



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA21/09937

Date and time of decision: 6 December 2021 14:44:00
M Wei, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) lodged a combined application for Safe Haven Enterprise Visas (SHEV) with his father, as a member of his father's family unit, in September 2017. At that time, the applicant was [Age] years old. At the time of the visa application, the applicant made no additional claims. The applicant lodged his own separate protection claims on 20 May 2021 and indicated that he no longer lived with his father. On 16 September 2021, a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the basis that the applicant was not a person in respect of whom Australia owes protection obligations.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The applicant's father's entry interview written record and audio recording of this interview took place on 20 January 2013 were not initially provided to the IAA by the Department. The Department subsequently provided them to the IAA following a post referral request from the IAA. Although the applicant, in his post interview submissions to the Department has expressly sought to rely on the information provided by his father during this interview, the delegate did not refer to this interview in her decision or at the SHEV interview. As such, it is not entirely clear to me if this information was before the delegate when the delegate made her decision. Even if it was not before the delegate and is considered as new information, I am satisfied there are exceptional circumstances to justify considering this information, given the applicant has sought to rely on evidence provided by his father and this information is relevant to the applicant's central claims for protection, which were based on his father's actual/imputed political profile.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He was born in [City], Eastern Province, Sri Lanka in April 2000.
 - He is a Tamil and Hindu.
 - People made inquiries (the Inquirers) about his father after he had assisted publicly in the 2012 provincial council elections.
 - In around 2013, after he and his had left Sri Lanka, people again asked about their whereabouts.
 - If he were to return to Sri Lanka, the inquirers might target him because of his connection with his father.
 - He is also afraid to go back because he came to Australia with his father when he was [a child]. He is now [Age]. He has spent his formative years in Australia. He does not know how he would handle returning to Sri Lanka.
5. Relevant to the applicant's claims about his father's involvement in the 2012 provincial council election, the applicant's father's claims in this respect can be summarised as follows:

- He started working as a postman in [City] and did this work until he left Sri Lanka in 2012.
- In 1999, he worked as a volunteer for [Organisation] and helped [families].
- He and his family members are not involved in any political organisations or groups in Sri Lanka.
- In September 2012, he distributed voting cards for the council election. He did this as part of job as the local postman. Members and supporters of the Tamil National Alliance (TNA) would come along with him while he was delivering the voting cards and he would disclose the names and addresses of the voting cards recipients. As a result, he was imputed with supporting the TNA.
- Unknown people (possibly the opposition party) were looking for him after the election. They went to his neighbour's house asking for his whereabouts. Fearing for his safety, He left Sri Lanka.
- He is not involved in any political groups or organisations in Australia.

Factual findings

6. The applicant has consistently claimed that he is of Tamil ethnicity and Hindu faith, born in [City] in [Year]. The applicant has provided a copy of his Sri Lankan birth certificate. The applicant's evidence was also that he arrived in Australia with his father by boat in November 2012 having departed Sri Lanka in October 2012, when he was [a child]. The applicant's father is now in Australia. His mother and his younger brother are still living in the same family home in [City]. I accept this. I am satisfied that he is a national of Sri Lanka and Sri Lanka is the receiving country.
7. The applicant has claimed to fear returning to Sri Lanka because of his father's involvement in the 2012 provincial council elections while working as a postman and his father's actual and perceived affiliation with the TNA. He claims that the people had made inquiries about his father after the 2012 provincial council election, which had led to their departure from Sri Lanka in 2012. He claims to fear that the inquirers would take him away, torture or kill him, because he is now old enough. The applicant further claimed in his post interview submissions to fear harm from the Sri Lankan authorities because of his imputed TNA affiliation due to his relationship with his father. However, matters discussed below raise serious concern as to the credibility of such claims.
8. As noted in his written statement and in the post interview submissions, the applicant seeks to rely on the evidence that had been provided by his father relating to his father's claims for protection.
9. In his father's written claims of 30 August 2017 (his father's written statement) submitted as part of their combined SHEV applications, his father stated that he started working for the post office as a postman in [City] in October 1993 until he fled Sri Lanka in October 2012. A Department of Posts ID card in the name of the applicant's father issued in 2006 was provided to the Department. It shows that his father was a telegraph messenger in the regional administrative office of [City]. I accept that his father had worked as a postman in [City] before he left Sri Lanka.
10. As per his father's written statement, his father was asked by [Mr A], a councillor and TNA candidate, to assist him in his campaign during the election in September 2012. Although his

father had not been involved with politics before, he was asked to help canvas because of his close connections to the local residents through his father's work for the [Organisation] and as a postman. His father agreed to help as the TNA was supportive of the local Tamil community. His father was allocated five villages. His father went to these villages, going from door to door, with [Mr A] and other TNA supporters. [Mr A] was re-elected [in] September 2012. His father claimed that around 14 October 2012 he learned from his wife, who had been informed by their neighbours, that some people had come to their neighbourhood asking for him. His father was very anxious about who these people were, so he did not return home and stayed at his mother's home where he was visiting at the time. His father believed he was targeted because he had campaigned for the TNA.

11. The applicant's father attended a SHEV interview on 19 May 2021, at which his father gave the following evidence: he was not member of the TNA and was not involved in the party, rather he distributed voting cards to the public as part of his postal duties for a period of about two weeks in the lead up to the voting date in the September 2012 election. It was well known that he was a postman, that he knew the local area and the households within it. Members of the TNA followed him as he travelled to different households delivering voting cards and they asked him to disclose the names and addresses of the people to whom the cards were to be delivered. Because of this, the applicant's father believed that the TNA perceived him as their supporter and that the member of the opposition party, the Tamil Makkal Viduthalai Pulikal (TMVP), believed that he was helping the TNA. His father also claimed that there were four enquires made about him, three times in 2012 while he was still in Sri Lanka - one with the neighbours on 14 October 2012, one at a neighbouring shop and another one at the post office where he worked (the applicant's father did not give the months or dates when the enquires were made at his post office or at the shop). One more inquiry was made in 2013 after he had left Sri Lanka, again the inquiry was made with the neighbours.
12. The post interview submissions of 6 June 2021 submitted on behalf of the applicant's father specifically addressed the concerns raised by the delegate at his father's SHEV interview. The submissions referred to that the applicant's father's written statement that he had agreed to 'help canvas' the local Tamil community and 'going from door to door' with the local TNA candidate and other TNA supporters. The submissions also referred to his father had previously in the January 2013 entry interview made reference of 'working with the TNA'. The submissions said that applicant's father had given instructions during the SHEV Interview's natural justice break that his father was aware of other postmen in the area being followed by the TNA as they delivered voting cards. It was submitted that the responses given by the applicant's father during the SHEV interview were not wholly inconsistent with the previous information provided. Rather, the applicant's father had at his SHEV interview provided new information to clarify that the nature of his involvement was imputed connection with the TNA. In respect of concerns raised by the delegate that the applicant's father did not previously claimed there were four inquires made about him, the submissions referred to that the applicant's father had claimed in 2013 entry interview that they had also come to his work office. It was submitted that the applicant's father's previous information was not inconsistent with the information provided at the SHEV interview.
13. The applicant in his separate written statement of 20 May 2021 referred to his father's 2017 written statement that inquirers made inquiries about his father after he had 'assisted publically' in the 2012 elections. The applicant further stated that people again asked about 'our whereabouts' around 2013. His mother in Sri Lanka told him about it. He stated that he was afraid to go back because of all the stuff that happened in Sri Lanka. His father told him about everything that happened in the past, including the inquirers. He claimed he feared, if he

were to return to Sri Lanka, the inquirers might come around and look to take his father and they might target him because of his connection with his father.

