



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA16/00149

Date and time of decision: 20 April 2016 14:52:29
Victoria Coleman, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*

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 an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Tamil of the Christian faith who was born in [District 1], in the north of Sri Lanka. He has resided in [District 2] and in [District 3], also in the north of the country. The applicant departed Sri Lanka in October 2012. He arrived in Australia [in] November 2012 and applied for a Safe Haven Enterprise Visa (SHEV) (Class XE Subclass 790) [in] September 2015 (the SHEV application).
2. A delegate of the Department of Immigration and Border Protection (the delegate) refused to grant the SHEV to the applicant [in] March 2016. The delegate found the applicant was a Tamil from Sri Lanka. The delegate accepted that the applicant was questioned by the Police Criminal Investigation Department (CID) in the course of his employment, that his mother was involved with [Political Party 1], and that he worked for [time period] with a Non-Governmental Organisation (NGO) that [details deleted]. The delegate also accepted that: the applicant's father was [occupation] for the LTTE; his [Relative 1] was a policeman with the LTTE who is in detention in an unknown location; and that CID questioned the applicant on several occasions in relation to his father and had physically assaulted him during questioning.
3. The delegate had regard to the guidelines prepared by the United Nations High Commissioner for Refugees (UNHCR) regarding persons in need of protection from Sri Lanka (the UNHCR guidelines). She accepted the applicant fell within the profile of a person identified as being at risk under these guidelines. Having regard to recent advice from the Australian Department of Foreign Affairs and Trade (DFAT)¹, the delegate concluded there was no real chance or real risk of harm to the applicant on return to Sri Lanka.

Information before the IAA

4. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. On 1 April 2016 the applicant provided a submission to the IAA. The information contained therein is in the nature of legal submissions responding to the findings of the delegate. It does not fall within the meaning of 'new information' in s.473DC of the Act. I considered this information.
6. I have obtained new information on the treatment of suspected members or supporters of the LTTE, which was not considered by the delegate.² This information, from the Governments of the United Kingdom (UK), the United States (US) and Canada, was obtained on the basis that I had insufficient information before me to determine whether the applicant satisfied the requirements for the grant of a protection visa. The information obtained directly relates to the treatment of persons with the applicant's claimed profile. Relevantly, information in US State Department report also pertains to the harassment of NGO's and the use of military

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Sri Lanka", 18 December 2015, CISEC96CF14143.

² United Kingdom (UK) Home Office, "Country information and Guidance Sri- Lanka and Tamil Separatism", 28 August 2014, OC180885B28; Immigration and Refugee Board of Canada (IRBC), "Sri Lanka: Treatment of suspected members or supporters of the Liberation Tigers of Tamil Eelam (LTTE), including information about how many are in detention; whether the government continues to screen Tamils in an attempt to identify LTTE suspects (2011-January 2015), 11 February 2015, OGFDFC61A5; and United States (US) Department of State, "Sri Lanka 2014 Human Rights Report", 25 June 2015, OG2B06FAF8.

bases by the CID as unofficial places of detention which goes to establishing the credibility of the applicant's evidence. For these reasons, I consider there are exceptional circumstances to justify considering this material for the purpose of s.473DD of the Act.

Applicant's claims for protection

7. The applicant's claims are contained in the information referred in the arrival interview, his SHEV application and his oral evidence in the SHEV interview. They are also restated in the IAA submission. They can be summarised as follows:

- The applicant's [Relative 1] was a policeman with the LTTE. He joined in 2008 and worked in the [Town 1] area in Kilinochchi district.
- The applicant's parents were also in the LTTE. His mother advised him that his father was [occupation] for the LTTE and that in 1998, before the applicant was born, he was shot and killed by paramilitary groups associated with army. Following his father's death, their neighbours began to remark that his mother was in an 'LTTE family'. As a result, she moved [District 3] to live with her relatives.
- In 2006 the applicant was studying at school in [District 3]. There was an army camp located nearby. In 2006 the LTTE members carried out a [specific] attack near this camp and many soldiers died. Members of the army entered the school and many of the students, including the applicant, were physically assaulted and locked in a classroom.
- During this time the army would also frequently do round-ups of Tamil youth. The applicant's mother became fearful for his safety and in October 2007, they went to India on a [temporary] visa. They registered with [a] camp and sought asylum. The applicant and his mother were accepted as refugees and resided in [another] camp in Tamil Nadu.
- In 2008 the applicant's mother became unwell and wanted to return home. She advised the applicant to remain in India but he felt he could not leave her, so they returned to Sri Lanka. At the airport they were investigated about why they left Sri Lanka and what they did in India. The authorities recorded their names and address and took their fingerprints.
- In approximately January 2010 the applicant obtained work [at an] [NGO] in [District 3], which [details deleted]. The applicant was not aware of this aspect of the NGO's work until after he signed the work agreement. The applicant left this organisation after [a time period] as the authorities began threatening NGO workers and he was fearful he would be perceived an LTTE supporter and harmed.
- From 2010 until 2012, the applicant was [an occupation] in [District 3] and used his vehicle to assist [Political Party 1] with errands for the election. [In] March 2012, the applicant [assisted] a customer [at a location]. He then received a telephone call from an unknown number and was instructed to attend a particular location. The applicant went and was approached by two people on a motorbike. They interrogated him in a threatening manner about the customer and her whereabouts. From their questions the applicant assumed she was a person of significance. The applicant informed them he did not know who she was. They noted this name, address and vehicle registration, threatened the applicant and physically assaulted him. He was told to report to the CID office the following day.
- The applicant reported to the CID and was interrogated by two officers. They asked about his parents, where they had lived and why he and his mother had travelled to

