



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA16/00188

Date and time of decision: 08 June 2016 09:45:08
Rebecca Mikhail, 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 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 from Sri Lanka. The applicant arrived in Australia an unaccompanied minor. [In] September 2015 he lodged an application for a Safe Haven Enterprise Visa (SHEV), claiming to fear harm on account of his Tamil ethnicity, his family's involvement with the Liberation Tigers of Tamil Eelam (LTTE), as a young unaccompanied person and as a failed asylum seeker.
2. A delegate of the Minister for Immigration and Border Protection (the delegate) accepted the applicant's claims but was not satisfied that he would face a real chance of serious harm for the above reasons. The delegate found that the punishment for departing Sri Lanka illegally is a law of general application and is appropriate to achieving the state's objective and did not accept that the applicant is imputed with a pro-LTTE political opinion. With regard to complementary protection the delegate was not satisfied that the economic difficulties the applicant may face on return amounted to significant harm and was also not satisfied that there is a real risk the applicant would suffer significant harm.

Information before the IAA

3. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. In addition, the IAA received a written submission from the applicant on 30 May 2016 (IAA submission).
5. The IAA submission argues that more weight should have been given by the delegate to country information in assessing the applicant's level of risk as someone who belongs to a family with LTTE links and also re-states aspects of his claim in response to some of the delegate's findings. I do not consider these aspects of the IAA submission amount to "new information" within the meaning of s.473DC, as the material is argument rather than "information" and have, therefore, had regard to it.
6. In the IAA submission the applicant further claims "[T]hat increasing tensions between the Sinhalese police and army forces in the occupied areas is increasing and Sri Lanka's ability to move forward without ethnic strife is unlikely". I note the applicant does not cite specific country information sources to support these claims and has not indicated whether these events have occurred prior to or after the delegate's decision. This statement may be considered "new information" for the purpose of s.473DC, however, given the lack of detail and corroborating sources to support it I am not satisfied that there are exceptional circumstances for considering this information.
7. The IAA submission also refers to a recent report on Sri Lanka by the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment published on 7 May 2016. The IAA submission refers to the report's general finding that "torture is a common practice carried out in relation to criminal investigations in a large majority of cases". The IAA submission also quotes a Human Rights Watch report published in October 2015 which claimed that "The Sri Lankan police treat the use of torture as an ordinary way of obtaining confessions" and "The police regularly get away with using torture to falsely 'resolve' cases that really aren't being resolved". The submission also refers to the most recent annual report

on Sri Lanka by Amnesty International for 2015/2016 published on 23 February 2016 and quotes general excerpts on continued reports of torture and ill-treatment of detainees, excessive use of force, deaths in custody and enforced disappearances. I note that there is already recent information before me in relation to the prevalence and use of torture, ill-treatment and use of force by Sri Lankan authorities and, for this reason, I am not satisfied that there are exceptional circumstances for considering this information as per s.473DD(a).