14. The applicant was interviewed by the same delegate on 30 June 2021. The applicant was given a number of opportunities to talk about his father's work and his father's involvement in the 2012 election and the TNA. Despite prompts from the delegate referring to his father's distributing voting cards for the election, the best the applicant could provide about his father's involvement in the election was that his father 'did election', 'went to do the vote', 'he was just supporting the party', 'when people asked for the vote, dad went did the vote', 'he went to vote there', 'my dad went to vote, but I don't know why he went to vote'. Although the applicant also claimed that inquires were made about his father and made reference to that people had visited the post office where his father worked, he did not refer to inquires made at the neighbouring shop. His evidence was that inquiries 'came to our house – they look for my dad' after the 2012 election. His evidence was also that in around 2013, the inquirers 'went back home again' making inquiries about his father, which he found out from his mother.
15. The post interview submissions of 15 July 2021, also from the RACS, submitted on behalf of the applicant, sought to confirm that the applicant did not make any reference to his father's distribution of voting card and that the issue of distributing voting cards may have been a gloss added by the delegate. Rather, it was submitted that the applicant's evidence at his SHEV interview was that he believed his father's issues were related to his father voting at the election. The submissions also stated that the applicant misunderstood the phrase 'assisted publically' when he stated in the written statement that his father had 'assisted publically' in the 2012 provincial elections.
16. The post interview submissions asked the delegate not to draw any adverse inference on the basis that the applicant's accounts of events may differ from the accounts given by his father. It also asked that the applicant's understanding of such events not be used to draw adverse inferences against the applicant's father's account of events. It was submitted that differing accounts given by the applicant was due to reasons, such as, the applicant's young age at the time of experiencing the events and the passage of time as the events happened over eight years ago. These matters, compounded with the traumatic psychological effect of the boat travel, may have distorted the applicant's understanding even if the event had been accurately described to the applicant by his father. It was further submitted that, even if the applicant is still in contact with his father, it is unreasonable to presume that they would discuss such subject matter. It was submitted that the applicant had instructed that at no point prior to his SHEV interview did he discuss with his father the factors resulting in his father becoming a person of interest (as opposed to the fact of the inquires, which was discussed), and only after the interview did the applicant speak with his father about such factors and his father then clarified such factors to the applicant. It was further submitted that the applicant was only informed of the nature of these events recently. The applicant's father was under no obligation to provide a complete account of events to his son. It is also uncommon for parents to not provide a complete account of past events to the children (regardless the inquiries of their children). It was submitted that those factors contributed to a divergence in their accounts.
17. I am willing to accept that the applicant was young in 2012 and might lack understanding of his father's involvement in the election then. I understand that the applicant's knowledge of the events might be limited, were it based on his own experience/observation at the time of the incidents in 2012 or if he were only told about these things when he was young. However, like the delegate, I have difficulty to accept the submissions that the applicant would only have discussed with his father about 'the fact of the inquiries' and not the factors resulting in his

father becoming a person of interest prior to his SHEV interview. The applicant has submitted his own written claims, which was submitted after his father's SHEV interview at the time when he was [Age] years old and was working in Australia. He was also assisted by RACS who have represented his father at his father's SHEV interview. The applicant's written claims made reference to claims made in the 2017 visa applications. The applicant has claimed to fear returning to Sri Lanka because the inquirers have been after his father. I have difficulty to accept that he would not be interested to know why his father became a person of the interest to the inquirers, were he to fear harm for this reason. He also stated in the written statement that his father 'told him about everything that happened in the past, including the inquirers'. I am not persuaded that his father would have withheld information from him by telling him only about the inquiries made about him and not why he was of interest. The applicant's differing accounts about his father's role in the election and his father's own differing accounts himself (as further discussed below), cast doubts that his father had any real involvement in TNA's 2012 provincial election campaign.

18. I have considered his father's post interview submissions that the applicant's father's responses given at the SHEV interview may not be 'wholly inconsistent' with the previous information he had provided. It was submitted that his father was perceived to be a TNA supporter by both the TNA and opposition parties because he had allowed the TNA supporters to accompany him while he was delivering the voting cards and he had disclosed the names and addresses of the voting card recipients. However, I consider the lack of consistency on key aspects is significant and concerning. Specifically, his father stated in the written statement that he 'was asked by [Mr A]' to 'assist him in his campaign' and that he was 'allocated five villages in which to promote the TNA', he 'went to these villages- going from door to door – with [Mr A] and other TNA supporters' and that he 'had campaigned for the TNA'. The applicant's father stated in the written statement that nobody else in his village worked for the TNA, after having referred to his active involvement in campaigning for the TNA. However, his father's evidence at the SHEV interview was that he was delivering voting cards in the two weeks leading up the election in the course of his ordinary work as a postman and the extent of his assistances to the TNA was that TNA members and supporters accompanied him while he was doing his delivery and he disclosed to them the names and addresses of the recipients of the voting cards. I am of the view that they are two very different roles. It is also stated in his father's post interview submission that the applicant's father was aware of other postman in the area being followed by the TNA as they delivered voting cards. I note that his father was represented by a migration agent at the time of preparing their combined SHEV applications. His father's written claims were interpreted to him by an interpreter from the Translating and Interpreting Services and his father had declared that his statements were true and correct.
19. On 18 May 2021, the day before his SHEV interview, the applicant's father provided the Department a letter of support said to be from [Mr A], member of the Eastern Provincial Council. The letter is written in English, undated, not on an official letterhead. Of particular concern, the letter refers to the surname of the author as '[Surname]' three times, including below where it was purportedly signed by the author, however, the stamp affixed bears a different [surname]. I consider it very unlikely that the author in his position would have affixed a personal seal or stamp with a differently spelt name. The author states that the applicant's father 'rendered a tremendous service by exercising a full support' in his election campaign from 1 July 2012 to 5 September 2012 when he contested the Provincial Council Election. This is not consistent with the applicant's father's evidence at his SHEV interview (which he claims were the correct version of events) - that he delivered voting cards for a period of two weeks as a postman and that the extent of his assistances to the TNA was that TNA members and supporters accompanied him while he was doing his delivery and he

disclosed to them the names and addresses of the recipients of the voting cards. The author further states that he came to understand that the applicant's father is threatened by unidentified persons 'day and night very often'. This again is not consistent with his father's claims at his SHEV interview (the day after this letter was provided) that inquirers only asked about his father's whereabouts three times while he was still in Sri Lanka and one time in 2013. As it was also raised by the delegate in his father's decision, document fraud was prevalent in Sri Lanka and that DFAT reported that attempts to use fraudulent documents were common and DFAT was aware of fraudulent sponsor letters and employment letters being presented by asylum seekers.¹ This also does not sit well with the applicant's own evidence at his SHEV interview that his father's involvement in the 2012 election was that his father voted for the TNA. In light of the irregularities and inconsistencies noted above, I am not satisfied this letter is genuine and give it no weight.

