



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA

IAA reference: IAA23/10559

Date and time of decision: 20 September 2023 17:02:00

S Kamandi, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Sri Lanka and of Tamil ethnicity. He arrived in Australia in September 2012 and on 3 February 2016 lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 2 November 2016, a delegate of the Minister for Immigration (the delegate) made a decision refusing to grant the visa on the basis that the applicant was not a person in respect of whom Australia owed protection obligations. The delegate did not accept the applicant's claims that he witnessed the murder of his friend's father by [Mr A], who was initially [a leader] of the paramilitary group the Tamil Makkal Viduthalai Poolikal (TMVP) and later was appointed as the organiser for [District] of the Sri Lankan Freedom Party (SLFP). Consequently, the delegate did not accept that the applicant went into hiding due to fear for his safety, or that he was identified by [Mr A] or Criminal Investigation Department (CID) officers during the September 2012 election, or that [Mr A] and CID were trying to kill him. While the delegate accepted that the applicant campaigned for the Tamil National Alliance (TNA) in 2011 and 2012 and that he departed the country illegally, the delegate was not satisfied that the applicant faced a real chance of harm or was at a real risk of significant harm for these reasons.
3. The matter was referred to the Immigration Assessment Authority (IAA) which made a decision affirming the delegate's decision on 14 July 2017.
4. The applicant applied for judicial review of the IAA's decision and [in] 2023, the Federal Circuit and Family Court of Australia remitted the matter to the IAA by consent orders. The Minister conceded that the IAA misapplied s.473DD(b)(ii) of the *Migration Act 1958* (the Act) to new information regarding the applicant's brother-in-law and wife by failing to provide reasons. It was conceded that given the nature of the information, being personal information about the applicant's family, on its face, the information met elements of s.473DD(b)(ii) of the Act as well as not being previously known to the Minister's delegate.

Information before the IAA

5. I have had regard to the review material given by the Secretary under s.473CB of the Act. This review material includes the applicant's consular access form dated [in] September 2012 and his detention notice dated [in] September 2012. These documents have been identified as information not provided to the IAA previously. These documents are administrative in nature, and in view, do not contain information that would materially assist in the determination of the applicant's claims for protection. I do not consider them to be relevant in the assessment of the applicant's claims.
6. On 28 November 2016, the applicant emailed the IAA a submission and country information/news reports. In the submission, the applicant primarily refers to the delegate's findings and includes extracts from the delegate's decision. He sets out his disagreement with the delegate's findings and argues that the delegate misunderstood his evidence and failed to consider integral parts of his claims. I do not consider these aspects of the submissions to be new information and have considered them in undertaking this review.

7. The submission also includes information identified as new information. The applicant claimed that “recently” he received information from his wife and brother-in-law residing in Sri Lanka. He claimed that his brother-in-law is [an Occupation 1] and had been asked by [Mr A] and CID officers to surrender the applicant on his return to Sri Lanka. The applicant claimed that his brother-in-law was threatened with termination of his service if he failed to surrender the applicant and that [Mr A] told him that the applicant would be taken away once he landed in Sri Lanka. The applicant also claimed that his wife was threatened with abduction if she failed to divorce the applicant and that the applicant had agreed to the divorce and sent the paperwork to his family in Sri Lanka. He claimed that his wife advised him that the divorce case was listed for hearing [in] December 2016. This information was not before the delegate and is new information.
8. Although the applicant has not specified when he received the new information from his family in Sri Lanka, in accepting his assertion which implies that he had received the information after the delegate’s decision, I am satisfied that s.473DD(b)(i) of the Act is met. I am satisfied that the new information is about the applicant’s family members and, on its face, is credible personal information. “Credible” in this context only requires that the new information is information that is open to be or capable of being accepted as truthful or believed, not that the new information is necessarily accepted as truthful or believed. Given that the delegate was not satisfied that the applicant was of adverse interest to the CID or [Mr A], I am satisfied that the new information may have affected the consideration of the applicant’s claims and that s.473DD(b)(ii) of the Act is met. Given these matters and the provision of this information in support of the applicant’s central claim, I am satisfied that there are also exceptional circumstances to justify considering the new information.
9. The IAA was also provided with what appears to be a report, titled “situation report” signed by the president of the Commission for Justice and Peace of the Catholic Diocese of Jaffna and dated 14 September 2016. The “situation report” provides information on issues, said to be obstacles for peace and reconciliation, such as return of land to people, lack of accountability for missing persons, and the Prevention of Terrorism Act (PTA). The report does not cite the sources from which the information was obtained, and I note that these issues are also discussed in country information sources considered by the delegate. The applicant also provided a news report published in The Diplomat on 7 January 2016, and an Amnesty International report, reporting on events in Sri Lanka in 2015/2016. These reports were not before the delegate and are new information. The three reports pre-date the delegate’s decision and I am not satisfied that they could not have been provided to the delegate. The information in these reports is general country information on the situation in Sri Lanka and does not meet s.473DD(b)(ii) of the Act. Several years have now passed since the publication of these reports and there has been substantial developments within the political and security situation in Sri Lanka. I have obtained recent reports from credible independent sources regarding the current situation in Sri Lanka. I am not satisfied that there are exceptional circumstances to justify consider these very dated reports.
10. The applicant provided the IAA with a further submission dated 15 September 2023. The submission refers to the previous IAA’s findings and expresses the applicant’s disaffection with the IAA’s conclusions regarding his claims. In undertaking this review, I will be assessing the applicant’s claims and evidence afresh and I am not bound by the previous IAA or the delegate’s findings or conclusions. The applicant has also referred to the delegate’s findings and decision and made submissions to clarify his evidence. In addition, the applicant has referenced a news report published in [Newspaper 1] in 2015, which was also provided to the delegate. I do not consider these aspects of the submission as new information and have considered them in undertaking this review.