8. The IAA submission also quotes a number of reports published after the protection visa interview but prior to the delegate's decision on 2 May 2016. These include:
 - A press release in relation to the release of a report by the International Truth and Justice Project published in January 2016 which documented incidents of recent kidnapping and torture of Tamils by the Sri Lankan authorities.
 - An article published in The Hindu on 20 February 2016 on a recent World Bank report on poverty in Tamil areas of Sri Lanka.
 - An article [published] on [date] on the current situation in [Town 1].
9. In deciding whether to consider this new information, I have taken into account that, at the conclusion of the protection visa interview held [in] December 2015, the delegate advised the applicant's representative that she had seven days to provide any further information and could request a further extension of seven days if needed. The delegate did not state that she would take into account any further information the applicant provides prior to her decision. The applicant's representative provided further submissions [in] December 2015. I note that the above reports were published after the prescribed time given by the delegate and, therefore, I accept that the applicant and his representative considered that they could not provide any further information to the delegate after this period. For this reason, I am satisfied that this information could not have been provided to the Minister prior to the decision and that there are exceptional circumstances to justify considering these reports.
10. The IAA submission also includes an article published on 11 May 2016 after the delegate's decision and relevantly reports on a recent crackdown on Tamil youth in north and east Sri Lanka. For the purpose of s.473DD(a) I am satisfied that it could not have been provided to the delegate and that there are exceptional circumstances to justify considering this information.
11. In the IAA submission the applicant also refers to two country information sources that report on attacks on Sri Lankan Christians. Based on these reports, the applicant claims that, although his family have not experienced any threat as Catholics, many people have experienced growing levels of intimidation and threat in his area and that this is another risk to his safety if he is returned to Australia. The applicant has not previously raised a fear of serious harm on return to Sri Lanka on the basis of his Catholic faith and I accept that this is "new information" within the meaning of s.473DC. I note that one of the reports referred to by the applicant is dated 17 May 2016 which post-dates the delegate's decision. The applicant also refers to United States International Commission on Religious Freedom Annual Report 2015 (published in 2015). During the applicant's protection visa interview held [in] December 2015 the delegate asked the applicant whether he faced any problems because he was Catholic and he responded that he faced persecution because of his race and not religion. The delegate also asked whether he had put forward all his claims for protection and he said he had. I note that both the above reports refer to a number of attacks on Christians in Sri Lanka that occurred in 2014 and in 2015, prior to the applicant's protection visa interview. Even though one of the reports post-dates the delegate's decision it is unlikely that these are the

only two available sources reporting on attacks on Christians in Sri Lanka in 2014 and 2015. The applicant has not submitted that he was unaware of these events prior to the delegate's decision. I have also taken into account that the applicant was represented by a migration agent at this stage and the agent would have been aware of country information in regards to the situation of Christians Catholics in Sri Lanka. I consider that if the applicant had a genuine fear of serious harm on the basis of being a Catholic Christian he would have raised it with the delegate at the protection visa interview when repeatedly asked by the delegate if he had any further claims. For this reason I do not accept that there are exceptional circumstances for considering this new information.

Applicant's claims for protection

12. The applicant's claims are contained in the information referred and subsequently given to the IAA. They can be summarised as follows:

- He is a citizen of Sri Lanka, born in [Town 2], Vannei, Vavuniya, Northern Province, Sri Lanka. He grew up in Vannei, and [Town 1].
- He is an ethnic Tamil and a Christian.
- He has [specified siblings]. He is the [sibling order] in his family.
- Whilst he was growing up, close members of his family were injured during the civil war in Sri Lanka. His [father] was injured, his mother [suffered an injury] and his [sibling] was injured. One of his [relatives] had his arm amputated after a bomb blast.
- His schooling was often interrupted during this period of the civil war in Sri Lanka. Many of his fellow students were killed during the civil war.
- Male members of the applicant's family have always been at risk of being abducted by the LTTE even though they do not support the LTTE. Two of his [Relative A's] were forcibly recruited as teenagers by the LTTE and held for fifteen to twenty days after which they escaped. Shortly after, his father was also forcibly abducted and recruited by the LTTE. His [Relative B] went to search for him but was killed by the Eelam People's Democratic Party (EPDP) because they oppose the LTTE. His father was made to do labouring work by the LTTE but then managed to escape after approximately twenty to twenty-five days. During the protection visa interview he claims that his father was given combatant training.
- Following his [Relative B's] death and the return of his father and [Relative A's], the applicant's family moved from the LTTE-controlled area, to the Army-controlled area. The applicant claims that life in the Army camp was 'very strict'. One night his father left the Army camp after curfew to seek work but was caught by the Army and held at gunpoint. His family were successfully able to beg for his release. The Army would check and interrogate his family members at any time.
- His family then moved to a house in [Town 1] in 2009/2010. During the protection visa interview the applicant claimed that his parents were tortured and interrogated by the Army whilst living in [Town 1]. His father was taken in for questioning by the Army/CID to determine whether he had any links to the LTTE but his father denied having any links.