20. DFAT has reported that elections have historically been volatile periods in Sri Lanka.² I have also had regard to the country information referred to in the applicant's father's post interview submission. I note the reporting of widespread accounts of intimidation and the stealing of polling cards during the 2001 presidential elections; reporting of postmen having polling cards snatched from them during the 2005 presidential election; reporting of Tamil voters being intimidated or having their voting cards forcefully taken by unidentified groups during 2011 local elections in Kilinochchi in the north; and reporting of incidents during the 2015 presidential election involving violence including threat and intimidation and the seizure of voting cards including on one occasion a postman was reported to have been attacked and some 35 voting cards were stolen from him in the lead up to the 2015 presidential election.³ Although these reporting indicates that there were postmen being targeted during election periods while distributing the voting cards, the applicant and his father did not indicate that his father experienced any such problem in the two weeks while his father was delivering the voting cards.
21. The applicant's evidence was that the inquirers 'came to our house' in 2012 and 'went back home again' in 2013. The post interview submission from the applicant restated that the applicant explained at the SHEV interview that the inquirers came to the applicant's house. Although the applicant's father also stated at his entry interview that people came and threatened him at home, his father's evidence since his SHEV application, in written statement, at his father's SHEV interview, which was further reiterated in his father's post interview submission was that the inquiries were made to the neighbours on one of the three occasions in 2012 and again 2013 and the other inquiries were made at his work and a shop close to home. This is despite, as per his post interview submissions, he had discussed the fact of inquires with his father prior to his SHEV interview. The applicant himself also cross-referred to his father's 2017 written statement in respect of the 2012 incident. The discrepancies between the applicant and his father's evidence about the 2013 inquiry is of particular concerning give both claimed they found out this from the same person, the applicant's mother. I am not satisfied such inconsistencies, in the circumstances, can be explained by the lapse of time, the applicant's young age in 2012 or the claimed trauma experienced due to boat journey in 2012. I consider such inconsistency is not minor, in light of the claimed fear of harm arising from the

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

² Ibid.

³ Voice of America, 'Sri Lanka Elections Marred by Bloodshed', 5 December 2001; IOM International Organization for Migration, 'Sri Lanka - the Voting Rights of Internally Displaced Persons, Refugees and Economic Migrants Action Plan V Final Report', April 2006; Xinhua Global Times, 'Sri Lanka local polls get underway', 23 July 2011; Centre for Monitoring Election Violence 'Final Report on Election Related Violence Presidential Election 2015', January 2015.

claimed inquiries made about his father's whereabouts. These matters give rise to serious concern as to the veracity of these claims.

22. His father's own evidence with respect to the claimed inquiries is also problematic. As noted above, although the applicant's father referred to in his entry interview in 2013 that unidentified people visited his post office, he did not refer to this incident in the SHEV application in 2017. Although his father also stated in his entry interview that people came and threatened him at home, the 2017 written statement only referred to one incident, that some people asked about the applicant's father's whereabouts around 14 October 2012 with his neighbours. The applicant's father further claimed in his SHEV interview that people also asked about him at a nearby shop in 2012 and again asked the neighbours about him in 2013. Leaving aside his father's failure to have mentioned all four inquiries made about him in his written statement, on his father's evidence since his SHEV application, there was no visit to their home despite one inquiry were made with their neighbours and one inquiry was made with a nearby shop on the same street of their family home in 2012. I find it also lacks credibility that these people would have not visited his family home in 2013, instead of asking the neighbours again about the whereabouts of the applicant's father, several months after they had left Sri Lanka, if they had previously made inquiries with their neighbours and a nearby shop in 2012 and if his father were of interest as claimed.
23. Country information indicates that various Tamil political parties established the TNA in October 2001 to prepare for the December general election. The alliance ran in the election as the Tamil United Liberation Front. In the April 2004 general election, the alliance ran again but as the Sri Lanka Tamil Government Party (Illankai Tamil Arasu Kachchi) (ITAK) and won 22 parliamentary seats in the north and east. It was during the April 2004 election that, the TNA presented itself for the first time as a proxy for the Liberation Tigers of Tamil Eelam (LTTE). However, post war in March 2010, the TNA renounced its longtime goal of an independent Tamil homeland. In the April 2010 parliamentary elections, it placed third with 14 seats in the legislature. As it was reported, in 2010, the TNA was the largest party representing the Tamil community in Parliament and had its majority vote bases in the north and east. The TNA was also reported to have won a large number of seats in the local elections in the north in 2011.⁴ I also take into account country information that the TMVP has been accused of harassing and intimidating suspected former members of the LTTE and supporters of its political rivals including the TNA.⁵
24. Although the applicant's father did not mention in his claims that he had voted for the TNA in the September 2012 election, having regard to that many Tamils had voted for the TNA around that period in the north and east, I am willing to accept that the applicant's father voted for the TNA in the September 2012 election.
25. Neither the applicant nor his father has claimed that his father had any other involvement in politics or with the TNA, apart from the claimed involvement in the September 2012 provincial council election. Neither has the applicant claimed/provided any probative evidence to indicate that his father faced any issue prior to October 2012, despite of having worked as a postman for nearly twenty years by then and a number of elections had taken place in that period. Having considered their overall evidence, I am not satisfied the applicant has provided convincing or satisfactory evidence concerning his father's involvement in the TNA in the 2012 provincial council election or the alleged inquiries made about his father.

⁴ 'LKA103949.E: Sri Lanka: The Tamil National Alliance (TNA)', Canadian IRB: Immigration and Refugee Board of Canada, Immigration and Refugee Board of Canada, 18 January 2012, LKA103949.E

⁵ DFAT, "DFAT Country Information Report - Sri Lanka", 4 November 2019, 20191104135244.