India. The applicant became fearful and, when asked, admitted that his father had worked for the LTTE. The applicant informed them that he was not in the LTTE but they did not believe him. The applicant was physically assaulted, threatened with a pistol, and sexually assaulted by one of the officers. The applicant was released that evening following a complaint by his mother. However, he was required to report to the CID once a week.

- The CID continued to monitor him and he was regularly interrogated and intimidated. The applicant reported to the CID every week. In May 2012 he was again sexually assaulted by the same officer. The applicant felt disgraced and uncomfortable. He stopped his work as [occupation] and moved to [District 2] to stay with [a relative].
 - The CID questioned his mother regarding his whereabouts. The applicant registered in [District 2] but hid in his [relative's] home and was afraid to go out. The neighbours noticed his presence and asked who he was. His [relative] became concerned and the applicant moved to [a town] in [District 1].
 - There he resided with [his Relative 1], who was previously a policeman with the LTTE. During this time, the CID arrested his [Relative 1] for his LTTE activities. He applicant was hiding at the time and was not located.
 - [In] September 2012, CID called the applicant's mother and asked the applicant to report to their office. The applicant was scared they would question him about his [Relative 1] (the LTTE policeman). He returned to [District 3] secretly with the assistance of his [relative] and made a complaint to [a government agency] [in] October 2012.
 - The applicant returned to [the town] and hid behind his [Relative 1's] home. His [relative's wife] advised him that [Relative 1] was being detained in [District 3] [military] base due to his LTTE activities. He is still being held there.
 - The applicant's mother became fearful for the applicant's safety and arranged for his departure from Sri Lanka. He travelled to [a location] with a relative and left Sri Lanka illegally by boat [in] October 2012. He arrived in Australia in November 2012.
8. The applicant also claimed his mother was, and continues to be, involved with [Political Party 1]. She campaigned during elections and engaged in hunger strikes and protests. The delegate considered that a claim to fear harm as a failed asylum seeker from a western country arose on the claims and evidence.

Factual findings

Country of Reference

9. On the consistent documentary and oral evidence provided by the applicant I accept that he is a national of Sri Lanka and that this is the country of reference for the purpose of assessing his claims for protection.
10. The applicant has resided in various locations in the north of Sri Lanka. He resided in [District 3] between [year] and 2007; and again between 2008 and 2012. He has had brief periods of residence in [District 1] and [District 2]. His mother still resides in [District 3] and I find this is the area to which he would return.

Ethnicity and Religion

11. On the basis of the consistent documentary and oral evidence provided by the applicant, I accept that he is of Tamil ethnicity and that he is a Christian.

Family connections to LTTE

12. The applicant has claimed that both of his parents were involved with the LTTE in [District 1]. In particular, that his father was [occupation] for the LTTE and that he was killed in 1998. He has also claimed [Relative 1] was a policeman with the LTTE and that he is currently in detention for this reason.
13. In 1983 the LTTE began a military campaign against the Sri Lankan military forces to establish a separate Tamil State, resulting in a civil conflict which lasted until May 2009 when the Government declared victory.³ The LTTE had a highly organised structure involving ground, air and sea forces, an intelligence wing, and a political and international wing.⁴ In the late 1970' or early 1980's, the Tamil Northern and Eastern provinces of Sri Lanka were divided into five military regions: Jaffna, Mannar, Wanni (including Vavuniya, Kilinochchi and Mullatiivu), Tricomalee and Batticaloa (which included both Batticaloa and Ampari).⁵ Information confirms that many women were involved in the LTTE, including in political and combat roles.⁶ Further, the LTTE recruited civilians, not only to assist in fighting, but also in the provision and transportation of supplies, including food and weapons.⁷
14. As of 2004 the LTTE had an armed force of approximately 18,000 combatants and were supported by an extensive administrative structure.⁸ Information confirms that the LTTE's development organisation created committees in sectors including policing.⁹ The security sector, which included the police and judiciary were under complete control of the LTTE.¹⁰ Police headquarters and a police training academy were established in Kilinochchi in September 2003. Recruits attended the academy for six months and undertook policing and military training and information is that police members would also participate in offensive LTTE military operations.¹¹ At its peak, the LTTE police force contained approximately 3,000 members and information confirms that there was a police force stationed at [Town 1], in Kilinochchi province.¹²
15. During the conflict period hundreds of thousands of people were displaced, tens of thousands of people were killed and many people disappeared, including in the north and east of the country.¹³ Information from the DFAT states that during the conflict more Tamils were

³ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Sri Lanka", 18 December 2015, CISEC96CF14143 at [2.1].

⁴ See generally, Joanne Richards, "An Institutional History of the Liberation Tigers of Tamil Eelam (LTTE)", CCDP Working Papers, Centre on Conflict, Development and Peacebuilding (CCDP) - Graduate Institute of International and Development Studies, Geneva, 1 November 2014, CISA447F082828; and Office of United Nations High Commissioner for Human Rights (OHCHR), "Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2)", 16 September 2015, CISEC96CF13358, at p 33-36.

⁵ Joanne Richards, "An Institutional History of the Liberation Tigers of Tamil Eelam (LTTE)", CCDP Working Papers, Centre on Conflict, Development and Peacebuilding (CCDP) - Graduate Institute of International and Development Studies, Geneva, 1 November 2014, CISA447F082828, at p.21 and 25-27.

⁶ Ibid at p.25-27

⁷ Ibid at p.25-27 at p29-30.

⁸ DFAT, "DFAT Country Information Report Sri Lanka", 18 December 2015, CISEC96CF14143.

⁹ [Information deleted].

¹⁰ Ibid at p.44.

¹¹ Ibid at p.45.

¹² Ibid at p.46 and 95.

¹³ United Nations High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka", 21 December 2012, UNBOI83EA8, p.16; DFAT, "DFAT Country

detained under the emergency regulations and the Prevention of Terrorism Act (PTA), than any other ethnic group. DFAT notes that this was primarily due to members of the LTTE being Tamil, but also because LTTE support was imputed on the basis of ethnicity.¹⁴ Information also confirms that towards the end of the conflict and in its immediate aftermath, Tamils were harassed by security forces and detained in government run camps on suspicion of separatist activities.¹⁵ Information indicates that any alleged association with the LTTE appeared to have been grounds for arrest.¹⁶ There were reports of public calls from the Sri Lankan Army for the surrender of anyone who had spent any time, in any capacity, with the LTTE and there are estimates of approximately 12,000 individuals being arrested and detained including on the most tenuous link to the LTTE.¹⁷ Information supports that as of 2014, the Sri Lankan Government continued to monitor the Tamil population, sensitive to the re-emergence of the LTTE, with reports of 71 per cent of Tamils in the north and east being visited by the CID and questioned.¹⁸ There is also information from 2014 and 2015 that the Government continues to detain certain members or suspected members of the LTTE.¹⁹

16. The applicant's written and oral evidence that his parents and [Relative 1] were involved with the LTTE in various roles has been internally consistent. The applicant did not provide details of his mother's role in the LTTE and the delegate did not seek further information from the applicant on this point during the SHEV interview. However, country information confirms that the LTTE were active in [District 1] and [District 3]; that the LTTE recruited both men and women in civilian and combat capacities, including in the provision and transportation of supplies and weapons. The applicant also provided evidence of his father's [occupation].²⁰ On the basis of his consistent evidence, the documentary evidence and the above country information, I accept that his mother undertook a role with the LTTE, and that his father was [occupation] for the LTTE as claimed.
17. The applicant provided a copy of his father's death certificate confirming he died [in] 1989 from gunshot wounds. The delegate did not accept that the applicant's father was killed in 1989 as a result of his involvement with the LTTE, relying on information that the LTTE and the Sri Lankan Government had entered into a ceasefire in April 1989 which ended in June 1990.²¹ However, there is also information from both DFAT and the Office of the United Nations High Commissioner for Human Rights that the ceasefire began in 2002 and lasted until 2005, and suggesting the LTTE and the Government remained in ongoing conflict until the commencement of that ceasefire.²² Having regard to the country information and to the

Information Report Sri Lanka", 18 December 2015, CISEC96CF14143 at [2.2]; and OHCHR, "Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2)", 16 September 2015, CISEC96CF13358, at p 12-13.