11. The applicant has also referenced seven timeframes within his SHEV interview recording and submits that these related to the seven instances where the Tamil interpreter “misinterpreted what was said to me” and requests that these sections of his interview to be taken in consideration. The applicant has also noted a 2 second instance during his interview which claims the delegate laughed and consider this to have been unacceptable behaviour on the part of the delegate. In indicating that these incidents involved misinterpretation of what was said to him, the applicant has not provided an alternative interpretation of what was said to him during these instances. I note that during the SHEV interview, the applicant, at times, spoke in English and corrected the interpreter regarding what was being interpreted. While I accept that there may have been instances where the applicant’s evidence may not have been interpreted accurately, due to the applicant’s English language abilities, he was able to identify the misinterpretations and corrected the interpreter. I am satisfied that the applicant was given ample and meaningful opportunity to present his claims before the delegate at the SHEV interview. The applicant also provided the delegate with pre-interview and post-interview submissions and evidence in support of his claims for protection. In addition, the applicant provided the IAA with further submissions, including clarification of his evidence before the delegate, and has responded to the delegate’s adverse findings, which I have considered in assessing his claims.
12. In addition, the submission refers to an interview with “Azad-Maulana” said to have been released on “channel 4” and related to the “bomb blast that occurred in Sri Lanka on Easter Day in 2019”. The applicant claims that the interview revealed that [Mr A] was part of “this attack since he attended a secret meeting prior to the execution”. This information was not before the delegate and is new information. Based on the applicant’s assertion that the information related to 2019 Easter bombing, I am satisfied that this information could not have been provided to the delegate. The applicant has not provided the IAA with a link to the interview nor a copy of the interview transcript. The applicant claims that this information supports his claim that [Mr A] can place him in “an unsafe situation”. Given the limited information about this interview or the basis for the applicant’s assertion that this interview establishes that [Mr A] would harm him if returned to Sri Lanka now, I am not satisfied that this information may have affected the consideration of the applicant’s claims or that there are exceptional circumstances to justify considering it.
13. The delegate considered the 2015 Department of Foreign Affairs and Trade (DFAT) report,¹ which was current at the time of the delegate’s decision. I have obtained the 2021 DFAT report², which is the most recent DFAT report on Sri Lanka. Like all DFAT reports, the report has been prepared specifically for the purposes of assisting in determination of protection status of applicants. I have also obtained the 2022 United Kingdom (UK) Home Office report; the 2022 UNHRC report, the 2023 Freedom House report and the 2023 United Nations Office for the Co-ordination for Humanitarian Affairs (OCHA) report.³ The delegate considered reports published by the UK Home Office and Freedom House, that were current at the time of the decision. Several years has passed since the delegate’s decision. The obtained reports are published by reputable organisations that provide a more current picture of the situation in Sri Lanka, including information about the unfolding of the recent economic and political situation in Sri Lanka which has had a significant impact on Sri Lankans

¹DFAT, “DFAT Country Information Report - Sri Lanka”, 18 December 2015, CISEC96CF14143.

² DFAT, “Country Information Report Sri Lanka”, 23 December 2021, 20211223094818.

³ UK Home Office, “Sri Lanka: Tamil separatism. Version 8.0”, August 2022; 20220930153437; UNHRC, “Situation of human rights in Sri Lanka: Comprehensive Report of the United Nations High Commissioner for Human Rights A/HRC/51/5”, 4 October 2022; 20221007144505; OCHA, “Sri Lanka Multi-dimensional Crisis, Situation Report No. 13”, 15 March 2023, 20230317095608; Freedom House, “Sri Lanka: Freedom in the World 2023 Country Report”, 10 March 2023, 20230310082028.

as a whole. For these reasons, I am satisfied that there are exceptional circumstances to justify considering the obtained reports.

14. As part of the previous review, the IAA obtained the 2017 DFAT report.⁴ As I have now obtained the most recent DFAT report on Sri Lanka, I am not satisfied that there are exceptional circumstances to justify considering the now outdated 2017 DFAT report.

Applicant's claims for protection

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

- The applicant was born and resided in the eastern province of Sri Lanka. He is of Tamil ethnicity and Hindu religion.
- In May 2007, "[Mr B]" a Karuna member from the applicant's area was killed due to infighting within the group and buried without his family's knowledge. A person within the Karuna group informed [Mr B]'s family. [Mr B]'s father contacted the Human Rights Commission and with police assistance dug out [Mr B]'s body the day after he was buried.
- The applicant was good friends with [Mr B]'s brother "[Mr C]" and attended [Mr B]'s funeral, which was held at their family home. The applicant took [Mr C] to a public playground to console him. They stayed at the playground for several hours. On return to [Mr C]'s family house, the applicant and [Mr C] witnessed [Mr A] shooting [Mr C]'s father. The applicant and [Mr C] escaped the scene.
- The applicant went into hiding at the university where he was studying, and [Mr C] departed the country for [Country 1]. The applicant remained within the walls of the university for four years until 2011 when he sat his final exam. In 2009, he only came out of the university to obtain his passport, his drivers license and to get married. In 2010, he left the university to attend two "[Event]" tournaments.
- After leaving the university, the applicant's mother advised him that he needed political support. The applicant joined the TNA and as a "low level supporter" helped with the campaign work for the election scheduled for 8 October 2011.
- On one occasion, the applicant and his friends were asked to meet with Karuna members at their office. The applicant left the area for Colombo while his friends attended the meeting. The applicant was told that his friends were mistreated and was advised not to return to the area. The applicant contacted an agent who arranged for him to go to [Country 2], where he stayed for 18 days. After his return, the applicant resided with his wife at her village also in [City 1]
- The applicant recommenced working for the TNA and started to gather support for the party for the September 2012 provincial council elections.
- [In] September 2012, the applicant and his friends were taken to bushlands behind a building by CID officers. They were told not to support the TNA or other parties and to support the TMVP. During their conversation with the CID officers, [Mr A] came towards the group. The applicant run away and went to his wife's place. That same night, [Mr A] and CID officers came to the applicant's wife's house. [Mr A] put a gun to the applicant's head and threatened to kill him. The applicant's wife and her parents started

⁴ DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD227.

screaming. The neighbours to come see what was going on. This caused [Mr A] and CID officers to leave in a white van.