26. Overall, I am not satisfied the applicant has presented a credible or reliable set of claims about his father's involvement/perceived involvement with the TNA in the 2012 provincial election and the claimed adverse attention that his father was subject to following the election. While his father had delivered voting cards as part of his job, I am not satisfied that his father had campaigned for the TNA or had otherwise assisted the TNA in the leading up to the September 2012 provincial election, including allowing TNA members or supporters accompanied him while he was delivering voting cards or that his father had disclosed the names and addresses of the addressees of the voting cards. I am not satisfied that there were inquiries made about his father's whereabouts in 2012, 2013 or any other time.
27. Both the applicant and his father have stated that none of the family members were involved in the LTTE or the politics. While his father claimed that he was once briefly detained among other people following a round up in 1993 when he was visiting a friend in a different area, the evidence before me was also that his father was released after three days. Country information indicates that it was common for the Tamils to be rounded up and detained or questioned on the basis of LTTE imputation during the war.⁶ There is no suggestion nor probative evidence before me to indicate that his father had faced any issue from the authorities in the nearly two decades while he was in Sri Lanka following the incident. I note the applicant's father also stated that he did not have further issues with the Sri Lankan authorities following his release in 1993. Rather his father had been working at the [City] post office for about 19 years before he left Sri Lanka. I understand that his father also worked as a volunteer part-time [for] the [Organisation] involving collecting contributions from local residents and assisting struggling families with [assistance]. There is no suggestion that his father had ever faced any issue because of this role.
28. On the evidence overall, I am not satisfied that the applicant's father was of adverse interest to opposition parties of the TNA, the TMVP, the authorities or anyone else when he departed Sri Lanka in 2012. The applicant left Sri Lanka when he was [a child]. I am not satisfied that the applicant himself was of adverse interest to anyone when he left Sri Lanka. I accept he left Sri Lanka by boat in 2012.

Refugee assessment

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

⁶ Ibid.

- 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. I have considered the applicant's submission that the 2019 DAFT report provides an incomplete and insufficient source of country information and is unduly optimistic and have relied heavily on promises made by the previous Sirisena government. The submission also warns that overreliance on DFAT sources and other government reports can lead to an error in cases where the information is contradicted by other sources. I note that applicant, on the other hand, has sought to rely on some of DFAT's 'concessions' that he considers in support of his claims.
32. I agree that DFAT's report has its limitations, particularly given it does not include more recent country information reported since the current Rajapaksa government took place which was formed after the release of the 2019 DFAT report. I however disagree with the submission that the 2019 DFAT primarily relies on self-reporting by the Sri Lankan government and focuses on the country's formal legal system or that it overlooks reporting by reputable human rights organisations and the UN. It is important to note that DFAT report has been prepared for protection status determination purposes and its assessment is distinct from Australian government policy with respect to Sri Lanka. Neither does the report contain policy guidance for decision makers. DFAT has stated that its report is informed by DFAT's on-the-ground knowledge and discussions with a range of sources in Sri Lanka. It takes into account relevant and credible open source reports, including those produced by: the US Department of State, the UK Home Office, relevant UN agencies, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations High Commissioner for Refugee and the International Organization for Migration; leading human rights organisations such as Human Rights Watch, Amnesty International and Freedom House; Sri Lankan non-governmental organisations; and reputable news organisations. Where DFAT does not refer to a specific source of a report or allegation, this may be to protect the source. I consider it is also evident from the report itself that a wide range of sources have been considered by DFAT.
33. The post interview submissions, while referring to a large amount of more recent country information, also refers to voluminous amount of information I considered quite dated - some were published several years ago and some of the reporting was based on incidents allegedly occurred years ago. In making the assessment below, in addition to the DFAT's report, I have considered a range of different authoritative sources including media reports, some are more recent than the DFAT's report, including those were referred to in the post interview submission and in the primary decision. I have also considered the past AAT and IAA decisions as referred to in the post interview submissions. While the country information referred to in these decisions may be of relevance, I consider the findings by another decision maker in respect of another Tamil visa applicant who might have a very different profile from the applicant has little value to me. I note the post interview submissions seem to suggest that the applicant had previous 'negative interactions with the Plain Clothes Officer'. I am not satisfied this reflects the applicant's claims or circumstances and I consider this has been included in error.

34. Country information indicates that the TNA remains that largest Tamil party, although its share of seats dropped from 16 to 10 in the August 2020 parliamentary elections. DFAT assesses there are no barriers to Tamil political participation. The recent report from the US Department of State also noted there were no reports of restrictions on political parties participating in elections except for those prohibited due to terrorist affiliations. The parliamentary elections in August 2020 were conducted peacefully, with few reported violations, no violence, and public-health guidelines largely adhered to by voters. The post interview submissions disputed DFAT's assessment that Tamils do not receive unwarranted attention from authorities because of their political involvement, including with the TNA. Although DFAT stated that post war, the TMVP has been accused of harassing and intimidating suspected former members of the LTTE and supporters of its political rivals including the TNA, it has also stated that the influence of the TMVP has waned considerably since 2015. Although local sources told DFAT that the TMVP 're-emerged' and was visible in the east following the appointment of Rajapaksa, there were no reports of violence attributed to it. According to local sources, while some Tamils, particularly those with past links to the LTTE, continue to fear the TMVP, it no longer poses a major concern. The independent information before me overall does not indicate that general Tamil voters who voted for the TNA or low level TNA supporters have faced harm from the authorities, the TMVP or anyone else, or were otherwise imputed with an adverse profile. In this respect, I note the attendance of police at a Jaffna TNA office following the August 2020 election appears to be due to an internal party dispute over preferential votes. Other incidents as referred to in the post interview submission also appear to concern some high profile TNA members.⁷
35. Country information indicates that Sri Lanka is a party to the International Convention on the Elimination of All Forms of Racial Discrimination. The constitution provides that 'no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds'. Most Sri Lankans tend to live within their own ethnic communities, although different ethnic groups live within close proximity in major urban areas. For example, Colombo, as Sri Lanka's commercial centre, has roughly equal populations of Sinhalese, Tamils and Muslims. Tamils are the second largest ethnic group in Sri Lanka, comprising 93.8 per cent of the population in the Northern Province- making it less ethnically diverse. The Eastern Province, in contrast, is mixed — at the time of the 2012 census, Tamils were the majority in the east comparing to any other ethnic group, comprising 39.2 per cent of its population (Muslims 36.9 per cent and Sinhalese 23.2 per cent). The Sinhalese and Tamil languages enjoy official status, with Tamil used mostly in the north and east. English is widely spoken.⁸
36. The Sri Lankan civil war started when the LTTE launched an armed insurgency against the Sri Lankan state in 1983, calling for an independent Tamil state. The LTTE established and maintained de facto control of the Tamil-populated areas in the north and east. The 26 year civil war ended in May 2009 when the LTTE surrendered. The civil war is estimated to have claimed 100,000 lives and displaced over 900,000 people. Many Tamils, particularly in the north and east, reported being monitored, harassed, arrested or detained by security forces during the war. While LTTE members and supporters were almost all Tamil, security forces also imputed LTTE support based on ethnicity, and emergency regulations were, at times, applied in a discriminatory manner. Mahinda Rajapaksa's 10-year presidency which saw the defeat of the

⁷ US Department of State, 'Country Reports on Human Rights Practices for 2020 - Sri Lanka', 30 March 2021, 20210401122412; Daily Mirror (Sri Lanka), 'Non-career lawmakers secure political authority', 13 August 2020, 20200813135432; Tamil Guardian, 'Sri Lankan police attack Tamils in Jaffna as frustration mounts over recount', 6 August 2020, 20200807130249; Daily Mirror (Sri Lanka), 'Internal strife within ITAK takes disturbing turn', 29 August 2020, 20200902130420; DFAT, "DFAT Country Information Report - Sri Lanka", 4 November 2019, 20191104135244.

