As recently as 27 May 2019, the government announced the Palmyra Fund to create greater employment opportunities in those areas<sup>40</sup>.
79. DFAT assesses that there is no official discrimination in the public sector based on ethnicity and that Tamils face a low risk of discrimination in regard to employment generally<sup>41</sup>. The USDOS also notes that Sri Lanka's constitution prohibits discrimination "on the basis of race, religion, language, caste, sex, political opinion, or place of birth"<sup>42</sup>. It does state that the government did not always effectively enforce such laws. It also reports that Tamils maintained that they suffered from longstanding, systemic discrimination. However, the examples of discrimination noted by the USDOS relate to predominantly to issues such as gender discrimination. No specific instances are given of discrimination against Tamils nor does the USDOS itself find that such discrimination is significant or systemic. A recent Country of Origin Information Services Section (COISS) report notes claims by Tamils that they suffer discrimination in areas such as university education and some government services, but quotes a number of sources as stating that they are not targeted solely on account of their ethnicity<sup>43</sup>.
80. The applicant's agent, in their submission dated 21 September 2021, made extensive reference to a UK tribunal decision that made various criticisms of the DFAT report<sup>44</sup>. This is an overseas tribunal decision and not binding on the IAA. No one source of country information will capture all the aspects of a country's political and human rights record. However, I consider that the DFAT report is a reliable and useful source of commentary on matters relevant to this review. I acknowledge that the most recent DFAT report for Sri Lanka is now over two years old. For this reason, included in the invitation to comment were a number of other sources more current than the DFAT report. Accordingly, these sources have been consulted and utilised alongside the DFAT report in undertaking the current review.
81. The applicant's agent has also claimed that when the applicant returns to Sri Lanka, he will be detained and interrogated for departing the country illegally. He stated in his written claims that he would be targeted also because the authorities will suspect that he has told people about his adverse treatment in Sri Lanka.

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<sup>38</sup> DFAT, "DFAT Country Information Report Sri Lanka", 4 November 2019, 20191104135244

<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> US Department of State, "Country Reports on Human Rights Practices for 2020 - Sri Lanka", 30 March 2021, 20210401122412

<sup>43</sup> Country of Origin Information Services Section (COISS), "Sri Lanka - Common Claims - August 2021", 27 August 2021, 20210827172808

<sup>44</sup> KK & RS v Secretary of State for the Home Department (2021) Upper Tribunal (Immigration and Asylum Chamber) 27 May 2021



82. The relevant sections of the Immigrants and Emigrants Act (I&E) Act make it an offence to depart Sri Lanka from other than approved port of departure, usually a seaport or airport. The applicant did not indicate in his entry interview that he had any involvement in crewing the vessel that brought him to Australia. There is nothing before me to suggest that he was involved in facilitating that journey. There is no evidence he has been charged with any immigration offences in Sri Lanka nor is there any evidence he ever faced such charges in Australia. However, DFAT confirms that the Attorney-General's Department has directed that all passengers of people smuggling ventures be charged under the I&E Act, not just those responsible for organising or facilitating the venture. DFAT also indicates that the I&E Act carries penalties of up to five years imprisonment<sup>45</sup>.
83. However, the Sri Lankan Attorney-General's Department, responsible for prosecuting I&E offences, claims no-one whose involvement was limited to being a passenger has received a custodial sentence<sup>46</sup>. Individuals charged under the I&E Act may be held for up to 24 hours after arrival, or in cases such as an arrival on a weekend or public holiday, up to two days at the airport<sup>47</sup>. DFAT states that it is not aware of any mistreatment of returnees during the entry procedure on return to Sri Lanka<sup>48</sup>. In its 2020 report, the US Department of State does not cite any instances of abuse of returnees, stating simply that the "law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights"<sup>49</sup>. It also notes that the government co-operated with the UNHCR in providing protection and assistance to "returning refugees"<sup>50</sup>. The UK Home Office reports IOM as stating that claiming asylum abroad is not an offence, and also finds that there were no media reports of returnees being interrogated on such grounds<sup>51</sup>.
84. DFAT notes that in practice most cases result in a fine, sometimes as little as \$25 AUD for the first offence but usually between \$122 AUD and \$163 AUD<sup>52</sup>. I note that there is no indication (nor has the applicant claimed) that he ever left Sri Lanka illegally prior to coming to Australia and that this would therefore be the applicant's first offence. From there, outcomes depend on the defendant's plea. A guilty plea will attract a fine which can be paid by instalment and then the defendant is free to go<sup>53</sup>. A plea of not guilty will usually lead to the grant of bail on the surety of a guarantor or family member. Although bail may continue for many years, the end result is again usually the payment of a fine<sup>54</sup>.
85. I also refer to the country information above that indicates even former LTTE members are not of adverse interest to the Sri Lankan authorities on return, and that barring an especially high profile, there may be some additional questioning but no evidence of mistreatment. The applicant has not had any altercations with the law or any sort of criminal record here in Australia. As noted above, I do not accept that the applicant is (or was) of adverse interest to the Sri Lankan authorities.
86. The applicant has not indicated any reason why he would not plead guilty and pay a fine. The applicant remains in regular contact with his family and his entry interview indicates that he