- About an hour later, a van carrying people with guns arrived at the house. The applicant escaped. The applicant's wife telephoned him and told him that the CID officers returned to kill the applicant and urged him to leave the country.
- The applicant and his brother departed Sri Lanka on [date] September 2012 and arrived in Australia on [date] September 2012.
- In July 2016, police officers went to the applicant's parents house and told them that they were aware that the applicant was in Australia, and that he would be killed on return to Sri Lanka.
- In 2016, the applicant's brother-in-law, [an Occupation 1], was asked by [Mr A] and CID officers to hand the applicant over after his return to Sri Lanka. His brother-in-law was threatened with termination of his service if he failed to surrender the applicant.
- The applicant's wife was threatened with abduction if she failed to divorce the applicant. The applicant agreed to the divorce and sent the paperwork to his family in Sri Lanka. The applicant's wife advised him that the divorce case was listed for hearing [in] December 2016.
- The applicant fears that he would be killed by [Mr A] and CID officers if returned to Sri Lanka. [Mr A] is protected by the government and the CID. The applicant fears that the authorities would create a false case against him and would catch and kill him.
- In Sri Lanka the applicant was protected by his brother who travelled with him to Australia. His brother died due to [Cause of death] in Australia. The applicant will have no one to protect him if returned to Sri Lanka.

Refugee assessment

16. 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

17. 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.
18. The applicant has consistently claimed, and I accept, that he was born in the eastern province of Sri Lanka and is a citizen of Sri Lanka. He provided the delegate with numerous identity documents, including his Sri Lankan National Identity Card, Birth Certificate, and pages from his Sri Lankan passport. I accept that Sri Lanka is the receiving country for the purposes of this review.
 19. The applicant's evidence is that he was born in [Year] and resided in [City 1] from birth until his departure for Australia in 2012. The applicant married his wife in 2009 and their daughter was born [after] the applicant's departure for Australia. His wife, daughter, parents, [sisters] and a brother remain residing in [City 1] in Sri Lanka. The applicant travelled with another brother to Australia. His brother passed away in Australia due to [Cause of death]. I accept the applicant's evidence regarding his place birth, residence, and family in Sri Lanka. I also accept that the applicant's brother, who he travelled with to Australia, passed away as claimed.
 20. Regarding his education, the applicant's evidence is that he completed high school in [Year], after which he commenced a Bachelor of [Subject] at [University]. The applicant's SHEV application indicates that he sat his final examination in 2011 but did not pass two subjects as he did not prepare well for these subjects. The delegate was provided with documentary evidence regarding the applicant's university admission and his university student card. Regarding his employment history, the applicant's SHEV application indicates that he established his own company, "[Company name]" in November 2015 in Australia. I accept the applicant's evidence regarding his education in Sri Lanka and employment in Australia.
 21. The applicant's central claim relates to having been a witness to a murder in May 2007, committed by [Mr A] with involvement of CID officers. In his SHEV statement, the applicant claims that he was a good friend of [Mr C], whose TMVP brother [Mr B] was murdered due to infighting within the group. He claims that [Mr B] was buried without the knowledge of his family and that a day after his death, someone within TMVP informed [Mr B]'s family about his death. The applicant states that [Mr B]'s father contacted the Human Rights Commission and had the body of his son dug up. On the evening of [Mr B]'s funeral, the applicant claims that he went to console [Mr C] and that they went to a nearby playground where they stayed for several hours. After their return to [Mr C]'s house, at around 10pm, they witnessed [Mr A] shooting [Mr B]'s father. The applicant claims that he and [Mr C] run in different directions and escaped the scene. He claims that he went to the university where he was studying at the time and that after a week or two, he heard that [Mr C] had left Sri Lanka for [Country 1]. The applicant states that he remained within the walls of the university, for a period of four years, until he sat his final exam in 2011. He claims that he only left the university on five occasions, [in] 2009 to obtain his passport, [in] September 2009 to get married, [in] December 2009 to obtain his driver's licence, and [in] September 2010 and [October] 2010 to attend "[Event]" tournaments. The applicant also states that he wanted to leave the country soon after obtaining his passport. He was told that he was able to travel to [Country 3] if he came first or second in the university, but he came third. He also refers to having been told by his "master" that if he came first, he would be sent to [Country 4], but once the applicant came first, he was refused.

