



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA21/09968

Date and time of decision: 5 November 2021 17:19:00
M Tubridy, 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 applicant claims to be a national of Sri Lanka. On 9 May 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). On 23 September 2021 a delegate of the Minister (the delegate) refused to grant the visa. On 28 September 2021 the matter was referred to the IAA.

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). No further information has been obtained or received.

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - He is a national of Sri Lanka who resided from birth in Puttalam District in Sri Lanka's North Western Province.
 - His Tamil family experienced persecution from the Sinhalese community who they lived among for reason of their being Tamil and being thus perceived as LTTE supporters.
 - He fears that the harassment and abuse from the community and the authorities would be worse, and life threatening, if he were to return to his community and they became aware that he had travelled to Australia to escape.
 - He fears that he may be killed or suffer harassment and physical assault from the Sinhalese community, and he also fears such harm, and also being detained and severely questioned, by the Sri Lankan authorities.

Refugee assessment

4. 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

5. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct

- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
6. [In] November 2012 the applicant arrived in Australia as an unauthorised maritime arrival. On 4 February 2013 he participated in an Irregular Maritime Arrival (IMA) Entry Interview (hereafter the 2013 interview) at [named] immigration detention centre (IDC). He indicated that he was a citizen of Sri Lanka who was born on [Date 1] in [Division 1], in [Town 1]. He said that he had departed Sri Lanka [in] November 2012, and that he had lived in in Puttalam District's [Village 1] in [Division 1] since he was around [Age] years of age (that is, from around 1992), and prior to this he had been living (since his birth) in [Village 2] (also in Puttalam District's [Division 1]), and this was where he went to school. Asked if he had lived anywhere else, he said he had not but that his parents had. Asked if he had any documents with which he could prove his identity, he indicated that he did bring some documents which were being held in the IDC's property facility, and this included his national identity card (NIC), and a copy of his passport, and his marriage certificate and birth certificate, and some work documents. Asked if he had provided copies of these to the Department yet (by way of his Departmental case manager) he said he had not. He was given instructions on how to do this, and he indicated that he would.
7. Asked for his highest level of schooling he said that from the age of five he did [number] years of school at [Village 2] Government School in [Division 1], but he did not sit the exam. After this (that is, from around 1992) he was employed for a year by a man named [Mr A] in [Village 3] as [an Occupation 1]. He was then employed for two years by a [Mr B] in [Occupation 2] work. He said that between jobs he did some work [in Occupation 3] for a [Mr C]. After this he did a six month of [training] in [Town 2]. He was then employed for four years (that is, until around 2000) doing [Occupation 1], and also [other tasks for] a company which was engaged in [Industry 1]. The company folded (in around 2000), and he got some compensation for this and used this to purchase some equipment to do [Occupation 1], and this was the work he did until he left Sri Lanka. He said he had been given a government grant of land, but this land could not be used for business, and so he had had his shop at his aunt's house in [Village 1]. Asked for his religion he said that he was Roman Catholic. Asked for his ethnic group he said he was Tamil. Asked for his preferred language he said that he studied Sinhalese but he liked to talk in English, and he could speak a little English. Asked if he understood English well enough that he had understood the interviewer's questions in English, the applicant replied (in English) that he could. Asked if he could speak any other languages, he said he could not. Asked if he was married, he responded (without waiting for the question to be interpreted into Sinhalese) that he had. Asked for the date of his marriage he said this was [Date 2].
8. The applicant presented his wife's name, and the interviewer questioned how the name had been presented. The interpreter explained that this was the normal convention for Sinhalese names, and the applicant agreed with what the interpreter had said in this regard, and that his wife was Sinhalese. The applicant said he had a son who was born on [Date 3], and a daughter who was born on [Date 4]. He said that his mother was also living with his family, and that his father was a Sri Lankan Tamil who had died about nine years ago and his death was caused by nerves because he was worried about their safety because they were Tamil and living in a Sinhalese area. The applicant said he had had a lot of problems and had been

physically assaulted. The interviewer responded that they would discuss this later. The interviewer then asked further questions about the applicant's family composition, and the applicant said that his mother worked as [an Occupation 4] at [a business]. He said that his mother had started this work after he came to Australia because they had had some difficulties, and he had had a three-wheeler but had had to sell this to get the money for his travel, and his kids were little and going to school and so he could not have his wife working at this time. Asked about his siblings he said he had two older sisters, and two older brothers, all living in [Village 1] but in houses different to his own. He said that he had had a younger brother who had died at a young age from eating some nuts and other food to which he had had a reaction.

9. Asked if he had contacted his family to tell them he was safe, he said he had and spoke with them every day. Asked if any family had travelled with him on the boat (which brought him to Australia) he said that one of his wife's aunt's children, a [Mr D] who was Sinhalese, had arrived with him but had been sent back to Sri Lanka. The applicant added to this that there were about 3,000 to 4,000 Sinhalese families and only three Tamil families in the village he was living in.
10. Asked to explain in a few sentences why he had left Sri Lanka, he said that he had had great difficulties because he was living in a Sinhalese dominated area. Asked what difficulties he had, he said that because they were Tamil they had difficulties, and because of the war they were always commenting and remarking and making life difficult, and his [body parts] were cut, and he had been attacked many times. Asked who cut his [body parts], he said it was another person in the village because he was friendly with a Sinhalese girl. Asked what happened in 2012 that made him leave, he said that day-to-day life was frustrating and he felt persecuted and he could not put his children through school, and they could not go to a Tamil area to live because they could not speak Tamil. Asked why he could not put his children in school, he said the school did not take much note of whatever they said, and there was no support for the Tamil people in the Sinhalese area.
11. Asked if he was ever arrested or detained by the police, or a security organisation, he said that he was about three or four times. Asked why this had occurred, he said that during the war any time there was a bomb blast or a disruption they would come and get any Tamil persons in his area for questioning, and they would be taken away by the army and questioned. Asked when the last instance of this he said he was not really sure, but it happened about three or four times. Asked what happened when he was taken, he said he was questioned for a few hours in a row and was not allowed to eat or drink during this time, and it was basic questions like have other Tamil persons visited him and he must not lie because these persons could have used his place as a place of gathering. He said that after being questioned at length, they would be kept until late at night and then allowed to go. Asked what the longest was he was kept, he said that it was just for the day and you were kept all day. Asked if he was ever charged, he said he had never been charged because they had always lived without any problems but, because they were Tamil, they had always made them feel threatened. He said he had relatives and friends on his father's side but, because of these problems, they had told them never to visit their house.
12. Asked if the police and security or intelligence organisations impacted on his day to day life, he said not directly, but if something happened to them the Sinhalese person's word would be taken against theirs and they could not even make a complaint. He said that there was a time his sister was gang raped and the child was given to a white family and the nuns in the area, and it was just going always, and they were being persecuted in this area. Asked if there

were any armed groups operating in his area, he said that there were not and because of all the problems in his area he would stay at home after 6pm.