¹⁴ DFAT, "DFAT Country Information Report Sri Lanka", 18 December 2015, CISEC96CF14143 at [3.7].

¹⁵ UK Home Office, "Sri Lanka July 2011", 4 July 2011, 3182 at [3.28]–[3.29].

¹⁶ Ibid at [3.28]–[3.29].

¹⁷ Ibid at [3.27]–[3.29].

¹⁸ DFAT, "Thematic Report People with Links to the Liberation Tigers of Tamil Eelam", October 2014, CIS2F827D91260 at [3.4]–[3.5].

¹⁹ IRBC, "Sri Lanka: Treatment of suspected members or supporters of the Liberation Tigers of Tamil Eelam (LTTE), including information about how many are in detention; whether the government continues to screen Tamils in an attempt to identify LTTE suspects (2011-January 2015), 11 February 2015, OGFDFC61A5; and United States (US) Department of State, "Sri Lanka 2014 Human Rights Report", 25 June 2015, OG2B06FAF8; DFAT, "Thematic Report People with Links to the Liberation Tigers of Tamil Eelam", October 2014, CIS2F827D91260 at [3.41].

²⁰ Copy of this father's death certificate.

²¹ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Sri Lanka Country Report", *ECOI.net*, 1 November 2001, CISC098D53439.

²² DFAT, "Thematic Report People with Links to the Liberation Tigers of Tamil Eelam", October 2014, CIS2F827D91260 at [2.2]; and OHCHR, "Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2)", 16 September 2015, CISEC96CF13358, at p.12-16.

applicant's consistent evidence, I accept as plausible that the applicant's father was shot and killed by paramilitary forces as a result of his involvement in the LTTE.

18. The applicant's evidence regarding [Relative 1's] role as an LTTE policeman stationed in [Town 1] area in the Kilinochchi district is consistent with country information cited above. I accept that the applicant's [Relative 1] was a policeman with the LTTE as claimed. The applicant's evidence regarding the apprehension and detention of [this relative] has been consistent. Country information above supports that after the cessation of the conflict a large number of Tamils were arrested and detained on suspicion of LTTE connects, and that as of 2014, Tamils were still subject to monitoring and interrogation by the CID, with the Government being sensitive to the re-emergence of the LTTE. It also supports that some members or suspected members of the LTTE remain in detention. Having regard to the applicant's evidence and to this country information, I accept that the applicant's [Relative 1] was detained by the CID in 2012 on the basis of his status as an LTTE policeman.
19. The delegate accepted that the applicant's [Relative 1] was detained but did not accept he was being held at [District 3] [military] base citing information that the base's primary purpose is [details deleted].²³ However, I note there is also information from the US State Department confirming that the CID utilises [military bases] to 'unofficially' house detainees held on suspicion of on terrorism related activities.²⁴ I accept as plausible his [Relative 1] was detained as claimed. Having regard to the above country information and to the applicant's consistent evidence, I also accept that his [Relative 1] remains in detention in Sri Lanka.

Mothers involvement with [Political Party 1]

20. The applicant stated that this mother was, and is, involved with [Political Party 1]. At the SHEV interview, he claimed she provided campaign support and participated in protests. The applicant provided a letter, from a Member of [a] Council with [Political Party 1] dated [in] May 2015, in support of these claims. This letter stated that his mother is well known to him; that she joined [a section] of [Political Party 1]; and that she continues to undertake this work. On the basis of the consistent evidence provided by the applicant and to the documentary evidence supporting this claim, I accept his mother is active in [Political Party 1].

Past Harm to applicant

21. At the outset I note that the applicant's oral and written evidence provided in the SHEV application has been consistent. I have listened to the recording of the SHEV interview and I consider that the applicant gave compelling evidence of his claimed past harm. He recounted events in detail and in a manner which strongly indicated he was genuinely recalling his own personal experiences.
22. The applicant claimed that in 2006, while at school, he was assaulted by members of the army following an attack on their base by LTTE members. The applicant's written and oral evidence on this matter was consistent. It is also consistent with country information cited above regarding the conflict between the LTTE and the Sri Lankan authorities. I accept that this incident occurred and that the applicant was assaulted and briefly detained within the school by the army in 2006 as claimed.

²³ [Information deleted].

²⁴ US Department of State, "Sri Lanka 2014 Human Rights Report", 25 June 2015, OG2B06FAF8, p. 12.