22. At the SHEV interview, the applicant was asked for his reasons to depart Sri Lanka. The applicant stated that on [date] September 2012, [Mr A] and CID officers came to shoot him, and that the reason for this was due to an incident that occurred on the fifth month of 2008. The applicant gave broadly consistent evidence to what he had stated in his SHEV statement regarding the death of [Mr B] and what occurred after his family were informed. The applicant claimed that the playground where he took [Mr C] was about 50 metres from [Mr C]'s home, where the funeral was held, and that after shooting [Mr C]'s father, [Mr A] had turned the gun towards the applicant and [Mr C] prompting them to run away. He also stated that he went to the main road, where he caught a bus to the university. He further stated that he stayed at the university hostel for a year, then moved to a house for his second year of study, after which he returned to the university hostel. He claimed that during the four years that he was at the university, he left the grounds on four occasions, and that other than those occasions his brother was helping him.
23. The delegate in his decision observed that the applicant's evidence about when the murder incident occurred was contradictory. I note that in his SHEV statement the applicant had claimed that the incident occurred in May 2007 and at the SHEV interview he stated that it occurred in May 2008. In response to the delegate's observation, the applicant submits that when he was asked about the incident, it was referred to as May 2008 incident. He did not dispute the year of the incident because he was concerned about the content of the claim and that the delegate could have clarified the year of the incident. Having listened to the recording of the SHEV interview, the delegate did not mention any incidents but rather allowed the applicant to give his reasons for leaving Sri Lanka and it was the applicant who referred to murder incident having occurred in May 2008. While the applicant has confirmed that the incident occurred in May 2007, he did refer to May 2008 in his SHEV interview.
24. The delegate also observed that while the applicant referred to five instances when he had left the university grounds in his SHEV statement, at the SHEV interview he stated that he had only been outside of the university on four occasions. The delegate also opined that on three of those occasions, to obtain his passport, legal papers due to his marriage, and to obtain his driver's licence, the applicant would have needed to approach the authorities, and found it implausible that if the applicant was in hiding from [Mr A], an influential government official, and CID officers, that he would have approached local government offices to obtain these documents. The applicant submits that as mentioned during the SHEV interview, unlike in Australia, in Sri Lanka one does not need to approach Sri Lankan authorities and that he was helped by his family members to obtain these documents through an agent. He confirms that he was afraid to approach any government authority due to fear of [Mr A] and CID officers who saw him while murdering [Mr C]'s father. I note that the applicant's SHEV statement does not indicate that he had engaged the help of his family or agents to obtain these documents on his behalf. He states that he came out of hiding during these five incidents which he considered as incidents to protect his life. He wanted to leave the country so he obtained his passport and that he felt that the police "should not catch me without a licence". I also note that it was only in response to the delegate's observation at the SHEV interview that the applicant had no issues going to Colombo, [Country 2] and returning to Sri Lanka, that the applicant stated that it was a friend of his brother who obtained his passport for him. I also note that in his latest 2023 submission, the applicant refers to a friend assisting him to submit his drivers' licence application and also asserts that before [September] 2012, he was able to give his personal information to the authorities to obtain his licence and passport because the paramilitary groups did not know his personal details. There are some not insignificant differences in the applicant's evidence about whether he left the university premises to obtain official documents, whether he personally lodged his applications for his drivers licence and passport or who made or assisted him in making applications to obtain

official documents. I also note the applicant's evidence during his SHEV interview that he had moved in and out of the university hostel during the period that he claims he was in hiding and confined to the walls of the university.

25. The applicant has not provided any independent information that support his assertion that he did not have to attend government agencies responsible for issuing passports, marriage certificates and drivers' licences to apply for or obtain these official documents and that an agent or a family member/friend could do this on his behalf. While the country information reports⁵ before the delegate indicate that forged and fraudulent obtained official documents was common in Sri Lanka and that agents who advertised employment or studies abroad provided an entire package of forged documents to support applications for passports and visas, the information does not indicate that agents applied for and obtained genuine passports for individuals. In addition, the applicant has also not provided any supporting evidence, such as statements from his family members or his friend who he claims submitted his driver's licence application, to substantiate his claims that an agent/family members/friend were engaged to obtain these documents and that he was in hiding at the university while completing his studies.

26. In his SHEV statement, the applicant claims that after he sat his final examination at the university in 2011, he had to leave the university. To ensure his safety, the applicant claims that he needed "political background" and that he commenced working as a "low level" person for the TNA. The applicant claims that he helped with the campaign work for the local council elections scheduled for 8 October 2011. He claims that [in] September 2011, as he was passing the Karuna group's office in his village, he was invited by members of the group to attend a meeting that evening and that he left for Colombo that evening. His friends who attended the meeting were mistreated and told him to stay in hiding until the election was over. The applicant claims that he contacted an agent who organised for him to go to [Country 2], where he remained for 18 days, and returned to Sri Lanka after the election was over. At the SHEV interview, the applicant stated that after his return from university, his mother advised him that he needed political support for his safety. He referred to distributing pamphlets and information for the TNA and that on one occasion when he was coming out of a house, he saw three of his friends talking to Karuna group members and when he asked his friends what was going on, he was told that they had been asked to go to the Karuna group's office that evening for a meeting. I note that this is different from his evidence in his SHEV application that he was passing the Karuna group's office and was personally asked to attend a meeting. At the SHEV interview, the applicant said that he went to Colombo that evening and that when he called his friend, he was told that his friend was attacked, had his leg broken, and that he was advised he was better leaving the country as the CID were looking for the applicant. The applicant confirmed that he departed Sri Lanka for [Country 2] with the help of an agent and that he waited in [Country 2] until 10 days after the election. When asked why he went to Colombo and where he stayed there, the applicant stated that he went to Colombo because he could not stay in his village and that as in Colombo many people come and go, it would have been hard for them to identify him. He confirmed that nothing happened to him while he travelled and stayed in Colombo. The applicant's evidence does not indicate that he faced any issues or was interrogated on return to Sri Lanka from [Country 2]. Country information⁶ before the delegate referred to individuals who were of interest to the authorities being placed on "watch" electronic databases at the airports and that at the time Tamils returning from abroad were the subject of detention.

⁵ UK Home Office, "Sri Lanka: Country of Origin Information (COI) Report", 7 March 2012, CIS29709; DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143.

⁶ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143.