13. Asked if there was anyone on the boat who had been violent, he said that there was nothing like that, but something had happened. He said that the mudalali (the Sinhalese word for “trader”; used in this instance to refer to the businessman who organised the smuggling operation) had organised for a Sinhalese person to come on the boat to help the skipper but this person had not come, and the skipper mistook the applicant for this person, and skipper told the applicant to help on the boat. The applicant said he told the skipper he did not know boat work and he only knew [Occupation 1], but the skipper said the applicant must do the work he was told to or he would not be fed. The applicant said that while he was travelling here, he was constantly throwing up and the skipper did not feed him properly and ill-treated him. Asked what the skipper asked him to do, the applicant said that the skipper asked him to cook, and he told the skipper he did not come to work on the boat and he had paid for his travel like everyone else, and so the skipper was ill-treating him and they were in conflict because the skipper was under the impression the applicant had been put on the boat to work, and the skipper had said he was going to do something really good to the applicant when they got there, and when they reached [Location 1] the skipper had told the Australian authorities he (the applicant) was part of the crew, and when he (the applicant) reached [Location 2] the (Australian) police asked him if he was part of the crew, and he had he was not and that he did not know the boat business and only did [Occupation 1]. Asked who the crew were, he said that there were three of these, and they were Sinhalese, and he listed their names.
14. Asked when he began making his arrangements to travel to Australia, he said that this had occurred in around October (2012). He said he had been doing some work on a roof in an area called [Village 3], and he had heard talking about this and when he heard this he remembered all the problems he had had and so he thought he would make some enquiries, and so he approached someone in this village of [Village 3] and they would not tell him the details of who was organising this but they told him it would cost about 5 lakhs (LKR500,000 or around AUD3,000). He said that a few days later a friend who he had met while doing [Occupation 3], a [Mr E] who lived in [Village 3], had told him that if he met a [Mr F] he would be able to help, and [Mr E] had taken him (the applicant) to meet [Mr F], and [Mr F] told him (the applicant) the travel would cost 5 lakhs and had introduced him to the mudalali. When the interviewer returned to the matter of his treatment on the boat, the applicant said that after 5 minutes at sea he was throwing up and he was told to go to the back of the boat, which he did. Asked if he did any work on the boat, he said that he did not and that he was so ill he could even stand up, and he told the skipper he was a paying passenger and was not going to work, and he did not know how to cook, and after this when everyone was fed he was always fed last. He said that someone else who was a paying passenger helped with the cooking.
15. The applicant was asked why he had lived in a Sinhalese area. The applicant said that his mother was from Colombo, and his father was from the tea estates of Nuwara Eliya (a district in the hill country of Sri Lanka’s Central Province) and had come to Colombo on some matters where he met the applicant’s mother, but the two families did not like their friendship and so they eloped and came to Colombo, and then travelled to the north because they spoke Tamil, and they lived in those areas but because of the war they left that area and came to Puttalam. The applicant said they had been to the church and his father spoke very good English and so his father was appointed to oversee the church and they were not paid anything but had a place to live, but the whole community was Sinhalese and so they went to Sinhalese schools. Asked why he chose to travel to Australia, he said he had wanted to get

away from his difficulties and he got his passport because he wanted to get away from these difficulties, and had had it issued as "Added All Countries" so that he could go anywhere, and he had made plans to go towards [country] but they just took all his money and disappeared. Asked what he thought would happen to him if he went back to Sri Lanka, he said that he had given his statement about what had happened to him in Sri Lanka, and it would not be good for him if they knew he had come to Australia and had done this. Asked if there was anything he had not been asked about that he would like to say, he said that he did not have a question but his worry was that the Australian police had told him the penalty for being part of the boat crew was 10 years imprisonment. He said that he came to Australia to get away from the problems Sinhalese people caused him, and now Sinhalese people were causing him problems here.

16. I note, with regard to the above, that within the review material is a copy of the Department's written record of the above 2013 interview which has been stamped as having been released by the Department under the *Freedom of Information Act 1982*.
17. On 3 May 2016, and again on 3 June 2016, the Department mailed the applicant at an address in South Australia informing him that the Minister had exercised the power under subsection 46A(2) of the Act to allow the applicant to make a valid application for a Temporary Protection visa (TPV) or a Safe Haven Enterprise visa (SHEV). The applicant was encouraged to apply within 28 days but was also informed that if he required more time, he could take up to 60 days from the date of the letter. He was also informed that if he did not submit a complete application there could be delays in processing his application. He was instructed that he should give details of his protection claims and provide evidence to support his claims, or an explanation for why he was unable to provide such evidence. He was also told that it was important that he tell the Department about any changes to his circumstances, including any changes to his contact details, as soon as possible and that he was required to do so in writing.
18. On 6 September 2016 the Department mailed the applicant another copy of the above invitation to apply for a TPV or a SHEV, this time to an address in [Suburb 1] NSW. Again, the applicant was encouraged to apply within 28 days but was also informed that if he required more time, he could take up to 60 days from the date of the letter (that is, by 5 November 2016). Some 245 days later, on 9 May 2017, the applicant lodged his SHEV application with the assistance of a legal practitioner (hereafter [Migration Firm]). In his SHEV application, the applicant indicated that in May 2016 he had moved from South Australia an address in [Suburb 1] NSW.
19. In his SHEV application, the applicant submitted that he was born on [Date 1] in [Town 1] and that he had resided in [Village 1], and he was an ethnic Tamil and a Roman Catholic, and he had married his wife on [Date 2] and that she originated from [Village 1] and she continued to reside there with his son and daughter, and that he was calling his family almost every day. He indicated that he could speak, read and write in Sinhalese but he gave no indication his ability to speak and understand English. He indicated that his father was born in Nuwara Eliya, and his mother in [Suburb 2] (a suburb of Colombo), and that his elder siblings had all been born in Jaffna (the most northern district in Sri Lanka) between 1965 and 1971. Unlike at his 2013 interview (where he indicated that following his birth he lived with his family in [Village 2] before moving to [Village 1]) the applicant now submitted that he had resided at the [Village 1] address from birth until his departure from Sri Lanka. In giving details about his employment history in Sri Lanka he indicated only that he had had casual employment from 1993 to 2001 in [Occupation 1] and [other work] and [Occupation 3], and that from 2001 to 2012 he was self-employed as [an Occupation 1] (he made no mention of the different

persons or the [Industry 1] company which had employed him, or that his [Occupation 1] business operated from his aunt's home).

20. In response to questions about his reasons for claiming protection, the applicant responded that he feared being persecuted and killed because of his Tamil race. As per his 2013 evidence, he submitted that his mother was from Colombo and his father was from Nuwara Eliya and had worked in a tea factory and would travel to Colombo where he met the applicant's mother, and they travelled to the northern area of Sri Lanka to live because they spoke Tamil. As the war began to affect their lives, they returned to the Puttalam district, and his father began to [work] for a friend of priest of the local church. The church was in a Sinhalese community, and the applicant went to Sinhalese schools. Because they lived in the Sinhalese community as a Tamil family they experienced great persecution from many large groups in the community, and his father became significantly concerned for our safety and wellbeing, and the applicant believes this may have contributed to his father's death.
21. The applicant claimed that a time when the Sinhalese community had a negative impact on his family was when his sister was sexually assaulted by a number of Sinhalese, and she fell pregnant and the child was given to a different family to be cared for. The police and security organisations were dismissive of their claims against Sinhalese people but if a person from that community lodged a complaint (to the police or a security organisation) their word was always treated to be less true than that of a Sinhalese person. Once the Sinhala people cut his [body parts] and interrogated him because he had had a love affair with a Sinhalese girl.
22. The applicant claimed that he experienced increased difficulty as he continued to live in the Sinhalese area, and he and his family were often approached and attacked by people within this community, and his day-to-day was impacted and he felt constantly persecuted, and as a result his children could not attend school. Because he was Tamil the Sinhalese community thought he supported the LTTE for some time, and frowned upon this, and much of their abuse resulted from this. In 2009 (when the LTTE leader Prabhakaran was killed by the Sri Lankan Armed forces) the applicant's house came under attack and they ran away to save their lives. During the war there would occasionally be explosions and other similar disruptions and when this occurred the police and army would take all the Tamil people in the area for questioning, and this occurred to him on four occasions, and he was not allowed to eat or drink, and the questioning would last far into the night, and the police and army personnel battered him until he fainted with injuries. His father's family would ask to visit them, but he would always have to tell them not to because of the fear that if they did so they would be severely questioned or targeted by the authorities.
23. Because of such harassment he illegally changed his children's birth certificates so that these indicated his children were Sinhalese rather than Tamil. He now realises this was a punishable offence. The applicant claimed he and his family had been unable to relocate to a Tamil area, and that it would be very difficult for his family to move to a different area because the Tamil language is so different from Sinhalese, and he would be forced to integrate his family into a very new life and language. It would not be possible for him to find another part of the country to live in, and earn a living, while actively assimilating a new culture.
24. The applicant claimed that he and his family had approached the police to make numerous complaints but the police have not taken any action against the perpetrators, and in all circumstances their claims have been dismissed. He has become increasingly concerned about the way his family has been treated, and is currently being treated, by the Sinhalese community. He fears that the harassment and abuse from the community and the authorities

would be worse, and life threatening, if he were to return to his community and they became aware that he had travelled to Australia to escape.