23. The applicant claimed he was [occupation] in [District 3] between 2010 and 2012. The applicant has provided internally consistent and detailed evidence that he used his vehicle to assist [Political Party 1] with errands for the election and that in March 2012, he was subject to questioning by the CID regarding a particular customer and asked to report to the CID for further interrogation the following day. The applicant also gave the DIBP documentary evidence in support of his claim to be have been [occupation] in that period. I accept that the applicant was [occupation] as claimed. Having regard to the detailed, compelling and consistent nature of his evidence, and to my findings his mother was involved with [Political Party 1], I accept as plausible that the applicant ran errands for [Political Party 1] using his vehicle; that he [assisted] a particular customer in March 2012; that he was questioned by the CID regarding this person; and that he was asked to attend the CID office for further questioning.
24. The applicant has given consistent, detailed and compelling evidence that he reported to the CID as requested; that he was interrogated by two officers; that he admitted his father's involvement with the LTTE when asked; he denied being involved with that organisation; and that he was physically and sexually assaulted by the CID. Country information indicates that the CID has historically used physical and sexual violence when questioning Tamil detainees, particularly those suspected of connections with the LTTE, and that such techniques continue to be used in the post-conflict period.²⁵ I accept that the applicant was interrogated and assaulted by members of the CID following his admission that his father was involved with the LTTE and that the CID sought information about whether the applicant was involved with that organisation.
25. The applicant's detailed evidence that the CID continued to monitor and intimidate him; that he was asked to report to the CID every week; and that he was subjected to a further sexual assault in May 2012, is also consistent with the country information cited above and I accept these claims. I also accept as plausible that following this second sexual assault, he ceased his work as [occupation] and moved to [District 2] to stay with [a relative]. I accept as plausible that after neighbours noticed his presence, he moved to stay with [Relative 1] (the former LTTE policeman) in [a town] in [District 1] and that the CID questioned his mother regarding his location after he ceased reporting to their office.
26. The applicant claimed that he made a complaint to [a government agency] [in] October 2012. In support of this claim, he gave the DIBP a copy of a document purportedly from the [government agency] in [District 3] dated [in] October 2012 which simply states that a complaint has been registered with the organisation. It does not describe the nature of the complaint. However, this document is consistent with examples of genuine reports issued by the [government agency].²⁶ Given the overall consistent nature of the applicant's evidence and having regard to this country information, I accept the applicant lodged this report as claimed.

²⁵ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", 21 December 2012, UNB0183EA8 at p.27; Human Rights Watch, "We Live in Constant Fear": Lack of Accountability for Police Abuse in Sri Lanka", 23 October 2015, CISEC96CF13673; Human Rights Watch, "We will teach you a lesson" Sexual violence against Tamil by Sri Lankan Security Forces", 1 February 2013, CIS25071; UK Home Office, "Country information and Guidance Sri- Lanka and Tamil Separatism", 28 August 2014, OCI80885B28 at [2.2.5]; US Department of State, "Human Rights Report 2014 Sri Lanka", 25 June 2015, OG2B06FAF8, at p.1,5,9 and 13; OHCHR, "Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2)", 16 September 2015, CISEC96CF13358; and IRBC, "Sri Lanka: Treatment of suspected members or supporters of the Liberation Tigers of Tamil Eelam (LTTE), including information about how many are in detention; whether the government continues to screen Tamils in an attempt to identify LTTE suspects (2011-January 2015)", 11 February 2015, OGFDFC61A5, at [2].

²⁶ [Information deleted].

Applicant's work with the NGO

27. The applicant claimed that he was employed for [a time period] [for] an [NGO] which [details deleted]. In support, the applicant provided a letter, dated [in] November 2009, from the Chairman of the organisation which indicates the applicant was being offered the position of [position] initially for one year. The applicant also provided detailed evidence at the SHEV interview regarding his employment with this organisation. I have no reason to doubt the genuineness of this document. I accept that the applicant was employed with this NGO as claimed.
28. The letter does not mention that the NGO was involved with [details deleted]. However, as noted above, the applicant's evidence was consistent and detailed and given in a manner which indicates that he was genuinely recalling past events. I accept this aspect of his claim. I also accept that the applicant was not aware of this aspect of the NGO's work until after he signed the work agreement. There is some country information that after the conflict NGOs were subjected to harassment.²⁷ I accept as plausible that the applicant left this work after [a time period] and he was fearful he would be perceived by authorities as an LTTE supporter and harmed.

Failed Asylum Seeker/Returnee from the west

29. I accept that the applicant departed Sri Lanka illegally [in] October 2012 and that he arrived in Australia by boat in November 2012. I accept that he would have a profile as a failed asylum seeker/returnee from a western country on return to Sri Lanka.

Refugee assessment

30. 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

31. 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

²⁷ US Department of State, "Sri Lanka 2014 Human Rights Report", 25 June 2015, OG2B06FAF8 at p.1.