27. The applicant's evidence is that after his return from [Country 2] he resided with his wife at her village in [City 1]. In his SHEV statement the applicant claims that he recommenced supporting the TNA and began to gather support for the party for the provincial council election scheduled for September 2012. At the SHEV interview, the applicant claimed that on [date] September 2012, he and his friends went to a house to distribute pamphlets and were approached by five officers who claimed to be from the CID. The applicant stated that they were shown the officers CID identity cards and were taken to a bushland behind a building. The applicant claimed that they were told by the CID officers not to work for the TNA or other parties and that they should support the TMVP. While they were talking to the CID officers, [Mr A] came and the applicant runaway. He claims that he went home as his wife was pregnant at the time and that once he arrived, his wife called her parents to come and stay with them for the night. The applicant's evidence was that at round eight at night, [Mr A] and CID officers came into their home and put a gun to his head. The applicant's wife and parent-in-law were screaming, causing the neighbours to come over to see what was happening. This resulted in [Mr A] and CID officers leaving in a white van. The applicant claimed that [Mr A] and CID officers returned later and that he escaped and spent the night at a deserted house and as his wife told him to leave the country, the applicant called his brother who arranged for them to depart [City 1] for Australia on [date] September 2012.
28. At the SHEV interview, the applicant was asked given his fear of [Mr A], who the applicant claimed was with the TMVP, why he chose to join the TNA and campaigned with the party openly. The applicant stated that his parents told him that he could not live without political support. When asked again about why he chose to campaign with TNA who were opposed to TMVP, the applicant stated that he joined an opposition party because they wouldn't shoot him as it would have become a big issue for them. When asked about why the CID and [Mr A] did not shoot him when they entered his home and put a gun to his head, the applicant said that shooting him would have ruined [Mr A]'s political life. The applicant also stated that at the time the United Nations was collecting information about [Mr A] and that they didn't shoot him for that reason but came back later with the intention to shoot him. The applicant has also made submissions that [Mr A] was trying to contest the 2012 election under the seat of TMVP, but his nomination was originally rejected due to people's awareness of his involvement in murders, sexual assaults, and torture, but that he was still trying to convince uneducated Tamils was trying to contest future elections. The applicant provided a news report published by [Newspaper 1] on [date] 2015 in support of his claim that [Mr A] was a member of the [named] Province Council after the 2012 election. The news report refers to [Mr A] as a paramilitary leader and that Tamils were calling for him to face justice. It refers to a protest in [District] involving Tamils calling for [Mr A] to face justice for his crimes committed during his time as [District]'s UPFA district coordinator. This news report and [a January 2012 news report] that [Mr A] was known to Tamils and the TNA for his involvement in violation of human rights and that the TNA and the Tamil population were calling for [Mr A] to be held accountable. The January 2012 news report also indicated that [Mr A] was accused of intimidating voters, issuing death threats, and of election fraud during the last presidential, parliamentary, and local elections. It is also noted that [Mr A] was sentenced to ten years suspended jail term due to being found guilty of criminal cases.
29. As noted above, there were some significant differences in the applicant's evidence regarding his claim regarding having witnessed his friend's father's murder, information relating to activities during the claimed period of hiding at the university, and the incident relating to having been told to attend Karuna group's office in 2011. In addition to the differences in his evidence, I found aspects of the applicant's claims implausible and his explanations unconvincing. Given the evidence about [Mr A] and Sri Lankan officials lack of accountability for human rights abuses and prevalence of officials and persons in power acting with

impunity, particularly in relation to Tamils and in the years after the end of the civil war, I find it highly implausible that if the applicant was a person of interest to [Mr A] or the CID that they would not have been able to locate him at the University or would not have harmed him when they had the chance to do during occasions that they had him at a bushland behind a building and at his house with a gun was held to his head. I find the applicant's explanation that because his political future, [Mr A] did not shoot him when he had a gun to his head, but returned soon after to kill the applicant, and the applicant's ability to just hid in a deserted house nearby without being found, difficult to accept. I also find it difficult to accept that if the applicant was wanted for having witnessed a murder and spent four years in hiding, even after his marriage in 2009, that he would have been advised by his family to get involved with a political party campaigning in the area where [Mr A] was also present and trying to gain political power/support. The applicant's evidence that he was able to depart Sri Lanka for [Country 2] and return after some 20 days without facing any issues at the airport, or in the months after his return up until [September] 2012, undermines his claim that the CID were looking for him prior to his departure. In addition, I find it very difficult to accept that if the applicant was fearful for his life, had to leave the country to escape being harmed by the CID and [Mr A], that on his return to [City 1] in October 2011, he would have recommenced his work with the TNA and openly distributed pamphlets and information to people in the area.

30. I also note that during his arrival interview, held days after his arrival in Australia, the applicant mentioned that [Mr A] and the Karuna group kidnapped his brother for three days and held his uncle for one year for no reason with no mention of having been a witness to a murder committed by [Mr A]. While I note the applicant's objections to reliance on his evidence provided during his arrival interview, held a month after the applicant's claim that he has [Mr A] and CID attempted to kill him, I consider that if he had experienced an incident where a gun was held to his head, that he would have at least mentioned this, particularly given that the applicant referred to [Mr A] having kidnapped his brother and uncle. Further the applicant's evidence that his family members in Sri Lanka have been approached and threatened by [Mr A] or that his wife has filed for divorce in 2016 due to fear of abduction, is not supported by any evidence, such as statements from his family in Sri Lanka or documentary evidence regarding his claimed divorce. It has been almost six years since the applicant's assertions made in his 2016 submission. He has not provided any further evidence or information regarding his family members in Sri Lanka.
31. I accept that the applicant attended university between 2007 and 2011. I accept that the applicant applied for and obtained his passport in 2009 and that he may have been promised travel to [Country 3] and [Country 4], which did not eventuate. in light of my reasons and discussion of the applicant's evidence above, I do not accept that the applicant was a witness to the murder of his friend's father in 2007 or that he was in hiding and remained within the walls of the university for a period of four years. I accept that after the completion of his final exam at the university in 2011, he returned to his family home and assisted the TNA during the election and in his own words was a low-level supporter. I accept that the applicant went to [Country 2] in 2011 and returned in October 2011, and that after his return he recommenced assisting the TNA, as a low-level supporter, to campaign for the September 2012 election. As I do not accept that the applicant was a witness to the murder as claimed, I do not accept that he was of any interest to [Mr A] or the CID for this reason and I am not satisfied of the credibility of his evidence regarding the events that occurred on [date] September 2012 causing him to depart the country. While I accept that having supported the TNA during the 2011 and 2012 election, in the form of distributing pamphlets and information to the locals in the area, the applicant and his friends may have faced some harassment and intimidation at the hands of opposition groups, which was common at the time, I am not at all satisfied that the applicant was of any ongoing adverse interest to the

authorities or the CID. Consequently, I do not accept the applicant's evidence that his family were harassed or visited by CID officers or [Mr A] after his departure from Sri Lanka or that his wife has filed for a divorce for reasons claimed.