25. Attached to the SHEV application is a copy of what presents as the biodata page, and next page, of the applicant's Sri Lankan passport. The biodata page lists the applicant as a Sri Lankan national who was born on [Date 1] in [Town 1], and whose passport was issued [in] 2017 (valid until [2017]), and the next page carries text which states: "Added All Countries", along with some text in a language other than English which has not been translated. I note, with regard to this that while this is evidence that the Sri Lankan authorities were willing to issue the applicant a passport without any restrictions on where he might wish to go, it is not compelling evidence that he was experiencing any harm at the time the document was issued, or that he applied for this passport to escape such harm. In terms of other documentary evidence, the applicant indicated that he would subsequently be providing his marriage certificate, and the birth certificates for his children, and witness affidavits from his relatives. The applicant did not take the opportunity to correct or comment upon anything he had said at the 2013 interview.
26. On 2 June 2017 the Department emailed [Migration Firm 1] an acknowledgement that the above application was a valid application, but that in order to process the application additional information was requested (within 14 days), and that the information being requested was detailed in an attached Request Checklist (this mostly related to the need for the applicant to fill in gaps in his personal history such as where he had been residing in Australia in 2015, and also the need for him to provide certified copies of any documents). It is not apparent that the applicant ever responded to the Department's 2 June 2017 request for additional information (such as would allow his SHEV application to be processed). Nevertheless, on 17 June 2020 the Department mailed the applicant at his [Suburb 1] NSW address and advised him that the Department was considering his application for a protection visa and might invite him to attend an interview to discuss his claims within the coming months, and that this might be by telephone as owing to COVID-19 pandemic, face to face protection visa interviews were not currently being held in Department offices. The Department advised the applicant that he should email the Department if he did not wish to proceed with a telephone interview, or if he had any further questions. It is not apparent that the applicant ever responded to the Department's 17 June 2020 letter.
27. The applicant did, however, engage with the International Organization for Migration (IOM, the UN migration agency) a few weeks after the Department's 17 June 2020 letter was sent, and on 6 July 2020 the applicant signed an IOM Voluntary Return Declaration Form in which he expressed his will to return to Sri Lanka with the assistance of the IOM. An IOM Return Counselling (RC) Outcome form records that on 7 July 2020 the applicant had self-referred to IOM requesting Assisted Voluntary Return Reintegration (AVRR). It is recorded that at the IOM's RC interview the applicant indicated that he felt that he had no chance of being reunited with his family here in Australia, and he had been informed about IOM's return services through friends who had been repatriated, and he was eager to return to his family, and he accepted that any application to remain in Australia would be withdrawn once his offshore status was confirmed. An application for a Sri Lankan Temporary Travel Document (TTD) was discussed, and the applicant confirmed that he held copies of his birth certificate and marriage certificate, and a passport copy. IOM informed him that, due to COVID-19 restrictions, return planning cannot progress as usual at this stage and Sri Lanka's Consulate General in Sydney had suspended TTD applications, and IOM would inform him when operations had resumed, and the Department would contact him regarding his AVRR eligibility.

28. Within the review material is a 28 April 2021 email which indicates that an email sent on that day by the Department (from its NSW QLD TPVP Interviews mailbox) to [Migration Firm 1] was returned as undeliverable. That same day, 28 April 2021, the Department mailed the applicant (at his [Suburb 1] NSW address) an invitation to attend an interview on 21 May 2021 about his SHEV application. According to the delegate's decision, the applicant did not attend the scheduled 21 May 2021 interview, and so the delegate telephoned the applicant (using a TIS interpreter in the Sinhalese language). The applicant answered this call and asserted that he had not received the Department's mailed 28 April 2021 invitation to the 21 May 2021 interview. According to the delegate's decision, the applicant was told that the invitation had been sent to the applicant's [Suburb 1] NSW address. It is not apparent that the applicant gave any indication that he no longer resided at this [Suburb 1] NSW address. According to the delegate's decision, the applicant advised that he had already engaged with IOM regarding his voluntary return to Sri Lanka, and that he had done so because his SHEV application still had not been decided after he had been waiting nine years (although I note in this regard that the applicant had taken some time to respond to the Department's invitation to lodge this application, and when asked for further information to allow the processing of this he did not respond at all). According to the delegate's decision, the applicant stated that he wanted to withdraw his application and return to Sri Lanka. The delegate recorded that he told the applicant that he (the applicant) would need to put this request in writing, and that after the telephone call he (the delegate) emailed the applicant about this. Included in the review material is a copy of the delegate's 21 May 2021 email to a Gmail address. The delegate sent a follow-up email to this Gmail address on 1 July 2021 asking the applicant if it was still his intention to withdraw his SHEV application and, if so, would he please put this request in writing.
29. It is not apparent that any response from the applicant was received by the Department, and according to the delegate's decision, on 14 July 2021 the delegate telephoned the applicant again, and the applicant said that he had not received the delegate's emails but then checked his email and confirmed that he had received both, and said that he still intended to withdraw his application but that he was waiting for his new Sri Lankan travel document to be issued by the Sri Lankan High Commission before he withdrew his protection visa application, and that once he had received this he would withdraw his application. On 22 September 2021 the delegate telephoned the applicant again, and the applicant confirmed that he still wanted to return to Sri Lanka, and that he had been told by IOM that he had an appointment with the Sri Lankan High Commission in mid-October, and he would withdraw his application after this. The delegate advised the applicant that the Department would not wait another month for him to withdraw his application, and that the Department might now make a decision based on the information it had. I note that it is not apparent that the applicant responded to this by requesting an interview from the delegate, nor is it apparent that the applicant sought to provide the Department with additional information of any kind in support of his SHEV application.
30. The delegate proceeded to make a decision on the basis of the information he had and on 23 September 2021 the delegate refused to grant the visa. That same day, 23 September 2021, the Department emailed the applicant his notification of refusal (to the same Gmail address used by the delegate on 21 May 2021 and 1 July 2021), and this included a copy of the delegate's decision record. The Department's 23 September 2021 refusal notification advised the applicant that his matter would now be referred to the IAA for review, and that the IAA would contact him about his review, and that if any of his contact details had changed (and he had not advised the Department of this) he would need to advise the IAA and the Department to ensure his contact details were up to date for communication purposes.