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

LTTE ended following the January 2015 presidential election, when Maithripala Sirisena was elected. Mahinda Rajapaksa's presidency was marked by democratic backsliding and accusations of corruption and human right violations, including war crimes against the Tamils and harassment and arrest of government critics. The Sirisena government were elected in 2015 on a platform of democratic renewal, post-war reconciliation, accountability for war crimes, anti-corruption and economic reform. Ethnic minorities voted in large numbers for Sirisena and Wickremesinghe, though both are Sinhalese. While there had been some progress under the Sirisena government, the overall pace of reform had been slow. Mahinda Rajapaksa's brother, former defence secretary Gotabaya Rajapaksa won a decisive victory in the 16 November 2019 presidential election, though overwhelming majorities of Muslim and Tamil did not vote for him. The August 2020 parliament election consolidated the Rajapaksa family's rule with their party, the Sri Lanka Podujana Peramuna (SLPP) won a landslide victory. Mahinda Rajapaksa was formally sworn in as prime minister- a post he has been holding in a caretake capacity since November 2019.⁹

37. Political observers, human rights critics and bodies have expressed concerns that the human rights improvements and reconciliation process achieved under the Sirisena government could be reversed under the new Rajapaksa government. Despite there is evidence of the government's suppressing dissidents, the country information overall indicates that the situations for Tamils in general in Sri Lanka have significantly improved since the war ended over 12 years ago, have also taking into account issues/concerns raised concerning the current Rajapaksa rule. As considered below, the bulk of the information before me indicates that Tamils, including Tamils from the former LTTE controlled areas in the north and east and returning Tamil asylum seekers are no longer specifically targeted or mistreated because of their Tamil ethnicity, any past low-level involvement/connection with the LTTE or opposition political parties including the TNA or having departed Sri Lanka illegally and sought asylum/spent an extended period in a Western country such as Australia.
38. Concerns have been raised about the government's suppressing dissidents, such as human rights defenders, victims of past abusers, lawyers and journalists, its obstructing accountability for crimes and human rights violations. Concern was raised that the 2020 constitution amendment reverses the gains introduced with the previous government's constitution amendment in 2015 in devolving some of the President's executive powers. Concerns have also been raised relating to the government's transferring responsibilities for large areas of civil administration to the Ministry of Defence, including the government's response to the Covid-19 pandemic, appointing former military personnel to senior government positions. The government has also been criticised for using the Covid-19 pandemic to stifle freedom of expression in 2020. Concerns were also raised by the OHCHR about other trends under the current government, such as the increased use of ethno-nationalistic and majoritarian rhetoric by the president and other senior government figures. The government was also reported to have dropped the singing of the national anthem in Tamil during the Sri Lankan Independence Day celebrations in February 2020, moving away from the previous government who sang the national anthem in both Tamil and Sinhalese as a significant gesture towards reconciliation.¹⁰

⁹ DFAT, "DFAT Country Information Report - Sri Lanka", 4 November 2019, 20191104135244; International Crisis Group (ICG), 'Sri Lanka's Presidential Election Brings Back a Polarising Wartime Figure', 18 November 2019, 20191119144914; Foreign Policy, 'Rajapaksa Rule', 14 August 2020, 20200817165533

¹⁰ Human Rights Watch (HRW), "World Report 2021. Events of 2020", 13 January 2021, 20210114072851; Sri Lanka Campaign for Peace and Justice, "Abandoned Promises? Preserving Human Rights and Pursuing Accountability in Gota's Sri Lanka", February 2020, 20200330123213; OHCHR, "Promotion reconciliation, accountability and human rights in Sri Lanka: Report of the Office of the High Commissioner for Human Rights", 27 January 2021, 20210203162131; OHCHR, "Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka", 18 February 2020, 20200221140652;

39. I note that the government has also promulgated new regulations in March 2021 to set up rehabilitation centres for the de-radicalisation of those holding extremist ideologies. The information before me does not suggest that Tamils or persons with previous LTTE links are being specifically targeted through this.¹¹ Various increased security and intelligence since the Easter Sunday attack appears to in response to the deadly Easter Attack.¹²
40. The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government-imposed island wide curfews in 2020 restricting free movement of persons citing COVID-19 concerns. Although many events proceeded peacefully, there were reports that in some cases, Tamils were barred from commemorating war victims. According to civil society and political leaders, authorities used COVID-19 health guidelines in some instances to prevent opposition political rallies, while progovernment rallies proceeded unhindered. Similarly, police, often acting on interim orders from magistrates, repeatedly tried to obstruct protests organized by the families of the disappeared, political parties and civil society actors, public commemorations, citing COVID-19 regulations.¹³
41. While noting the more recent development and the various concerns raised, on the other hand, I note that the various ministries and bodies set up in addressing the needs of the Tamil minority do not appear to have been taken away. It has been also noted that some progress has been made in promoting reconciliation, such as in the area of returning military occupied land. The OHCHR notes it has continued to provide technical assistances to the Human Right Commission of Sri Lanka (HRCSL) and the Office of Missing persons.¹⁴ The HRCSL, who have jurisdiction to investigate human rights violations, continued to have wide powers and resources and generally operated independent of and with lack of interference from the current government. The HRCSL consists of five commissioners and has divisions for investigations, education, monitoring and review, and administration and finance. The HRCSL accepts complaints from the public and may also self-initiate investigations. After an allegation is proven to the satisfaction of the commission, the HRCSL may recommend financial compensation for victims, refer the case for administrative disciplinary action or to the attorney general for prosecution, or both. If the government does not follow an HRCSL request for evidence, the HRCSL may summon witnesses from the government to explain its action. If the HRCSL finds the government has not complied with its request, the HRCSL may refer the case to the High Court for prosecution for contempt by the Attorney General's Department, an offense punishable by imprisonment or fine.¹⁵
42. Although the government remains sensitive to the potential revive of separatism, the independent information indicates that Tamils are no longer imputed with an adverse profile on the basis of their ethnicity/place of residence alone. The independent information is also that previous membership of /association with the LTTE at low level would not be enough to

UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", May 2020, 20200527172009; INFORM Human Rights Documentation Centre, "Repression of Dissent in Sri Lanka: 1st - 31st May 2020", 29 June 2020, 20200702160949; US Department of State, "Country Reports on Human Rights Practices for 2020 - Sri Lanka", 30 March 2021, 20210401122412; US Department of State, "Country Reports on Human Rights Practices for 2019 - Sri Lanka", 11 March 2020, 20200312151418; see also post interview submissions.

¹¹ Eurasia Review, "Sri Lanka To Set Up Rehabilitation Centers For Extremists – Analysis", 15 March 2021, 20210316115940

¹² DFAT, "DFAT Country Information Report - Sri Lanka", 4 November 2019, 20191104135244.

¹³ Ibid.