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<sup>45</sup> DFAT, "DFAT Country Information Report Sri Lanka", 4 November 2019, 20191104135244

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> US Department of State, "Country Reports on Human Rights Practices for 2020 - Sri Lanka", 30 March 2021, 20210401122412

<sup>50</sup> Ibid

<sup>51</sup> UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928

<sup>52</sup> DFAT, "DFAT Country Information Report Sri Lanka", 4 November 2019, 20191104135244

<sup>53</sup> Ibid

<sup>54</sup> Ibid

paid a substantial sum to come to Australia. The applicant has also been able to sustain himself here in Australia. Even in the event the applicant chose to plead not guilty, I do not consider that the applicant would be unable to obtain bail or pay the resultant fine (even if he was unable to receive any financial assistance from his family) or that this would threaten his capacity to subsist. I note that even such fines as are levied can be paid in instalments<sup>55</sup>.

87. I consider that it is very likely the applicant will be detained only briefly at the airport, have to pay a relatively small fine or, alternatively, be released on bail, and pay associated costs (which may involve returning to court on one or more occasions). I do not consider that this treatment amounts to serious harm, nor does the available country information indicate that there is a real chance the applicant would be mistreated in any way while so detained.

88. I am also not satisfied that the treatment the applicant may experience as a consequence of the I&E Act is systematic and discriminatory conduct. The relevant sections of the I&E Act make it an offence to depart Sri Lanka from other than approved port of departure, usually a seaport or airport. These are measures aimed at controlling and regulating the flow of people across the border, and especially irregular migration. Regarding entry procedures generally, DFAT states that investigations can be undertaken on arrival to confirm a person's identity, and to determine if they have a criminal record or an outstanding criminal matter. I note that there is no evidence that the applicant has ever been charged with or convicted of any crime in Sri Lanka and has only a minor driving offence here in Australia. DFAT notes that entry processing requirements are standard procedures carried out "regardless of ethnicity and religion" and its understanding is that detainees "are not subject to mistreatment during processing at the airport"<sup>56</sup>. Similarly, the evidence does not indicate that the I&E Act itself is applied selectively or enforced in a discriminatory manner.

89. I am not satisfied that the applicant faces a real chance of persecution from the Sri Lankan government, including any branch of security or law enforcement, or from the Karuna group, The TMVP or anyone associated with it. I am not satisfied that the applicant faces a real chance of harm due to the fact that he departed the country illegally, his previous support of a Tamil political candidate, his imputed political opinions, his ethnicity, or on any other account.

### **Refugee: conclusion**

90. 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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91. 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**

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

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<sup>55</sup> DFAT, "DFAT Country Information Report Sri Lanka", 4 November 2019, 20191104135244

<sup>56</sup> Ibid

- 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.

93. 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.

94. I accept that the applicant will very likely be detained briefly at the airport on arrival, where he is likely to pay a relatively small fine or, alternatively, be released on bail, which may incur costs (and involve additional court visits or procedures). I accept that the applicant’s period of detention at the airport may extend over a weekend depending on when he arrives back in Sri Lanka<sup>57</sup>. However, information from DFAT quoted above does not indicate that returnees are subject to mistreatment during entry procedures or during the brief period the applicant may be detained prior to coming before a magistrate. The country information before me does not include any accounts indicating that there is any intention to inflict severe pain or suffering, or pain and suffering that could reasonably be regarded as cruel and inhuman, or extreme humiliation. Nor I am satisfied there is a real risk of the death penalty being carried out, the applicant being arbitrarily deprived of his life or tortured in these circumstances. I do not consider that the consequences the applicant faces in regard to his illegal departure amount to significant harm.

95. As noted above, I have considered whether the applicant is likely to be monitored on return and consider such a prospect to be remote. Even if such monitoring or questioning was to occur, I am satisfied that, while possibly unwelcome, it would not rise to the level of significant harm.

96. I consider that the applicant will be able to rely to at least some extent on the emotional support and practical advice of his family while he reintegrates into life in Sri Lanka. The applicant is also Tamil and would be returning to Eastern Province which has a sizeable Tamil population<sup>58</sup>. He previously worked on the farm and he has not indicated why he could not resume that work or do similar work for others.

97. In respect of the remainder of his claims I have otherwise found that the applicant does not face a real chance of any harm. Based on the same information, and for the reasons set out above, I find that the applicant does not have a real risk of suffering significant harm on return to Sri Lanka in connection with those claims.

98. After having regard to all of the applicant’s circumstances, and the country information noted above, I am not satisfied that he faces a real risk of suffering significant harm on return to Sri Lanka.

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<sup>57</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 4 November 2019, 20191104135244

<sup>58</sup> Ibid

**Complementary protection: conclusion**

99. 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.