31. On 28 September 2021 the Department referred the applicant's matter to the IAA for review. On 29 September 2021 the IAA attempted to telephone the applicant at the contact number he had listed in his SHEV application and Form 956. A message was heard indicating the service for this telephone number was now disconnected. The Department, in referring this matter to the IAA, had provided the IAA with the NSW [Suburb 1] address and the Gmail address as, respectively, the applicant's last address and last email address provided to the Minister for the purposes of receiving documents. On 29 September 2021 the IAA sent the applicant an "Acknowledgement of Referral" letter by mail and by email to these respective addresses. The "Acknowledgement of Referral" letter advised that the IAA would now proceed to make a decision on his case on the basis of the information sent to us by the Department, unless the IAA decided to consider new information. The applicant was advised that he should act quickly as the IAA aimed to complete the review in six weeks, and that he should tell us immediately if any of his contact details had changed. The "Acknowledgement of Referral" letter also attached an information sheet in English and in Sinhalese which advised the applicant that if he wanted to provide a submission (about why he disagreed with the delegate's decision, or about any matter he considered had been overlooked) that he should do this within 21 days of his case being referred to the IAA by the Department, and that any new information (which the IAA had not requested) must be given to the IAA within 21 days of his case being referred to the IAA by the Department. No response was received.
- On 3 November 2021 the IAA noted that the applicant's 7 July 2020 IOM form carried a contact telephone number for the applicant different to that he had listed in his SHEV application and Form 956. The IAA made telephone calls to this alternative number on 3 November 2021 and left messages (including in Sinhalese) requesting that the applicant contact the IAA. No response was received.
32. It is now more than five weeks since the applicant's matter was referred to the IAA and his "Acknowledgement of Referral" letter was sent to the [Suburb 1] NSW address and the Gmail address. I note, with regard to all of this, that on 28 April 2021 the Department attempted to email the applicant's 2017 appointed [Migration Firm 1] and the email proved undeliverable but, beyond this, it is not clear from the review material why the Department then proceeded to communicate with the applicant directly, nor is apparent when it was that the applicant provided the Gmail address for the purposes of receiving documents. Nevertheless, the delegate's decision records that the applicant did receive the emails which were sent by the delegate on 21 May 2021 and 1 July 2021 to this Gmail address, and the delegate's decision indicates that the applicant indicated that he did receive these emails (such that this was the applicant's email address), and it is not apparent that the applicant gave any indication that he was opposed to receiving such communications at this Gmail address, and it is also not apparent that the applicant ever informed the Department that he had ceased residing at the [Suburb 1] NSW address (even if he did claim that he had not received the Department's 28 April 2021 letter which was sent to this address). Further, the applicant has not sought to provide the IAA (either directly or via the Department) any alternative contact details, and he was plainly made aware by the delegate that the Department would be proceeding to make a decision on his application on the basis of the information he had provided. He did not seek a rescheduling of his 21 May 2021 interview from the Department, nor did he seek to provide the Department with further information in support of his SHEV application, and he has not requested an interview from the IAA, nor has he sought provide the IAA with information in any other way. I consider that the applicant has had a fair opportunity to do this if he wished. He has not done so, and so I have proceeded to a decision on the information before me.

33. The applicant claims to be a national of Sri Lanka who was born on [Date 1] in [Town 1] in Puttalam District, in Sri Lanka's North Western Province. In support of this claim he has provided what a copy of his Sri Lankan passport and, although he has never provided a certified copy of this or presented the original passport to the Department for inspection, I am nonetheless satisfied that the applicant is a national of Sri Lanka who was born on [Date 1] in [Town 1] in Puttalam District, in Sri Lanka's North Western Province. I therefore find Sri Lanka to be the applicant's receiving country for the purpose of this review.
34. As has been noted above, the applicant claims to be an ethnic Tamil who is unable to speak the Tamil language, and who instead speaks Sinhalese as his preferred language as a consequence of his having been raised in a Sinhalese area where he attended Sinhalese schools, and where there were few Tamils. Thus, it is the applicant's claim that notwithstanding the fact that his parents were Tamil speakers, and notwithstanding the fact that most Tamils in Sri Lanka speak Tamil as their preferred language, and notwithstanding the fact that Tamil is widely spoken in Sri Lanka, he never acquired an understanding of the Tamil language. This seems an unlikely situation. What is more, and although he has indicated he holds a copy of his birth certificate (which would indicate his registered ethnicity and that of his parents), he has never provided a copy of this document to the Department. Nevertheless, given that such a situation is not impossible, I am willing to accept this.
35. The applicant claims that during the war (that is, between 1983 and 2009) there would occasionally be explosions and other similar disruptions, and when this occurred the police and army would take all the Tamil people in the area for questioning, and this occurred to him on four occasions, and he was not allowed to eat or drink, and the questioning would last far into the night, and the police and army personnel battered him until he fainted with injuries. I note, in this regard, that in April 2009 UNHCR reported that, as a result of the ongoing LTTE attacks on government and civilian targets, wide scale arrests and detention of Tamils had been reported throughout the country and were frequently associated with cordon and search operations, and frequently follow bombings or other attacks by the LTTE.¹ The applicant has provided no specific country information to establish that episodes of this kind were occurring in his area of Puttalam District, but given the extent to which during the war years it was the practice of Sri Lanka's security forces to cordon off an area (which had seen an LTTE attack) to screen the Tamil population for any association with, or knowledge of, the LTTE attack which had occurred, I am willing to accept that the applicant was detained for questioning on four occasions because of such operations during the war years, and that he was held for a period of hours without food or water and experienced some questioning. I have some doubts about the applicant's claim that the police and army personnel battered him until he fainted with injuries (at his 2013 interview he was questioned about such matters at some length and he gave no indication that he was harmed in such a manner in such instances). Nevertheless, and although I have my doubts, I am willing to accept this also.
36. However, I have more serious doubts about some of the applicant's other claims. In his SHEV application the applicant claimed that neither of his parents originated from Puttalam district and that his father and mother were from of Nuwara Eliya and Colombo respectively, and that his parents travelled to the northern area of Sri Lanka to live because they spoke Tamil, and as the war began to affect their lives they returned to Puttalam district, where his family experienced persecution in this area from the local Sinhalese community who attacked them and considered them LTTE supporters because they were Tamil, and his sister was sexually assaulted by a number of Sinhalese, and she fell pregnant and the child was given to a

¹ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", 1 April 2009, CIS17261.

different family to be cared for and once the Sinhala people cut his [body parts] and interrogated him because he had had a love affair with a Sinhalese girl, and in 2009 (when the LTTE leader Prabhakaran was killed by the Sri Lankan Armed forces) the applicant's house came under attack and they ran away to save their lives, and the police and security organisations were dismissive of their complaints and in spite of their numerous complaints took no action against their persecutors, and he could not put his children through school, and because of such harassment he illegally changed his children's birth certificates so that these indicated his children were Sinhalese rather than Tamil.