¹⁴ OHCHR, "Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka", 18 February 2020, 20200221140652; OHCHR, "Promotion reconciliation, accountability and human rights in Sri Lanka: Report of the Office of the High Commissioner for Human Rights", 27 January 2021, 20210203162131

¹⁵ US Department of State, "Country Reports on Human Rights Practices for 2020 - Sri Lanka", 30 March 2021, 20210401122412

make someone of interest and that police interest, with the exception to some former prominent members of the LTTE, or those who are suspected of raising funds during the war. Rather, the government's objective has shifted to identify those activists who promote Tamil separatism or have expressed anti-government views. A number of arrests reported in 2021 appear to have directed at persons with such profiles, such as the mayor of Jaffna, Tamil journalists and the two Tamils who were accused of promoting terrorism on YouTube.¹⁶

43. The Prevention of Terrorism Act (PTA), which was used during the conflict and its aftermath mainly to target those suspected of involvement with the LTTE, has not been abolished although its use has been very limited in the last few years and most recent arrests made under it were relating to the Easter Sunday attack in 2019. Human rights groups reported at least 22 PTA arrests unrelated to the Easter Sunday attack in 2020, including the arrest of critics of the government's COVID-19 responses. Although the authorities alleged the arrests of a prominent lawyer Hijaz Hizbullah and others were due to their connections to the Easter Sunday attack, human rights lawyers claimed no credible evidence had been presented to link Hizbullah to the attack. The arrest of a Tamil poet and teacher A Jazeem under the PTA in 2020 was said to be due to allegation of having published or promoted extremist content.¹⁷
44. Sri Lankan Constitution and several other laws specifically prohibit torture. Torture is an offence punishable by imprisonment of between seven and 10 years. I note there is continuing reporting of incidence of torture, which has not been totally eradicated. I however consider the chance or risk of torture to ordinary Sri Lankan Tamils is very remote, though prisoners and arrestees may be subject to mistreatment that can amount to torture, mainly due to excessive use of force by police. I give considerable weight to the DFAT's assessment that that Sri Lankans face a low risk of torture overall. It also 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. I note in reaching its assessment, DFAT, has thoroughly considered the claims of torture as identified by several local and international organisations and from local sources, including UN human rights bodies, the International Truth and Justice Project (ITJP), the Freedom from Torture and the Associated Press. DFAT notes the HRCSL received about 400 complaints of mistreatment and torture annually. The recent report from the US Department of States notes that the HRCSL documented about 300 complaints of physical and mental torture from January to August in 2020. In response allegations of torture, the HRCSL carried out routine visits of detention centres.¹⁸

¹⁶ UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928; UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", May 2020, 20200527172009; 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; US Department of State, "Country Reports on Human Rights Practices for 2019 - Sri Lanka", 11 March 2020, 20200312151418; Tamil Guardian, Tamil Guardian Sri Lankan TID arrest two Tamil YouTubers for 'promoting terrorism', 31 March 2021; Mondaq, The continuing Tamil genocide in Sri Lanka: An interview with TRC spokesperson Charanja Thavendran - Government, Public Sector - Sri Lanka (mondaq.com), 17 May 2021; The Diplomat, 'Post-War Sri Lanka: Fractured and Unjust for Tamils', 15 May 2021.

¹⁷ DFAT, "Country Information Report - Sri Lanka", 4 November 2019, 20191104135244; OHCHR, "Promotion reconciliation, accountability and human rights in Sri Lanka: Report of the Office of the High Commissioner for Human Rights", 27 January 2021, 20210203162131; US Department of State, "Country Reports on Human Rights Practices for 2020 - Sri Lanka", 30 March 2021, 20210401122412; Human Rights Watch Sri Lanka: 'Joint Statement Calls for Immediate Release of Poet Detained for a Year Without Charge' (hrw.org), 16 May 2021; Tamil Guardian, 'Sri Lanka continues detention of Muslim poet', 30 April 2021

¹⁸ DFAT, "Country Information Report - Sri Lanka", 4 November 2019, 20191104135244; OHCHR, "Promotion reconciliation, accountability and human rights in Sri Lanka: Report of the Office of the High Commissioner for Human Rights", 27 January 2021, 20210203162131; US Department of State, "Country Reports on Human Rights Practices for 2020 - Sri Lanka", 30 March 2021, 20210401122412; US Department of State, "Country Reports on Human Rights Practices for 2019 - Sri Lanka", 11 March 2020, 20200312151418

45. DFAT indicated that while the authorities may monitor members of the Tamil diaspora returning to Sri Lanka, depending on their risk profile, returnees who likely draw adverse interest from the authorities on return including at the airport are those who are on the watchlist, those found to have committed or have outstanding criminal offences, Tamil activists, in particular prominent activist or former LTTE members, or whose holding leadership positions in Tamil diaspora groups, particularly groups deemed by the Sri Lankan Government to hold radical views. Some returnees, including returnees in the north and east with suspected LTTE links, had been the subject of monitoring by the authorities, involving visits to returnees' homes and telephone calls by the Criminal Investigation Department (CID). It however considered that most returnees, including failed asylum seekers, were not actively monitored on an ongoing basis. Some Tamil returnees in the north had told DFAT they had not experienced harassment by the authorities or received monitoring visits. Sources interviewed by the UK fact finding team indicate that seeking asylum is not considered as an offence, though returning asylum seekers may be subject to a further check at home after leaving the airport or be monitored although the length of time may vary. Persons who are active in a proscribed group is likely to be of interest. It does not indicate that returning asylum seekers are subject to mistreatment if being monitored. I note, recently, the government issued a gazette announcing the proscription of hundreds of Tamils and several diaspora organisations.¹⁹
46. The previous government had consistently stated refugees were welcome to return to Sri Lanka.²⁰ There is no information before me to indicate this position has changed under the current government. Many Tamils were known to have returned to Sri Lanka from Australia, the US, the UK and other European countries. 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.²¹
47. I have had regard to the information referred to in the post interview submission concerning alleged detention of returning asylum seekers, including allegations made/reported by the Tamil Refugee Council, the Associate Press and the ITJP. I note some of the allegations of torture documented by the ITJP, the Freedom of House and the Associated Press were referred to in the DFAT report as discussed above. The independent information, particularly more recent information before me does not indicate that Tamil returning asylum seekers who do not have a profile of adverse interest to the authorities are imputed with an adverse profile for reasons of having sought asylum or are otherwise subject to harassment, arrest, prosecution or mistreatment just because they have sought asylum.
48. On the country information before me overall, I acknowledge that issues of human rights abuse remain to be of significant concern in Sri Lanka. However, I consider the bulk of the more recent country information, including those referred to in the post interview submission, does not support that Tamils and Tamil returnees who have sought asylum abroad in Australia or having an extend period time in Australia, who do not have a particular adverse profile otherwise, are specifically targeted or face mistreatment under the current government. The country information overall indicates that under the current Rajapaksa government, persons of Tamil ethnicity and those with past membership or connection to the LTTE at a low level do not

¹⁹ DFAT, "Country Information Report – Sri Lanka", 4 November 2019, 20191104135244; UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928; UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", May 2020, 20200527172009; Tamil Guardian, "Tamil organisations speak out against Sri Lanka's ban", 4 April 2021, 20210406172318.