32. Overall, I am not satisfied that the applicant was of any adverse interest to the Sri Lankan authorities, the CID, [Mr A], or any other group, for any reason, including his limited involvement with the TNA in 2011 and 2012. I am not satisfied that the applicant departed Sri Lanka for the reasons claimed.
33. The applicant has consistently claimed, and I accept, that he is of Tamil ethnicity. I also accept that he is of the Hindu religion but has not made any claims based on his religion.
34. DFAT reports,⁷ indicate that the security situation for Tamils in Sri Lanka has significantly improved since the applicant's departure from Sri Lanka in 2012, particularly in the period after the 2015 Presidential election. It is reported that the 2015 presidential election proceeded relatively smoothly and was peaceful and orderly. Tamils faced less harassment during the 2015 presidential election and did not receive unwarranted attention from the authorities. After the 2015 election, the then President Sirisena promised a new era of "clean" government and embarked upon a path of reconciliation with the Tamil minority. The government committed to implementing a range of truth, justice and reconciliation measures under the UN Human Rights Council resolution. Many initiatives markedly improved the lives of Tamils in Sri Lanka, which included the recognition of both Sinhala and Tamil as the official languages of the country; the lifting of restrictions on travel to the north and east of the country; the freeing of civilian land from military control; the release of some individuals detained under the PTA and the government's public commitment to reducing military involvement in civilian activities. Such measures resulted in a decrease in the number of Tamils held in detention, reduced incidents of extrajudicial killing, disappearances, abductions, extortion and kidnapping for ransom.
35. In 2021 DFAT⁸ reported that the Sirisena government faced a constitutional crisis when the President briefly appointed Mahinda Rajapaksa as his Prime Minister in a move that was not approved by the parliament. As Mahinda Rajapaksa's prior 10-year presidency, between 2005 and 2015, was marked by accusations of corruption and human rights violations including war crimes against Tamils, both Tamils and non-Tamils expressed concerns that human rights improvements achieved since 2015 would be reversed if Rajapaksa came into power. The election held in November 2019 saw his brother, Gotabaya Rajapaksa become the new President. The 2020 parliamentary election, reported to be mostly credible, resulted in a two-third majority in the Sri Lankan parliament led by Prime Minister Mahinda Rajapaksa. It is reported that following the election of the Rajapaksas, the progress made under the Sirisena government was seen to have reversed in direction with fear of a return to the patterns of discrimination and widespread violation of human rights experienced in past decades. Local sources expressed concern about the militarisation of the civilian areas under the Rajapaksa government and increasing use of the PTA to silence critics of the government. International organisations expressed concerns about the Sri Lankan government seeking to stifle and suppress critics with knowledge of historical abuses during the war.
36. DFAT⁹ also reported that in 2020, the World Bank classified Sri Lanka as a lower middle-income country, downgrading it from upper middle-income status. Since the global

⁷ DFAT, "DFAT Country Information Report – Sri Lanka", 18 December 2015, CISEC96CF14143; DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

⁸ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

⁹ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

pandemic, in 2021, Sri Lanka's economy has been further troubled by the country's low foreign-exchange reserves and high and rising government debts. More recent country information reports¹⁰ about the political and economic situation in Sri Lanka, indicate that Sri Lanka is currently facing an unprecedented economic crisis, and its political landscape has undergone significant upheaval in 2022. Sri Lankans have faced severe shortages of essentials, including fuel, electricity, and medicines. With the country's collapsing economy, Sri Lankans came together to protest, blaming the powerful and wealthy Rajapaksa family for the economic crisis/mismanagement. The scale of the protests, which was met with violence by pro-government factions, was unprecedented and managed to shake up the Rajapaksa led government. The Prime Minister, Mahinda Rajapaksa, resigned in May 2022 after his supporters attacked peaceful protesters. This caused widespread protests and violence against the then Rajapaksa government, with the President Gotabaya Rajapaksa fleeing the country and resigning on 14 July 2022. Ranil Wickremesinghe, who was appointed Prime Minister in July 2022, was made Acting President, and then elected President of Sri Lanka on 20 July 2022. He is expected to serve out the remainder of Mr Rajapaksa's term, which ends in 2024. It is reported that after the collapse of the Rajapaksa government and the widespread protests in the country, the new President has tried to sound conciliatory and in his first speech to Parliament, appealed for unity of Sri Lankans across all ethnic communities and affirmed the place of all religions, languages, and traditions. He reportedly recognised the transformative power of the protest movement, promised constitutional reforms and combating corruption, and establishing a new social justice commission to ensure economic reforms benefit all sectors of the society. Regarding the current economic crises and shortages of essential items, including food, fuel and medicines, the OCHA report¹¹ indicates that several countries have pledged further assistance, especially towards improving food security and humanitarian assistance.

37. Regarding monitoring and discrimination against the Tamil population, the 2021 DFAT report¹² indicated that while some members of the Tamil community reported discrimination in employment, particularly in government jobs, other sources suggested that this is because Tamils speak neither Sinhala or English and DFAT assessed that there was no official discrimination on the basis of ethnicity in public sector employment. Members of the Tamil community and NGOs reported that the authorities monitored public gatherings and protests in the north and east, and that security forces were more likely to monitor people associated with politically sensitive issues, including relating to the war or missing persons. While DFAT assessed that surveillance of Tamils in the north and east continued, with particular surveillance of those associated with politically sensitive issues, it concluded that physical violence against those being monitored was not common, and that ordinary Tamils living in the north and east of the country were at a low risk of official harassment. It is also reported that while the LTTE was comprehensively defeated in May 2009, Sri Lankan authorities remain concerned over its potential re-emergence, and to separatist tendencies in general. It is reported that Tamils with former links with the LTTE, and those who are not politically active, have generally been able to lead their lives without concern for the security as a result of their past association with the LTTE, with the government focusing on Tamil activities in the diaspora who are working for Tamil separatism to destabilise the government and that monitoring of Tamil diaspora returning to Sri Lanka depends on their security risk profile. The

¹⁰ UNHRC, "Situation of human rights in Sri Lanka: Comprehensive Report of the United Nations High Commissioner for Human Rights A/HRC/51/5", 4 October 2022, 20221007144505; OCHA, "Sri Lanka Multi-dimensional Crisis, Situation Report No. 13", 15 March 2023, 20230317095608; Freedom House, "Sri Lanka: Freedom in the World 2023 Country Report", 10 March 2023, 20230310082028; US Department of State, "Sri Lanka 2022 Human Rights Report", 20 March 2023, 20230321155722.