37. I note, with regard to all of this, that the applicant has claimed in his SHEV application that all four of his elder siblings born in north of Sri Lanka in Jaffna between 1965 and 1971, which is consistent with his claim that his parents were initially living in the north of Sri Lanka before they moved to Puttalam where he was born in [Year 1]. But the applicant also claims that "as the war began to affect their lives" his family left northern Sri Lanka and settled in Puttalam District. The implication of this is that the applicant's family were compelled to flee northern Sri Lanka, and to endure persecution in Puttalam, because of the violence and insecurity which the war brought to the north of Sri Lanka. The problem with this is that (since the applicant was born in Puttalam District in [Year 1]) his family were plainly in Puttalam District in [Year 1] or earlier, and (although the LTTE did exist at this time) the LTTE would not carry out its first major attacks, and the war between the LTTE and the Sri Lankan government would not commence in the north, until 1983.² I note also that among the factors which led to the formation of Tamil insurgent groups like the LTTE, and to the outbreak of the war, was the manner in which there had (at different times over the preceding decades) been outbreaks of anti-Tamil violence by Sinhalese mobs in different Sinhalese dominated parts of the country. Thus, if the applicant's family settled in Puttalam (the population of which is around 75% Sinhalese and only 5% Tamil)³ at some point between 1971 and [Year 1], then they did so when the Tamil dominated north (whose districts are almost entirely Tamil) was not yet affected by the war which would begin in 1983, and they did so when instances of anti-Tamil violence had been occurring in certain Sinhalese dominated areas of Sri Lanka.
38. I am mindful, with regard to the above, that at his 2013 interview the applicant had asserted of his parents' marriage that the two families did not like their friendship and so they eloped and went to the north, which seemed to imply that owing to family ill feeling his parents felt unable to reside in either Nuwara Eliya or Colombo. But I note, in this regard, that the applicant made no such assertion in his written claims, and his only reference to his wider relatives in his written claims was that he had told his father's family not to visit them in Puttalam for their own safety (which suggests that there was no ill-feeling with his father's family, and which also suggests that the applicant was able to communicate with his father's family). The applicant made no reference in his written claims to his relationship with his mother's family but, in any event, Colombo is a city of millions. Given this, I find it difficult to accept that, if [Village 1] really had been affected by a significant level anti-Tamil feeling, that the applicant's parents would have chosen to settle in [Village 1] when they did. I likewise find it difficult to believe that the applicant would have remained in [Village 1] if his situation there had been as difficult for him and his family as he claims. The applicant's assertion that he felt unable to move away from their problems (by way of moving to an area with a greater Tamil population, and that they could not do so because they did not speak Tamil) seems highly doubtful given that Colombo has a large Tamil population, and given the extent to

² 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, p.67, 20191104135244.

³ Sri Lanka DCS, "A2: Population by ethnic group according to districts, 2012", January 2015, CISEC96CF1436.

which not just Sinhalese but also English is widely spoken⁴ (and although Colombo did see cordon and search operations during the war years it is not apparent that this remained a significant problem for the capital's Tamil population after the end of the way in mid-2009).

39. As has been noted above, historically there have been occasions where Sri Lanka's Tamil population have, at certain times and in certain places, been attacked by the predominant Sinhalese community in outbreaks of communal violence, but have been few reported instances of this in the recent decade. In recent decades such incidents of this kind as have been reported have tended to be of a more limited nature and to have involved disputes between Sinhalese Buddhist organisations and Tamil Hindu or Tamil Evangelical (rather than Roman Catholic) Christian communities, or to localised instances of election violence along political lines. There have, in recent years, been outbreaks of communal violence toward Sri Lanka's Muslim community (who are generally Tamil speakers), and there have even been incidents of this kind reported from Puttalam District. But Sri Lanka's Muslim community are (notwithstanding that they are Tamil speakers) seen as a separate ethnic group from Tamils more broadly (and, indeed, such violence has sometimes been perpetrated against Muslims by Tamils).⁵ But the country information before me does not indicate that Tamils in [Village 1], or in the area of the [Division 1] or Puttalam District more broadly, have been experiencing any difficulties, nor has the applicant provided any such country information (nor has he volunteered an explanation for why no such evidence has been provided).
40. DFAT's 4 November 2019 report assessed that while monitoring of Tamils in day-to-day life had decreased significantly under the then government, surveillance of Tamils in the north and east continued, particularly those associated with politically-sensitive issues, but physical violence against those being monitored was not common. Broader reporting from this period likewise indicates that to the extent that Tamils faced problems it was experienced on account of matters like displaying LTTE symbols (and there were reports of regular monitoring of such persons, and several arrests).⁶

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

⁵ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", 1 April 2009, CIS17261; UN Human Rights Council, "Promoting reconciliation, accountability and human rights in Sri Lanka", 8 February 2019, 20190311120409; Verite Research, "Sri Lanka: Resolution 30/1 Implementation Monitor Statistical and Analytical Review No. 4", 1 March 2019, 20190318141458; HRW, "Fear Returns to Sri Lanka After Bombings", 10 May 2019, 20190513142002; "Over 2,280 suspected arrested since Easter Sunday terror attacks", Daily News, 5 June 2019, 20190710120316; "Sri Lanka: Hardening Faultlines - Analysis", South Asia Terrorism Portal, 11 June 2019, 20190611160309; DFAT, "DFAT Country Information Report: Sri Lanka", 4 November 2019, 20191104135244; OHCHR, "Report of the UN High Commissioner for Human Rights on Sri Lanka", 18 February 2020, 20200221140652; USDOS, "Sri Lanka 2019 Human Rights Report", 11 March 2020, 20200312151418; UNHRC, "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association", 4 May 2020, 20200622112923; UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil Separatism", May 2020, 20200527172009; INFORM HRDC, Repression of Dissent in Sri Lanka: 1st-31st May 2020, 29 June 2020, 20200702160949; HRW, "World Report 2021 - Events of 2020", 13 January 2021, 20210114072851; Freedom House, "Freedom in the World 2021 - Sri Lanka", 3 March 2021, 20210304102827; USDOS, "Sri Lanka 2020 Human Rights Report", 30 March 2021, 20210401122412.

⁶ "Official list of detainees under PTA", Ceylon Today, 30 July 2017, CXC90406612037; "LTTE's martyrs remembered at Valvettithurai", Valvettithurai.org, 21 November 2017, CISED50AD7706; "Good Governance allows the Martyrs Day – 'Maveerar Naal' celebrations on the sly", Asian Tribune, 26 November 2017, CXC90406618275; "Thousands attend Maaveerar Naal commemorations at destroyed Thuyilum Illam in Kilinochchi", Tamil Guardian, 27 November 2017, CXC90406620312; "'Martyrs Day' events end in N-E", Ceylon Today, 28 November 2017, CXC90406620309; 'Mahaveer Naal celebrated without any major incidents in the North', Asian Tribune, 28 November 2017, CXC90406618423; "Sri Lankan regime backing away from conflict resolution vows", Asia Times, 5 December 2017, CXC90406618789; "Defying Confusing Magisterial Orders Prabhakaran's Birthday Celebrated Widely", Colombo Telegraph, 27 November 2018, CXBB8A1DA39486; UN Human Rights Council, "Promoting reconciliation, accountability and human rights in Sri Lanka", 8 February 2019, 20190311120409; Verite Research, "Sri Lanka: Resolution 30/1 Implementation Monitor Statistical and Analytical Review No. 4", 1 March 2019, 20190318141458; "Sri Lankan refugees to return from South India", News.lk, 25 March 2019, 20190326103343; "Jaffna uni students and canteen owner release on bail", Tamil Guardian, 17 May 2019,

41. The subsequent November 2019 presidential election saw the return to power of Gotabaya Rajapaksa and his appointment of his brother, Mahinda Rajapaksa, as prime minister. The two men had been in power prior to 2015 and had overseen the defeat of the LTTE in a manner which saw allegations of their having perpetrated, or at least ignored, war crimes against the Tamil community. This, and their success in the 2020 parliamentary elections, have raised concerns among the Tamil community that their situation will now deteriorate. Over subsequent years it has become apparent that the Rajapaksa government has little interest in holding persons accountable for abuses perpetrated against Tamils during the war years, and that it seems unlikely that their government will reform the Prevention of Terrorism Act (PTA) with its special provisions on detention and the admissibility of confessions, and which has been used to detain persons suspected of LTTE activity. Under the Rajapaksa government Tamils have continued to face arrest for weapons possession, and there appears to have been an increase in the number of persons arrested because of matters like sharing content that glorified the LTTE on social media platforms, or for commemorating the LTTE (as opposed to civilians who died during the war). The current Rajapaksa government has also reportedly proscribed hundreds of Sri Lankan Tamils and several diaspora organisations involved in activism abroad, and there has also reportedly been an increase in the level of harassment faced by activists and journalists in Sri Lanka. But beyond matters of this kind, and although as in earlier years there have been reports that the Tamil community faces discrimination in matters like obtaining government employment, there is little evidence of any significant change in Sri Lanka in recent years in terms of the day-to-day experiences of the broader Tamil population.⁷