²⁰ DFAT, "DFAT Country Information Report - Sri Lanka", 4 November 2019, 20191104135244

²¹ Ibid.

face a real chance of harm, with the exception of only very limited groups of persons, who may be of adverse interest to the Sri Lanka authorities. They include those who have, or are perceived to have had, a significant role in the LTTE in the past or are considered to have engaged in post conflict separatist activities or those who are otherwise viewed as activists, dissidents or critics.

49. The reports from the US Department of State continues to note that Tamils maintained they suffered longstanding, systematic discrimination in university education, government employment, housing, health services, access to justice.²² DFAT also noted that some members of the Tamil community reported discrimination in employment, particularly in relation to government jobs.²³ Against this, multiple authoritative and credible sources expressed views otherwise. DFAT assesses there is no official discrimination on the basis of ethnicity in public sector employment. DFAT further assessed that non-Muslim Sri Lankans, including Tamils, faced a 'low risk' of official or societal discrimination based on ethnicity or caste, including in their ability to access education, employment or housing. DFAT reported that there was no official discrimination on the basis of ethnicity in public sector employment. Rather, Tamil's under representation was largely the result of language constraints and disrupted education because of the war.²⁴ Multiple credible sources including the TNA, have advised that Tamils were not specifically targeted and did not suffer persecution just for being a Tamil. Although the UNHCR's representative told the UK fact finding team that that there had been historical discrimination against Tamils which did not disappear overnight and that there could still be individuals who would be subjected to surveillance and discrimination, it did not suggest that the majority Tamils with no profile of concern were subject to official or societal discrimination.²⁵ The applicant has not indicated any members of his family in Sri Lanka are facing official or societal discrimination due to their Tamil ethnicity. His evidence is also that there are many Tamils in the area where his family reside.
50. The applicant, a Tamil from Eastern Province, left Sri Lanka as a young boy. He was not of adverse interest to anyone when he left Sri Lanka in 2012. There is no indication that the applicant has involved in any activities since he left Sri Lanka that would bring him to the adverse attention to the Sri Lankan authorities, any political parties or anyone else.
51. It is also of note that, apart from that his father was briefly detained in 1993 without further issue occurring to his father because of this incident, the applicant has not indicated anything has happened to his immediate or extended family members. None of his family members including his father had any actual involvement in the LTTE. There is no indication nor probative evidence to suggest that his father or other extended family members had faced problems on LTTE suspicion towards the end of the conflict and in the immediate aftermath, when many Tamils were questioned, monitored or detained for possible LTTE activities or anti-government sentiment in that period.²⁶ The applicant's mother and younger brother has continued to live in the same family residence in [City] since the applicant and his father left Sri Lanka in 2012. There is no probative evidence before me to indicates members of the applicant's family has faced discrimination in recent times due to their Tamil ethnicity. I note

²² US Department of State, "Country Reports on Human Rights Practices for 2019 - Sri Lanka", 11 March 2020, 20200312151418; US Department of State, "Country Reports on Human Rights Practices for 2020 - Sri Lanka", 30 March 2021, 20210401122412; Freedom House, "Freedom in the World 2021 - Sri Lanka", 3 March 2021, 20210304102827.

²³ DFAT, "DFAT Country Information Report - Sri Lanka", 4 November 2019, 20191104135244

²⁴ Ibid.

²⁵ UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928; UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", May 2020, 20200527172009; DFAT, "DFAT Country Information Report - Sri Lanka", 4 November 2019, 20191104135244.

²⁶ DFAT, "DFAT Country Information Report - Sri Lanka", 4 November 2019, 20191104135244

the applicant has not indicated to have faced harm in the past or claimed to fear harm due to his Hindu religion. I reject the submission that nothing has happened to his younger brother due to his father's profile was because his brother was still a child (who has just turned 16) and once his brother becomes an adult there is a real possibility that he will face issues, which I consider is pure assertion and not supported by the information before me. I have not accepted that people inquired his father's whereabouts in 2012 or 2013 or any other time. The applicant has not provided probative evidence that his family in Sri Lanka has been visited by authorities in the last eight years since they have been in Australia. The information also does not support that his father's voting for the TNA in the 2012 election would now impute the applicant with an adverse profile to the authorities, the TMVP or anyone else.

52. I accept that the applicant will be returning to Sri Lanka as an adult. However, as further discussed below, I consider the country information overall before me does not support, with the applicant's profile, also taking into account his illegal departure from Sri Lanka and having sought asylum in Australia, there is a real chance he would be imputed with an adverse profile, if he were to return to Sri Lanka. I am not satisfied that the applicant has a profile of concern to the authorities and would be regarded as such. I consider that the chance that the applicant would be imputed with an adverse profile is very remote. I am not satisfied there is a real chance that the applicant would face monitoring on returning to Sri Lanka. Even accepting that applicant may face a home visit/monitoring on return as a returning asylum seeker, with his profile I am not satisfied it will be for any prolonged period or that it amounts to serious harm or would lead to a real chance of any other harm.
53. I have not accepted the applicant's father was otherwise involved in the TNA or politics apart from that he perhaps had voted for the TNA as a general Tamil voter in 2012. I have not accepted that the applicant's father came to the adverse interest of anyone or that inquirers or anyone had made inquiries about his father in 2012 while he was in Sri Lanka or after had left Sri Lanka, despite he might have voted for the TNA. I am not satisfied that the applicant faces a real chance of harm owing to his imputed profile because of his father.
54. Country information²⁷ is that entry and exit from Sri Lanka is governed by the Immigrants and Emigrants Act (I&E Act). According to DFAT, all returnees to Sri Lanka were processed at the airport on arrival by various governmental agencies (including the Department of Immigration and Emigration, the State Intelligence Service, the CID and, at times, the Terrorism Investigation Division), who checked travel documents and identity information against the immigration databases, intelligence databases and records of outstanding criminal matters. Processing of returnees at the airport can take several hours, due to the administrative processes, interview lengths and staffing constraints. Returnees were processed in groups, and individuals cannot exit the airport until all returnees have been processed, although returnees were free to go to the bathroom and to talk to one another during this time. For returnees travelling on temporary travel documents, police undertook an investigative process to confirm identity. This would identify someone trying to conceal a criminal or terrorist background, or trying to avoid court orders or arrest warrants. This often involves interviewing the returning passenger, contacting police in their claimed hometown, contacting claimed neighbours and family, and checking criminal and court records. DFAT understands detainees are not subject to mistreatment during processing at the airport. The UK Home Office's report also indicates there is no mistreatment of returnees during arrivals process, regardless their ethnicity or religion. There is an absence of recent country information to indicate that ordinary returning

²⁷ DAFT, "DFAT Country Information Report - Sri Lanka", 4 November 2019, 20191104135244; UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", May 2020, 20200527172009.

Tamil asylum seekers are being mistreated during the process on arrival. It is submitted that COVID-19 'may be used as a false justification for extended detention' for returned asylum seekers. However, there is no probative evidence before me to support this assertion.