- the person does not have a well-founded fear of persecution if effective protection measures are available to the person
- 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.

Assessment of claims

32. The applicant claimed to fear harm on the basis of his Tamil ethnicity, his imputed connections to the LTTE, and due to his association with [Political Party 1].
33. Between 2000 and 2001, the LTTE controlled and administered 76 per cent of the north and eastern provinces in Sri Lanka and as a result, all people residing in these areas necessarily had contact with that organisation and its civilian administration in their daily lives.²⁸ The UNHCR guideline states that residing in an area previously controlled by the LTTE does not of itself result in a need for refugee protection. However, certain links that go beyond prior residency within an LTTE controlled area continue to expose individuals to treatment which may give rise to a need for protection.²⁹ These guidelines are now over three years old but they remain the most current assessment by the UNHCR of persons at risk in Sri Lanka and are referred to in more recent reports from DFAT³⁰ and the UK.³¹ While not exhaustive, the UNHCR guidelines state that people with family links to: persons who held senior positions with considerable authority in the LTTE civilian administration in areas of the northern and eastern provinces; former LTTE combatants employed by the LTTE in administrative functions; and former LTTE supporters who were involved in the supply and transport of goods, are at risk on return to Sri Lanka.³²
34. DFAT assesses the Sri Lankan authorities remain sensitive to the re-emergence of the LTTE and do monitor former members and supporters, including on stop and watch lists.³³ Overall, DFAT advises that former LTTE leadership are at the highest risk of monitoring, arrest, detention or prosecution, regardless of whether they performed combat or civilian roles.³⁴ Low profile former members of the LTTE would be likely to be detained and sent to rehabilitation centres.³⁵ However, both high and low profile members would be monitored following release; as would family members of former LTTE members, particularly family of high ranking members.³⁶ Notably, the DFAT report does not specify the exact nature of the roles or positions within the LTTE which would be considered by Sri Lankan authorities to be high or low profile.
35. Advice from DFAT is that upon arrival in Sri Lanka, all involuntary returnees are processed by the Department of Immigration and Emigration (DoIE), the State Intelligence Service (SIS) and a unit of the CID based at the airport.³⁷ During this process, DoIE officers check travel documents and identity information against the immigration database; SIS checks the returnee against

²⁸ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka", 21 December 2012, UNBOI83EA8, at p.26.

²⁹ Ibid, at p.26 -27.

³⁰ DFAT, "DFAT Country Information Report Sri Lanka", 18 December 2015, CISEC96CF14143 at [3.35].

³¹ UK Home Office, "Country information and Guidance Sri Lanka: Tamil Separatism", 28 August 2014, OG180885B28, at [2.2.34].

³² UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka", 21 December 2012, UNBOI83EA8, at p 27.

³³ DFAT, "DFAT Country Information Report Sri Lanka", 18 December 2015, CISEC96CF14143 at [3.36].

³⁴ Ibid at [3.39].

³⁵ Ibid at [3.42]-[3.43].

³⁶ Ibid at [3.41]; [3.43]; and [3.53].

³⁷ Ibid at [5.29] – [5.31].

intelligence databases; and the CID verifies a person's identity to determine whether they have any outstanding criminal matters. For returnees travelling on temporary travel documents, police investigate whether a person is trying to conceal their identity due to a criminal or terrorist background or whether they are trying to avoid court orders or arrest warrants. This process can involve interviewing the returnee, contacting their home suburb or town police, contacting neighbours and family, and checking criminal and court records. DFAT has observed that this process can several hours.³⁸ DFAT advises that all returnees are treated according to these standard procedures.³⁹ I note that the applicant and his mother were previously subjected to similar procedures on their return from India in 2008, including having their identity verified and their fingerprints taken.