20190710121032; "Govt urged to review 'security reforms' as 60 suspects taken in under PTA", The Island, 25 April 2019, 20190508133730; "Police arrest 2289 over Easter Sunday terror attacks – Police Spokesman SP Ruwan Gunasekara", The Sunday Reader, 3 June 2019, 20190711142139; "Over 2,280 suspected arrested since Easter Sunday terror attacks", Daily News, 5 June 2019, 20190710120316; "Sri Lanka: Hardening Faultlines - Analysis", South Asia Terrorism Portal, 11 June 2019, 20190611160309; "Ex-LTTE cadre, wife and sister arrested with firearms, explosives", Colombo Page, 13 October 2019, 20191014130858; UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928; USDOS, "Sri Lanka 2019 Human Rights Report", 11 March 2020, 20200312151418.

⁷ "Gotabaya Rajapaksa launches Sri Lanka presidential bid", Aljazeera, 12 August 2019, 20190813112747; "Support Sajith or minorities could suffer - Hakeem", Daily News Sri Lanka, 28 October 2019, 20191028114803; "Sri Lanka Muslim party warns of a massive plot to buy minority votes to defeat Sajith Premadasa", Colombo Page, 9 November 2019, 20191111104451; ICG, "Sri Lanka's Presidential Election Brings Back a Polarising Wartime Figure", 18 November 2019, 20191119144914; "Unfair to attribute racist dimension to Tamil vote, says Sampanthan", Hindu, The, 18 November 2019, 20191121095223; "Sri Lanka's new president has a worrying past", The Economist, 23 November 2019, 20191122115223; Komireddi, K. "We Needed a Modi After the Easter Attacks", New York Times, The, 25 November 2019, 20191126161105; "Sri Lanka President Gotabaya Rajapaksa deploys armed forces to maintain public order", International Business Times, 26 November 2019, 20191231114452; "Sri Lanka: Presidential Election And Tamil Politics - OpEd", Eurasia Review, 27 November 2019, 20191128103208; ITJP & JDS, "Sri Lanka: And the Crackdown Begins", January 2020, 20200114142534; ICG, "A Dangerous Sea Change in Sri Lanka", 29 January 2020, 20200615164541; SLCPJ, "Abandoned Promises? Preserving Human Rights and Pursuing Accountability in Gota's Sri Lanka", February 2020, 20200330123213; OHCHR, "Report of the UN High Commissioner for Human Rights on Sri Lanka", 18 February 2020, 20200221140652; UNHRC, "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association", 4 May 2020, 20200622112923; UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil Separatism", May 2020, 20200527172009; "Falsely arrested and tortured disabled Tamil man submits complaint at Human Rights Commission", Tamil Guardian, 3 June 2020, 20200604080654; "Key LTTE activist in Norway - Nadaraja Sethuparan arrested at BIA", Asian Tribune, 23 June 2020, 20200624105850; INFORM HRDC, Repression of Dissent in Sri Lanka: 1st-31st May 2020, 29 June 2020, 20200702160949; "An Accidental Bomb Blast Identified an Active LTTE Intelligent Agent", Asian Tribune, 7 July 2020, 20200709151217; "Sri Lankan police arrest ten Tamils in Jaffna", Tamil Guardian, 11 August 2020, 20200812105606; Arudpragasam, A. "Rajapaksa Rule", Foreign Policy, 14 August 2020, 20200817165533; "Sri Lanka is becoming a one-family state", The Economist, 15 August 2020, 20200814111514; "Sri Lankan Defence Secretary claims 'need to eliminate separatist ideology' in North-East and Tamil diaspora", Tamil Guardian, 17 August 2020, 20200818105547; "Sri Lanka: Economy, human rights key challenges facing Rajapaksas", Aljazeera, 19 August 2020, 20200819205836; "Tamil youth hospitalised following Sri Lankan army assault in Mannar", Tamil Guardian, 25 August 2020, 20200828165229; "Arrests in Jaffna as Sri Lankan police block Thileepan commemorations", Tamil Guardian, 14 September 2020, 20200916075319; HRW, "World Report 2021 - Events of 2020", 13 January 2021, 20210114072851; "Sri Lanka To Set Up Rehabilitation Centers For Extremists - Analysis", Eurasia

42. Within the country information before me there is a report which indicates that in mid-2020 two Tamils were arrested by Puttalam Police for lighting lamps in the Puttalam town to remember those who lost during the war, and who were after statements were recorded,⁸ but beyond this it is not apparent that Tamils have been experiencing problem in Puttalam District currently or over previous decades. Given this, and while I am willing to accept that the applicant was detained for questioning on four occasions as part of the cordon and search operations which happened during the civil war (which ended in mid-2009), it seems doubtful (given that neither the applicant or his family were involved in matters like activism or LTTE commemorations) that the applicant or his family would have had any problems in Puttalam more broadly, or that the applicant would face a real chance of harm of any kind in Puttalam for the foreseeable future after returning to live there with his family.
43. I note also that the applicant has provided no medical evidence to establish that injuries to his [body parts] were sustained as a result of his suffering an attack, nor has he provided any details about when this purported incident occurred, or when the purported attack upon his sister occurred, nor has he provided any details of when it was or in what specific circumstances that he and his family made numerous complaints to the police and/or security organisations, nor has he provided the birth certificates of his children which he claims he has illegally changed, nor has he provided the witness affidavits from his relatives which he referred to as prospective evidence in his SHEV application. I note also that while Sri Lanka's Tamil community continue to report that members off their community can experience problems in certain circumstances (something I will discuss further below) it is not apparent that the situation is such that members of Sri Lanka's Tamil community are unable to send their children to school; and in November 2019 DFAT reported that Sri Lankans are able to access the education system without discrimination, regardless of their ethnic or socioeconomic profile.⁹
44. Indeed, DFAT assessed that non-Muslim Sri Lankans, including Tamils, face a low risk of official or societal discrimination based on ethnicity or caste, including in their ability to access education, employment or housing, and I note also that the applicant's claim to have experienced such anti-Tamil sentiment in Puttalam District is not accompanied by any indication that he had any problems (as a result of anti-Tamil sentiment; or an imputed pro-LTTE profile) in finding employment or earning a livelihood, or in accessing identity documentation, or other government or health services. That he did not have problems of this kind is consistent with what is reported about the situation in Sri Lanka for Tamils (DFAT has observed that some members of the Tamil community report discrimination in employment, particularly in relation to government jobs, but that the under-representation in government employment was largely the result of language constraints) but it is difficult to accept that the situation for the applicant could have been thus if he was living in area of Sri Lanka where the surrounding Sinhalese community were so driven by anti-Tamil sentiment to be persecuting him and his family as he has claimed was occurring in other regards.
45. I accept that the applicant and his family resided in Puttalam District, and I accept that the applicant's family continue to reside in [Village 1], and I consider that this is where the applicant would return to. But given that that the applicant has provided no evidence of his

Review, 15 March 2021, 20210316115940; Freedom House, "Freedom in the World 2021 - Sri Lanka", 3 March 2021, 20210304102827; USDOS, "Sri Lanka 2020 Human Rights Report", 30 March 2021, 20210401122412; "Tamil organisations speak out against Sri Lanka's ban", Tamil Guardian, 04 April 2021, 20210406172318; "What is behind the anti-Muslim measures in Sri Lanka?", Aljazeera, 12 April 2021, 20210413125122.