55. Country information is also that if returnees are suspected of illegal departure from Sri Lanka, they can be charged under the I&E Act. DFAT reported that the Police Airport Criminal Investigations Unit at Bandaranaike International Airport makes most arrests. In the process, police will take photographs, fingerprints and statements from returnees, and further enquire about activities while abroad if returnees are suspected to be former LTTE members. At the earliest available opportunity after investigations are completed, police transport individuals charged with departing Sri Lanka illegally to the closest Magistrate's Court, after which custody and responsibility for the individual shifts to the courts or prison services. The magistrate then makes a determination on next steps for each individual; facilitators or organisers of people smuggling ventures, including the captain and crew of the boat, are usually held in custody. Apprehended individuals can remain in police custody at the CID's Airport Office for up to 24 hours after arrival. Should a magistrate not be available before this time (for example, because of a weekend or public holiday), those charged may be detained for up to two days in an airport holding cell. DFAT was not aware of mistreatment of returnees during this process.²⁸ The UK Upper Tribunal also found that if a person is detained by the Sri Lankan security services there remains a real risk of ill treatment or harm requiring international protection.²⁹ The recent report of the US Department of State notes that interviews conducted by human rights organizations found that torture and excessive use of force by police, particularly to extract confessions, remained endemic. The HRCSL noted that many reports of torture referred to police officers allegedly "roughing up" suspects to extract a confession or otherwise elicit evidence to use against the accused.³⁰ However, there is an overall lack of recent independent information to support that returning Tamil illegal departees face mistreatment during this process on arrival, including during the brief period of detention at the airport holding cell.
56. Penalties for leaving Sri Lanka illegally can include imprisonment of up to five years and a fine. Sri Lankan authorities differentiate between fare-paying passengers and the facilitators or organisers of irregular migration. Unlike facilitators or organisers, fare-paying passengers are usually released on bail and generally receive only a fine for breaking the I&E Act, as a way of deterring future illegal departures. Bail conditions are discretionary. The Attorney-General's Department claims no mere passenger on a people smuggling venture has been given a custodial sentence for departing Sri Lanka illegally. A guilty plea will attract a fine, which can be paid by instalment, and the defendant is free to go. Fines vary from LKR 3,000 (approximately AUD 25) to LKR 200,000 (approximately AUD 1,633). Well-placed sources told DFAT this fine is usually between LKR15,000 and LKR20,000 (approximately AUD122 and AUD163). Where a passenger returnee pleads not guilty, the magistrate will usually grant bail on the basis of personal surety or guarantee by a family member. Where a guarantor is required, returnees may need to wait for the guarantor to come to court.³¹
57. The applicant left Sri Lanka by boat 2012. I accept he may be charged with an offence under the I&E Act for departing Sri Lanka illegally. Unlike facilitators or organisers, fare-paying passengers are usually released on bail and generally receive only a fine for breaking the I&E Act, as a way of deterring future illegal departures. The country information is that the applicant would be free to go if he pleads guilty subject to a fine imposed in the range noted as

²⁸ DFAT, "DFAT Country Information Report - Sri Lanka", 4 November 2019, 20191104135244.

²⁹ UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", May 2020, 20200527172009.

³⁰ US Department of State, "Country Reports on Human Rights Practices for 2020 - Sri Lanka", 30 March 2021, 20210401122412.

³¹ DFAT, "DFAT Country Information Report - Sri Lanka", 4 November 2019, 20191104135244.

above which can be paid by instalment. The applicant has not indicated that he would plead not guilty instead of pleading guilty. Neither the applicant has provided probative evidence to support that a bail would not be granted in his case, noting the country information is that that the magistrate will usually grant bail on the basis of personal surety or guarantee by a family member if a person pleads not guilty. On the evidence provided and the country information before me, I am not satisfied there is a real chance the applicant would not be able to secure bail. I am not satisfied that he would be subject to a custodial sentence for departing Sri Lanka illegally.

58. In any event, the country information does not support that the I&E Act is discriminatory on its face or that it is applied or enforced in a discriminatory manner. I am not satisfied that the questioning, temporary detention, imposition of a fine, possible associated costs and any other treatment the applicant may experience as a result of his illegal departure would constitute persecution.
59. DFAT noted that refugees and failed asylum seekers faced practical challenges to successful return to Sri Lanka including difficulty in finding suitable employment and reliable housing on return and that failed asylum seekers received limited reintegration assistance. Despite the challenges they may face, some Tamils who had failed to secure asylum in Australia and since returned to the Northern Province told DFAT they were able to reintegrate into their communities and find employment. DFAT noted that some returning failed asylum seekers reported social stigma from their communities including for being beneficiaries of financial reintegration assistance but understands that societal discrimination was not a major concern for returnees, including failed asylum seekers.³²
60. I understand that the applicant came to Australia when he was [a child] and he is now [Age]. He has spent some of his formative years in Australia. I understand he has a job and a fiancée in Australia. He may have used to the lifestyle in Australia. I accept his knowledge about Sri Lanka may be limited and he did not have work experience in Sri Lanka. On the other hand, the applicant has been working in Australia for a number of years and also holds a [specialised] driving licence. He has his mother and a younger brother in Sri Lanka who are residing in the same family home in [City]. I accept that the applicant may face practical challenges upon return. I am not satisfied that there is a real chance that he would be prevented from obtaining employment, accommodation and integrating. I am not satisfied that there is a real chance the applicant's capacity to subsist will be threatened. I am not satisfied that the applicant faces a real chance of serious harm due to any practical challenges, including social stigma, if any, of resettling in Sri Lanka. I am further not satisfied any potential separation from his fiancée if he were forced to return to Sri Lanka is persecution, as it does not involve serious harm nor involve systematic and discriminatory conduct, for the purposes of the Act.
61. Overall, I am not satisfied the applicant has a well-founded fear of persecution for any of the reasons claimed, if he were to return to Sri Lanka now or in the reasonably foreseeable future.

Refugee: conclusion

62. 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).

³² Ibid.

Complementary protection assessment

63. 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

64. 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.

65. 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.

66. I am willing to accept that the applicant, may face some practical challenges in resettling and possibly a home visit/brief period of monitoring or social stigma if any, as noted above, and/or possible separation from his fiancée, I am however not satisfied that the treatment or challenge would amount to or lead to significant harm. I am not satisfied that it amounts to death penalty, arbitrary deprivation of life or torture. I am also not satisfied that it amounts to pain or suffering that could be reasonably regarded as cruel or inhuman in nature, severe pain or suffering, or extreme humiliation for the purpose of the definition of cruel or inhuman treatment or punishment or degrading treatment or punishment.

67. I am also not satisfied the treatment and penalties the applicant may face as someone who left Sri Lanka unlawfully amounts to significant harm as defined. I am not satisfied the applicant faces a real risk of the death penalty, arbitrary deprivation of life or torture as defined in the Act. I am also not satisfied, having regard to the country information that such treatment would involve an intention to inflict severe pain or suffering, pain or suffering that could be reasonably regarded as cruel or inhuman in nature, or an intention to cause extreme humiliation for the purposes of the definition of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment. Nor am I satisfied that this treatment, when combined with the treatment that he may otherwise face amounts to significant harm.

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

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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