¹¹OCHA, "Sri Lanka Multi-dimensional Crisis, Situation Report No. 13", 15 March 2023, 20230317095608.

¹² DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

most recent UK Home Office report¹³ on Tamil separatism, also opines that Tamils do not face persecution for reasons of their Tamil ethnicity alone, and that only those considered by the Sri Lankan government to have had a “significant role” with the LTTE or engaged in diaspora Tamil separatism activities are of concern to the authorities. The applicant has not claimed to have been involved with the LTTE during the war or that, as Tamil residing in the east, he was suspected of or perceived to have had any links with the LTTE. His evidence also does not indicate that he has been involved in any groups or activities in Australia that would be of concerns to the authorities in Sri Lanka or that he would be of any security risk to the Sri Lankan government.

38. Country information reports, including the recent report published by the ITJP, indicate that Sri Lankans face a real risk of torture and sexual violence while in detention. DFAT¹⁴ also reports that while the risk of torture perpetrated by either military, intelligence or police forces decreased since the end of the war, Sri Lankans faced a low risk of torture overall, with those detained facing a moderate risk of torture. Given my findings about the applicant’s lack of any ongoing profile with the Sri Lankan authorities, his absence from the country since 2012, and the treatment of those who have departed Sri Lanka illegally and sought asylum abroad with no profile of interest with the authorities (discussed below), I consider the chances of the applicant being detained and tortured or otherwise mistreated, to be no more than remote.
39. The information cited above demonstrates that while Sri Lanka has recently experienced political instability and is in the midst of a significant economic crisis, the security situation for Tamils has markedly improved since the applicant’s departure in 2012 and that the impact of the Sri Lankan authorities on Tamils’ lives and the targeting of Tamils based on their ethnicity has markedly decreased. In view of the country information, and that I do not accept that the applicant was a person of ongoing concern to the authorities while residing in Sri Lanka and at the time of his departure, or that that has engaged in any activities that would be of concern to the authorities since his departure from the country in 2012, I do not consider that there is a real chance the applicant would be considered a security risk to the authorities if returned to Sri Lanka.
40. I also note that the information cited above indicates that the current economic and political crises have united Sri Lankans to protest demanding change and democratic participation. The reporting on the recent events does not support a conclusion that responses to the widespread protests have targeted Tamils or that the allocations of scarce resources have been applied in a disproportionate or discriminatory manner towards any ethnicity or religious or other group. It is reported that the now President Wickremesinghe is pushing for unity and reconciliation and that the government is working towards improving the current very difficult economic situation in the country which is impacting the Sri Lankan population generally. I am not satisfied that there is a real risk that the applicant faces a real chance of being targeted or subjected to harm due to the ongoing economic and political crises in Sri Lanka.
41. DFAT¹⁵ reported that the 2015 presidential election proceeded relatively smoothly and was peaceful and orderly. It is also reported that Tamils faced less harassment during the 2015 presidential election and did not receive unwarranted attention from the authorities and that the influence of former Paramilitary groups such as the TMVP, formerly the Karuna group,

¹³ UK Home Office, “Sri Lanka: Tamil separatism. Version 8.0”, August 2022; 20220930153437.

¹⁴ DFAT, “DFAT Country Information Report - Sri Lanka”, 23 December 2021, 20211223094818.

¹⁵ DFAT, “DFAT Country Information Report – Sri Lanka”, 18 December 2015, CISEC96CF14143; DFAT, “DFAT Country Information Report Sri Lanka”, 24 January 2017, CISED50AD227.

have waned considerably since 2015 and they no longer maintain armed wings. The most recent DFAT report¹⁶ indicates that Tamil political parties have remained active, and that in the 2020 parliamentary election the TNA won 10 seats and that there were two Tamil parties in the government. The applicant's evidence is that he was a low-level supporter of the TNA and assisted the party during the 2011 and 2012 elections. He has not indicated that he would get involved in any future election activities in any capacity. It is reported that since 2012, the elections have not been marred with large-scale violence and proceeded in an orderly and peaceful manner and that the presence and intimidation by paramilitary groups have waned. I am not satisfied that should the applicant engage in any election activities, in the same capacity as he did in the past, that he would face a real risk of encountering intimidation or any harm.

42. Overall, I am not satisfied that the applicants, will face a real chance of detention or harm for reasons of their Tamil ethnicity, having resided in the eastern province during the civil war, or his limited work with the TNA during the 2011 and 2012 local elections.
43. I accept that the applicant departed Sri Lanka illegally and that his Sri Lankan passport issued in 2009 is now expired.
44. DFAT¹⁷ indicates that Sri Lankans without passports can re-enter the country on temporary travel documents, also known as an Emergency Passport or a Non-Machine-Readable Passport, issued by diplomatic and consular missions and valid for re-entry to Sri Lanka. Given that the applicant is no longer in possession of a valid passport he may well be returning to Sri Lanka on temporary travel documents. DFAT indicates that for returnees travelling on temporary travel documents, police undertake an investigative process to confirm identity, which would identify someone trying to conceal a criminal or terrorist background or trying to avoid court orders or arrest warrants. The 2022 UK Home Office report¹⁸ indicates that on arrival returnees will be interviewed by Chief Immigration Officer and depending on the circumstances of their departure from Sri Lanka and their personal history, they may be interviewed by other agencies such as the CID, Sri Lankan State Intelligence Services and Sri Lankan Navy Intelligence, who would check travel documents and identity documents against immigration and intelligent databases. The applicant is very likely to be questioned at the airport, have his identity determined and criminal history checked. Given my findings about his profile with the authorities prior to his departure, I do not consider that any identity or background checks at the airport would identify the applicant as a person of adverse interest or place him at a real risk of detention or mistreatment. I also note that DFAT indicates that it is not aware of detainees being subjected to mistreatment during processing at the airport.
45. Entry and exit from Sri Lanka is governed by the Immigrants and Emigrants Act (I&E Act). According to DFAT, persons who departed Sri Lanka illegally are very likely to be questioned at the airport, have their criminal history checked and be charged under the I&E Act. Due to his illegal departure in 2012, it is likely that he may be charged under the I&E Act. DFAT¹⁹ indicates that penalties for leaving Sri Lanka illegally can include imprisonment of up to five years and a fine, although is unaware of a prison sentence being given for illegal departure by itself. Those charged are required to appear in court in the location where the matter was first heard, reportedly Negombo Courts, near the airport, 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