⁸ INFORM HRDC, Repression of Dissent in Sri Lanka: 1st-31st May 2020, 29 June 2020, 20200702160949.

⁹ DFAT, "DFAT Country Information Report: Sri Lanka", 4 November 2019, 20191104135244.

siblings having been born in Jaffna, I am not satisfied that the applicant's parents and siblings ever lived in Sri Lanka's Northern Province. Given also the serious doubts which are raised by the concerns which I have outlined above about the credibility of the applicant's claim that he and his family suffered mistreatment from the Sinhalese community in the area of Puttalam District in which he and his family lived, I am not satisfied that he or his family have experienced any problems in Sri Lanka other than the applicant was detained for questioning on four occasions as part of the cordon and search operations which happened during the civil war (which ended in mid-2009).

46. As to the matter of the applicant's having to return to Sri Lanka, I note that in November 2019 DFAT reported that Sri Lanka's Immigrants and Emigrants Act (1948) (the I&E Act) governs exit and entry from Sri Lanka, and Sections 34 and 35 (a) of the I&E Act make it an offence, respectively, to depart Sri Lanka other than via an approved port of departure, such as a seaport or airport, and without a valid passport. Penalties for leaving Sri Lanka illegally can include imprisonment of up to five years and a fine. Returnees who depart Sri Lanka irregularly by boat are considered to have committed an offence under the I&E Act. If a returnee voluntarily returns on their own passport on a commercial flight, they may not come to the attention of local authorities if they had departed Sri Lanka legally through an official port on the same passport. Different agencies, including the Department of Immigration and Emigration, the State Intelligence Service, the Criminal Investigation Department and, at times, the Terrorism Investigation Division process returnees at Colombo's Bandaranaike International Airport, including those on charter flights from Australia. These agencies check travel documents and identity information against the immigration databases, intelligence databases and records of outstanding criminal matters. Australian officials based in Colombo may meet charter flights carrying voluntary and involuntary returnees. The IOM meets assisted voluntary returnees after immigration clearance at the airport and provides some cash and onward transportation assistance. Processing of returnees at the airport can take several hours, due to the administrative processes, interview lengths and staffing constraints. Returnees are processed in groups, and individuals cannot exit the airport until all returnees have been processed, although returnees are free to go to the bathroom and to talk to one another during this time.
47. For returnees travelling on temporary travel documents, police undertake 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. All returnees are subject to these standard procedures, regardless of ethnicity and religion. DFAT understands detainees are not subject to mistreatment during processing at the airport. Most Sri Lankan returnees, including those from Australia, are questioned (usually at the airport) upon return and, where an illegal departure from Sri Lanka is suspected, they can be charged under the I&E Act. DFAT understands 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 Criminal Investigation Department'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 is not aware of mistreatment of returnees during this process.

48. The Sri Lankan Attorney-General's Department has directed that all passengers of people smuggling ventures, not only those suspected of facilitating or organising irregular migration, be charged under the I&E Act and appear in court. Those charged are required to appear in court in the location where the offence occurred, which involves legal and transport costs. While the frequency of court appearances depends on the magistrate, DFAT understands that most individuals charged under the I&E Act appear in court every 3-6 months. In addition to their own court hearings, those charged may be summonsed as witnesses in cases against the facilitators or organisers of people smuggling ventures. Cases are taken forward in court only when all members of a people smuggling venture have been located, contributing to protracted delays. According to local sources, some cases dating from 2015 are still ongoing. The IOM provides legal assistance to individuals charged under the I&E Act who returned to Sri Lanka with the IOM's assistance. Some returnees charged under the I&E Act report having to travel long distances to attend court hearings, and have found this disruptive to their livelihoods. At the time of publication, about 800 separate court cases were pending, with most involving several people. The I&E Act does not specify minimum mandatory sentences. Returnees who departed Sri Lanka legally are not required to face a court, as no offence under the I&E Act applies.
49. Bail is normally granted to fare-paying passengers of a people smuggling venture. Bail conditions are discretionary, and can involve monthly reporting to police at the returnee's expense, including for those who have subsequently relocated to other parts of the country. In contrast, facilitators or organisers of people smuggling ventures, including captains and their crew, are usually refused bail and are taken into custody. Facilitators or organisers of people smuggling ventures may be charged under Section 45 (c) of the I&E Act. DFAT understands that facilitators or organisers of people smuggling ventures convicted under Section 45 (c) normally receive prison sentences of between one and three years, depending on the extent of their involvement in the venture, with sentences usually closer to three years. DFAT could not obtain information on the number of facilitators or organisers of people smuggling ventures convicted. The Attorney-General's Department, which is responsible for the conduct of prosecutions, claims no fare-paying passenger on a people smuggling venture has been given a custodial sentence for departing Sri Lanka illegally (as distinct from facilitators or organisers). However, fines are issued to fare-paying passengers as a way of deterring future illegal departures. Fine amounts vary from LKR3,000 (approximately AUD25) to LKR200,000 (approximately AUD1,633). Well-placed sources told DFAT this fine is usually between LKR15,000 and LKR20,000 (approximately AUD122 and AUD163). A guilty plea will attract a fine, which can be paid in instalments, and the defendant is free to go. 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.
50. Between 2010-11 and 2018-19, 3,716 Sri Lankan nationals returned from the Australian community or were removed from Australian onshore immigration detention centres to their country or origin or a third country. Many others returned from the US, Canada, the UK and other European countries. Most returnees are Tamil. Although individual experiences vary, many Tamil returnees choose to return to the north, either because it is their place of origin and they have existing family links, or because of the relatively lower cost of living compared to the south. Failed asylum seekers receive limited reintegration assistance. Many returnees have difficulty finding suitable employment and reliable housing on return. Those who have

skills that are in high demand in the labour market are best placed to find well-paid employment. The IOM provides eligible returnees with livelihood assistance and makes regular visits to monitor the welfare of returnees. DFAT understands that some returnees, including returnees in the north and east with suspected LTTE links, have been the subject of monitoring by the authorities, involving visits to returnees' homes and telephone calls by the Criminal Investigation Department. DFAT understands that most returnees, including failed asylum seekers, are not actively monitored on an ongoing basis. DFAT is unable to verify whether monitoring, where it occurs, is specific to former LTTE cadres. DFAT is not aware of returnees, including failed asylum seekers, being treated in such a way that endangers their safety and security. Tamils who had failed to secure asylum in Australia and since returned to the Northern Province (that is, to areas which were formerly under LTTE control) told DFAT they had no protection concerns and had not experienced harassment by the authorities, nor received monitoring visits.