36. According to information from DFAT, thousands of asylum seekers returned to Sri Lanka since 2009, including from Australia, the US, Canada and the UK and other European countries, the majority of which were Tamil.⁴⁰ The UK Home Office notes that in September 2012, Freedom from Torture identified 24 cases of Tamils being tortured after voluntarily returning at the end of the conflict⁴¹ and other country information, also reports Tamils have been arrested on return to Sri Lanka.⁴² Relevantly, the UK Home Office report states that it was a combination of having returned from the UK and having an actual or perceived association with the LTTE which placed individuals at risk of harm on return.⁴³ The more recent DFAT report from December 2015, states that there have been a small number of allegations of torture or mistreatment raised by asylum seekers who have been returned to Sri Lanka but it has not been possible to verify these reports.⁴⁴
37. DFAT considers that under the previous government the risk of torture or mistreatment for returnees was greater for those suspected of committing serious crimes, such as terrorism offences, due to the possibility of extended periods of pre-trial detention but notes that monitoring and fears about mistreatment have reduced under the current Sirisena government.⁴⁵ DFAT has observed that it is difficult to verify if the intent to improve general conditions has led to an actual lower risk of harm for returnees, but overall, assesses that the risk of harm for the majority of returnees is now low.⁴⁶ The DFAT report does not exclude a risk of harm for those who return to Sri Lanka with an adverse profile. Relevantly, recent information from Canada suggests that the Sri Lankan Government continues to screen the Tamil population for those with links to the LTTE, including those who return from abroad.⁴⁷
38. The above country information indicates that being a failed asylum seeker or returnee from a western country will not of itself result in a real chance of harm. Moreover, authoritative information from DFAT indicates that there are no official laws or policies that discriminate on the basis of ethnicity or language; including in relation to education, employment and access to housing; and that the implementation of other laws and polices is generally without

³⁸ Ibid at [5.29] – [5.31].

³⁹ Ibid at [5.29] – [5.31] and [3.36].

⁴⁰ Ibid at [4.23]; and [5.37].

⁴¹ UK Home Office, "Country Information and Guidance Sri Lanka: Tamil Separatism", 28 August 2014 OC180885B28 at [2.2.13].

⁴² UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka (21 December 2012), p.8.

⁴³ UK Home Office, "Country Information and Guidance Sri Lanka: Tamil Separatism", 28 August 2014, OC180885B28 at [2.2.13].

⁴⁴ DFAT, "DFAT Country Information Report Sri Lanka", 18 December 2015, CISEC96CF14143 at [4.22].

⁴⁵ Ibid at [4.23].

⁴⁶ Ibid at [4.23].

⁴⁷ IRBC, "Sri Lanka: Treatment of suspected members or supporters of the Liberation Tigers of Tamil Eelam (LTTE), including information about how many are in detention; whether the government continues to screen Tamils in an attempt to identify LTTE suspects (2011-January 2015), 11 February 2015, OGFDFC61A5 at [1.1].

discrimination.⁴⁸ Overall, the country information from DFAT, the UNHCR and the UK indicates that Tamil ethnicity alone will not result in a real chance of discrimination or harm to the applicant.⁴⁹ However, the information indicates is that there may, depending on the circumstances, be a real chance of harm in cases where a returnee is identified on return as having a relevant adverse profile, including having relevant actual or suspected connections to the LTTE. As noted above, this includes familial connections to: certain persons in the LTTE civilian administration, including from the north of the country; certain former LTTE combatants; and people involved in the supply and transport of goods for the organisation.⁵⁰

39. In this case, I have accepted that the applicant is a young Tamil male and that his home area is [District 3] in the north of Sri Lanka. I have accepted that the applicant's father [worked] for the LTTE and was killed as claimed, and that his [Relative 1] was a policeman with the LTTE in the north of Sri Lanka and is currently in detention for this reason. Country information above supports that policemen also undertook military training with an expectation they would participate as combatants in the conflict against the Government. I have also accepted that the CID is already aware the applicant's father was involved with the LTTE, that they have questioned the applicant about whether he was involved with the LTTE, and that he has been subjected to physical and sexual violence and ongoing monitoring for this reason in the past.
40. On the above information, including information that the Government continues to screen Tamils for LTTE connections and that all returnees are subject to security screening on arrival in Sri Lanka, I accept the authorities would discover the applicant's connection to his father on arrival in Sri Lanka. It is also plausible they would become aware of his connection to [Relative 1], and to his own work with the NGO. I find that the applicant would be identified as having, not insubstantial, links to the LTTE. As noted above, there is country information that authorities continue to employ techniques such as physical and sexual violence when questioning Tamil detainees who are suspected of connections with the LTTE.⁵¹ Further, I place weight on the information from DFAT that the Government remains sensitive to the re-emergence of the LTTE and that even low profile members are subjected to detention and their families are subject to continued monitoring. On the totality of the applicant's accepted circumstances, including his past harm and monitoring by the authorities, I am satisfied that he faces a real chance of persecution amounting to serious harm from the authorities on return to Sri Lanka, and that this relates to all areas of the country.
41. I find that the harm he faces is for the essential and significant reasons of his imputed LTTE political opinion. In the sense that the harm he faces would be motivated and deliberate conduct on the part of the persecutors, I accept that it amounts to systematic and

⁴⁸ DFAT, "DFAT Country Information Report Sri Lanka", 18 December 2015, CISEC96CF14143 at [2.26], [3.3] and [3.9]. [3.9].