¹⁶DFAT, "Country Information Report Sri Lanka", 23 December 2021, 20211223094818.

¹⁷ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

¹⁸ UK Home Office, "Sri Lanka: Tamil separatism. Version 8.0", August 2022; 20220930153437.

¹⁹DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

months, regardless of their plea and that cases of those charged with illegal departure may take years to resolve, requiring on-going court appearances. Local sources suggested that those convicted of the offence of illegal departure are almost always fined, and those who are unable to pay the fine are permitted to pay in instalments but, if still unable, may be imprisoned for 14 days. The applicant has not claimed, and I am not satisfied that he would not be able to pay the fine if convicted of illegal departure.

46. Although the process of exiting the airport could take several hours, on the information before me it appears that all returnees are treated according to these standard procedures. I am not satisfied that the applicant would be identified as a person of interest. Any penalties that the applicant may face would be as a result of the application of the I&E Act which is neither discriminatory on its terms nor applied in a discriminatory manner nor selectively enforced. I consider that the process that the applicant may encounter due to the application of the I&E Act, as discussed above, does not involve systematic and discriminatory conduct or amount to persecution for the purposes of s.5J of the Act.
47. In relation to the applicant facing any harm for reasons of having sought asylum in Australia, the most recent DFAT report²⁰ notes that between 2010-11 and 2018-19, 3,716 Sri Lankan nationals returned from Australian community or Australian onshore immigration detention centres to Sri Lanka or a third country. It is reported that while refugees and failed asylum seekers face practical challenges to successful return to Sri Lanka, they are not actively monitored on an ongoing basis or treated in such a way that endangers their safety or security. DFAT²¹ reported that returnees receive limited integration assistance, many having difficulties finding suitable employment and reliable housing on return. Those with skills in high demand in the labour market were best placed to find well-paid employment. Societal discrimination was not considered a major concern and DFAT assessed that returnees faced a low risk of societal discrimination on return to their communities. Some Tamils who had failed to secure asylum in Australia and since returned told DFAT that they had no protection concerns and had not experienced harassment by the authorities, nor received monitoring visits, but DFAT could not determine if this was the case for all returnees. Given the applicant's profile, I consider the chance of him being of any ongoing interest to the authorities to be no more than remote. The applicant is university educated and his evidence in his SHEV application indicates that he established a business in Australia and was working. His family, including his wife, child, parents and siblings remain in Sri Lanka, and the applicant has not claimed he would not have accommodation or the support of his family if returned to Sri Lanka. Although the current economic situation in Sri Lanka has seemingly had a widespread impact on the country as a whole, I am not satisfied that there is a real chance the applicant's capacity to subsist would be threatened or that he would otherwise face a real chance of persecution. I also note country information which indicates that societal discrimination is not a major issue and that returnees face a low risk of societal discrimination and consider the chances of the applicant facing any harm on this basis to be no more than remote.
48. In considering the applicant's circumstances and overall profile in the context of the country information cited above I am not satisfied that the applicant would face a real chance of persecution in the reasonably foreseeable future for any of the claimed reasons or arising on the material before me.

²⁰ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

²¹ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

49. The applicant does not have a well-founded fear of persecution within the meaning of s.5(J) of the Act.

Refugee: conclusion

50. 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

51. 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

52. 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.
53. 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.
54. I accept that on return to Sri Lanka the applicant will very likely be subjected to an investigation process to establish his identity and background. For the reasons explained above, I am not satisfied that there is a real risk that he would be identified as a person of interest or otherwise be harmed during this process. I do not consider that the treatment that the applicant may face during the arrival process amounts to a level of pain, suffering or humiliation required by the definition of torture in s.5(1) of the Act, nor cruel or inhuman or degrading treatment or punishment. I am not satisfied he face a real risk of arbitrary deprivation of his life or be subject to the death penalty or tortured.
55. On the country information cited above, I consider it likely that the applicant, like any other returnee who departed Sri Lanka illegally, will be charged under the I&E Act. I accept that Sri Lanka as a country is in the midst of a challenging economic crisis which has impacted the population as a whole. I am not satisfied that being charged under the I&E Act for illegal departure or any of difficulties that the applicant may experience due to the current economic and political situation in Sri Lanka, which is an issue impacting Sri Lankans, would amount to significant harm as defined. I am not satisfied that there is an intention to inflict pain or suffering that can reasonably be regarded as cruel and inhuman in nature, severe pain or suffering or an intention to cause extreme humiliation such as to meet the definitions of torture or cruel or inhumane treatment or punishment or degrading treatment or

punishment. I am also not satisfied that the applicant will face a real risk of being arbitrarily deprived of his life or be subject to the death penalty or torture.

56. I have found above that there is otherwise no real chance of the applicant facing any harm. The Federal Court²² has held that 'real risk' imposes the same standards as the 'real chance' test. Having regard to my findings and reasoning above I am also satisfied that the applicant does not face a real risk of significant harm.
57. I am not satisfied that there is a real risk that the applicant will suffer significant harm in Sri Lanka.

Complementary protection: conclusion

58. 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.

²² *MIAC v SZQRB (2013) 210 FCR 505.*

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.