51. DFAT understands that returnees may face financial difficulties reintegrating into their communities, including due to sale of their belongings to fund irregular ventures overseas, but do not experience societal discrimination for seeking asylum elsewhere. Some refugees and failed asylum seekers reported social stigma upon return to their communities, including for being beneficiaries of financial reintegration assistance. Overall, DFAT understands that societal discrimination is not a major concern for returnees, including failed asylum seekers. Some Tamils who had failed to secure asylum in Australia and since returned to the Northern Province told DFAT they had not experienced societal discrimination following their return. Bureaucratic inefficiencies rather than official discrimination present the biggest challenge to reintegration for returnees. DFAT assesses that returnees face a low risk of societal discrimination upon return to their communities. DFAT further assesses that, where it occurs, surveillance of returnees can contribute to a sense of mistrust of returnees within communities.
52. As has been discussed above, more recent reporting indicates that the Rajapaksa government there has been an increase in the number of Tamils arrested in association with matters like sharing content that glorified the LTTE on social media platforms, or for commemorating the LTTE (as opposed to civilians who died during the war), and it has proscribed hundreds of Sri Lankan Tamils and several diaspora organisations involved in activism abroad, and there has also reportedly been an increase in the level of harassment faced by activists and journalists. Given this, it may be that returning Tamils found to have engaged in activism or LTTE associated activity while abroad, or prior to departing Sri Lanka, may face an increased level of scrutiny when being interviewed and checked at the airport upon return by Sri Lankan security officials. But it is otherwise not apparent that there has been any significant change in the posture of the Sri Lankan authorities over recent years, and the applicant has given no indication that he has ever had any involvement in activities like activism or LTTE commemorations, and during the war years (following security incidents in his area) he was questioned on four occasions by Sri Lankan security personnel but was released without charge on each occasion.
53. I note also that while I accept that the applicant was mistreated on those previous occasions, and while there continue to be reports that Sri Lankan authorities have sometimes employed torture for purposes like compelling confessions, it is not apparent that any Sri Lankans (including Tamils) have experienced any mistreatment in recent years in the course of being processed at the airport, or in the course of being dealt with on charges relating to illegal departure. I note also that the results of a later 2019 UK Fact Finding Mission (published in

January 2020)¹⁰ reported information similar to that related to DFAT, though it was also apparent that the Colombo airport had no holding cells as such, and that waiting to be brought before court might involve staying overnight in a holding room with a large window overlooking to the office.

54. In his SHEV application the applicant has indicated that he departed Sri Lanka illegally by boat, but he did not take part in the boat crew that brought him to Australia. As has been noted above, at his 2013 interview he also asserted that this was the case and that although the boat captain (the skipper) mistook him for someone who had been assigned to the boat as crew, he (the applicant) told the captain this was not the case, and he (the applicant) refused to do any work on the boat and did none and was instead throwing up at the back of the boat. At the 2013 interview the applicant said that the boat captain had threatened to do something bad to the applicant upon arrival in Australia, and upon arrival had told Australian authorities that the applicant was part of the crew. I note, however, that it is not apparent that the Australian authorities subsequently viewed the applicant as a suspected crew member, and there is no evidence to indicate that anyone has told, or intends to tell, the Sri Lankan authorities that the applicant was a member of the crew of the boat which brought him to Australia. Thus, the possibility that he will be perceived as a member of the crew of a smuggling venture (rather than as a fare paying passenger) is too speculative.
55. Given all this, and the possibility that the applicant will return to Sri Lanka on a temporary travel document (and that he may even be returned involuntarily notwithstanding his protected engagement with the process of voluntary return), I consider that there is a real chance that upon return to Sri Lanka the applicant will be detained at the airport for questioning by Sri Lankan officials and that he will have to wait while checks are conducted, and that this process could take several hours. I consider that there is a real chance that he will then be charged under the I&E Act for having made an illegal departure and, at the earliest available opportunity after investigations are completed (which, should a magistrate not be available due to its being a weekend or a public holiday, may result in the applicant being detained for up to two days in an airport holding cell or room), police will transport him to the closest Magistrate's Court, where custody and responsibility for the individual shifts to the courts or prison services. Given that the applicant has always indicated that he departed Sri Lanka illegally, and given that it is not apparent how he could hope to prove otherwise, I consider that the applicant would plead guilty if he were charged with illegal departure. That being the case there is a real chance he would be fined between LKR15,000 and LKR20,000 (approximately AUD122 and AUD163) which he could pay by instalments, and he would be free to go.
56. When all of this is considered, and given the absence of any reporting that any returnees have experienced any mistreatment in association with such processes, and even if the applicant were to be returned on a weekend such that he might be held in an airport holding cell or room for up to two days, and even in the unlikely event that the applicant was to plead not guilty such that he would be released on bail on the basis of personal surety or guarantee from one of his family members, and even if the applicant were required to appear for additional hearings in the court in the location where the offence occurred (which he has indicated in his SHEV application was [Village 3] in Puttalam District), I am not satisfied that such treatment would amount to serious harm. I further find that the treatment would arise from a non-discriminatory application of Sri Lankan law, rather than being for one of the reasons in s.5J(1)(a) or involving systematic and discriminatory conduct as required by s.5J(4)(c).

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

57. But beyond this, given that I am not satisfied that the applicant or his family have ever experienced any mistreatment in Puttalam District (other than the applicant being detained for questioning on four occasions during cordon search operations following security operations during the war years), and given that it is not apparent that there is an significant anti-Tamil feeling (or anti Roman Catholic feeling) on the part of the Sinhalese community in the area which the applicant would be returning to, and given that it is not apparent the act of seeking asylum in a country like Australia is itself something that attracts adverse attention from the authorities, and given how little evidence there is of persons experiencing problems from broader society for having sought asylum (and given that I do not, in any event, accept that the applicant travelled to Australia to escape the Sinhalese community in his home area), and given that the applicant has not been involved in activism or LTTE associated activities, I am not satisfied that the applicant would for the foreseeable future face a real chance of harm of any kind, whether from the Sri Lankan authorities or from the Sinhalese community, and whether for reason of his being Tamil, and/or as an imputed LTTE supporter, and/or because he has travelled to Australia (and sought asylum) to escape, and/or for any other reason associated with the totality of his circumstances. I am therefore not satisfied that the applicant would face a real chance of serious harm. I am not satisfied that the applicant has a well-founded fear of persecution.

Refugee: conclusion

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

Complementary protection assessment

59. 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

60. 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.

61. 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.

62. For the reasons already given above, I consider that there is a real risk that upon return to Sri Lanka the applicant will be detained at the airport for questioning by Sri Lankan officials and that he will have to wait while checks are conducted, and that this process could take several hours. I consider that there is a real risk that he will then be charged under the I&E Act for

having made an illegal departure and, at the earliest available opportunity after investigations are completed (which, should a magistrate not be available due to its being a weekend of a public holiday, may result in the applicant being detained for up to two days in an airport holding cell or room), police will transport him to the closest Magistrate's Court, where custody and responsibility for the individual shifts to the courts or prison services. I consider that the applicant would plead guilty if he were charged with illegal departure. That being the case there is a real risk he would be fined between LKR15,000 and LKR20,000 (approximately AUD122 and AUD163) which he could pay by instalments, and he would be free to go.

63. But even allowing for the possibility that might be held in an airport holding cell or room for up to two days, and even in the unlikely event that the applicant was to plead not guilty such that he would be released on bail on the basis of personal surety or guarantee from one of his family members, and even if the applicant were required to appear for additional hearings in the court in the location where the offence occurred (which he has indicated in his SHEV application was [Village 3] in Puttalam District), I am not satisfied that such treatment would amount to significant harm, since it would not involve the death penalty or arbitrary deprivation of life, nor am I satisfied that such treatment would cause the applicant the kind of extreme humiliation which defines degrading treatment or punishment, nor am I satisfied that it would cause the applicant the kind of severe pain or suffering (whether physical or mental) that defines both torture, and also cruel or inhuman treatment or punishment. I note also that is not apparent from the evidence that such questioning, or such an experience of detention, or that such a fine, or that the bail or other possible court proceedings involved, would be intended to cause the applicant extreme humiliation or severe pain or suffering.
64. Given this, and given that I am otherwise not satisfied that there is a real risk of the applicant experiencing harm of any other kind for any other reason, I am not satisfied that the applicant would face a real risk of significant harm.

Complementary protection: conclusion

65. 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.