⁴⁹ Ibid; UK Home Office, "Country Information and Guidance Sri Lanka: Tamil Separatism", 28 August 2014, OC180885B28 at [2.2.13]; and UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka", 21 December 2012, UNBO183EA8, at p.26 -27.

⁵⁰ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka", 21 December 2012, UNBO183EA8, at p 27.

⁵¹ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", 21 December 2012, UNB0183EA8 at p.27; Human Rights Watch, "We Live in Constant Fear": Lack of Accountability for Police Abuse in Sri Lanka", 23 October 2015, CISEC96CF13673; Human Rights Watch, "We will teach you a lesson" Sexual violence against Tamil by Sri Lankan Security Forces", 1 February 2013, CIS25071; UK Home Office, "Country information and Guidance Sri- Lanka and Tamil Separatism", 28 August 2014, OC180885B28 at [2.2.5]; US Department of State, "Human Rights Report 2014 Sri Lanka", 25 June 2015, OG2B06FAF8, at p.1,5,9 and 13; OHCHR, "Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2)", 16 September 2015, CISEC96CF133588; and IRBC, "Sri Lanka: Treatment of suspected members or supporters of the Liberation Tigers of Tamil Eelam (LTTE), including information about how many are in detention; whether the government continues to screen Tamils in an attempt to identify LTTE suspects (2011-January 2015)", 11 February 2015, OGFDFC61A5 at [2].

discriminatory conduct.⁵² As the applicant fears harm from the authorities, I find that effective protection measures are not available to him on return. I further find that the applicant cannot take reasonable steps to modify his or her behaviour to avoid a real chance of persecution for the purpose of s.5J(3) of the Act. The authorities would be aware of the applicant's familial connections to the LTTE on return to Sri Lanka.

42. I find the applicant has a well-founded fear of persecution if he returns to Sri Lanka now or in the reasonably foreseeable future.
43. Given my findings above, I have not considered the applicant's remaining claims to fear harm, including on the basis of his own and his mother's association with [Political Party 1].

Refugee: conclusion

44. The applicant meets the requirements of the definition of refugee in s.5H(1).

Third country protection

45. Section 36(3) of the Act (as set out in the attachment to this decision) provides that, subject to certain qualifications, Australia is taken not to have protection obligations to an applicant who has a right to enter and reside in any country apart from Australia and has not taken all possible steps to avail themselves of that right.

Application of s.36(3) to this case

46. The applicant stated he and his mother travelled to India in October 2007 on a [temporary] visa. He and his mother registered as refugees at the [camp] and that they resided in [another] camp in Tamil Nadu until 2008. The applicant provided a copy of a 'Sri Lankan Refugees Identity Card' from [the] camp confirming he and his mother were registered as refugees. I accept this claim and his evidence on this matter.
47. India is not a party to the Convention Relating to the Status of Refugees or the Protocol Relating to the Status of Refugees.⁵³ Further, India has no domestic procedure or law that explicitly governs the protection of refugees and no binding regional agreements on this matter.⁵⁴ Rather, refugees in India are subject to legislation such as the *Passports Act of 1967*, the *Registration of Foreigners Act of 1939* and the *Foreigners Act of 1946* and de facto protection relies on the goodwill and tolerance of the Government of the day.⁵⁵ Refugee Certificates issued by the UNHCR are recognised as legitimate proof of refugee status and entitle the holder to extended periods of stay in India, though without affording permanent status.⁵⁶ UNHCR certificates offer the only measure of protection against arbitrary arrest, detention and deportation for refugees in India.⁵⁷ Once a person has left India, the Government would no longer consider them to be a refugee.⁵⁸

⁵² *Ram v MIEA* (1997) 190 CLR 225; and *MIMA v Haji Ibrahim* (2000) 204 CLR 1 at [95].

⁵³ Sreya Sen, "'Understanding India's Refusal to Accede to the 1951 Refugee Convention: Context and Critique'", 'An e-publication of the ESPMI Network', 3 June 2015, CISEC96CF13799, at p.131- 132.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ "India: CIS Information Request IND 3848- Status of Sri Lankan in Tamil Nadu", 16 January 1997, CX21545.

48. In this case, the applicant's passport confirms that he was granted a visa in September 2007 allowing a single entry to India. This visa expired in December of that year and is no longer in force. There is no evidence that the applicant was issued with a Refugee Certificate from the UNHCR in India such that he had a right of extended stay in that country. Further as the applicant and his mother departed India in 2008, country information confirms that the Indian Government would no longer recognise their status as refugees. There is no evidence the applicant has a current right to enter and reside, temporarily or permanently, in India or any other country.

49. Section 36(3) does not apply to the applicant.

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.

91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...