- Whilst living in [Town 1] there were also 'grease men' in the area. Every day, ten or twelve men had to guard the area otherwise the 'grease men' would come and attack the women. He claims the grease men were from the Army and were trying to frighten the people.
- The applicant's family started making arrangements for the applicant to come to Australia because "as [a male] child, I would always be at risk". The applicant left Sri Lanka by boat [in] July 2013. He came to Australia as an unaccompanied minor when he was [age] years old.
- He fears that if he were forced to return to Sri Lanka, he would be detained, tortured or killed and that "nowhere is safe" for him in Sri Lanka and he could not safely relocate to another part of the country. He claims that the local Sri Lankan authorities would be unable and unwilling to assist him and he would face serious harm as a returned failed asylum seeker.
- The applicant attended a Protection visa interview [in] December 2015 where he also claimed to fear revival of the LTTE and that, as a Tamil boy, he will be forcibly recruited, abducted or killed by the LTTE or Army if the LTTE is revived.
- Following the protection visa interview, post-interview written submissions were submitted on behalf of the applicant dated [in] December 2015 (post-interview submissions). In those submissions the applicant further claimed that, as a consequence of the Department's leak of personal details on their website on 11 February 2014 ('the Department's website disclosure'), he fears the Sri Lankan authorities have now identified him as an asylum seeker in Australia which will reinforce the applicant's imputed political opinion as anti-government and pro-LTTE by Sri Lankan authorities.
- It further claims that there is a continued presence of the EPDP and there are close ties between the EPDP and the Sri Lankan Government's security forces and "previous issues" the applicant has had with the EPDP would continue if he were forcibly returned to Sri Lanka.
- The applicant claims there is an increased risk of torture and sexual violence faced by Tamil children following arrest and detention and he would be unable to subsist as a young unaccompanied person who has no support or protection.

Refugee assessment

13. 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

14. 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.

Applicant's Identity and Past Harm to the Family

15. I accept that the applicant is a Christian Tamil born on [date] in [Town 1], Vannei, Northern Province in Sri Lanka. I make this finding based on the applicant's consistent evidence, his fluency in the Tamil language and the provision of a copy of his original birth certificate. For the purpose of this assessment I accept that the applicant is a citizen of Sri Lanka and that Sri Lanka is the country of reference.
16. Having considered the information that was before the delegate, I agree with her positive findings of fact in relation to the events that occurred to the applicant and his family prior to his arrival in Australia. His evidence has been mostly consistent since his arrival in Australia as an unaccompanied minor and is also consistent with country information in respect of the experience of Tamils residing in the Northern Province towards the end and after the civil war in Sri Lanka.

Fear of Harm due to his family's connection to the LTTE

17. The post-interview submission claims that the applicant fears systematic and persecutory harm as someone who is closely related to persons who have been abducted by the LTTE.
18. I accept that the applicant's two [Relative A's] and father were previously forcibly recruited by the LTTE but escaped after a short period of time. It appears from the applicant's evidence that this occurred in the period towards the end of the war as he claims he was [age range] years old at the time. I also accept that the applicant's father was previously questioned by the Sri Lankan authorities as to whether he had any connection to the LTTE when they were residing in [Town 1].
19. During the protection visa interview the applicant claimed that when his father was interrogated by the authorities about having any association to the LTTE his father lied about being forcibly abducted by the LTTE and was, therefore, subsequently released. The applicant claims the Sri Lankan authorities never found out that his father had been forcibly recruited by the LTTE and, although they had some suspicion, they could not prove it. He claims that if the authorities had enough evidence his father would have been shot.
20. Country information indicates that at the height of its influence in Sri Lanka in 2000-2001, the LTTE controlled and administered 76% of the northern and eastern provinces of Sri Lanka. Therefore, all persons living in those areas necessarily had contact with the LTTE and its

civilian administration in their daily lives.¹ In 2008 Human Rights Watch also claimed that virtually all Vanni residents are ethnic Tamils who have relatives (by choice or compulsion) in the LTTE.²

21. In a 2010 report by the Danish Immigration Service, the Co-ordinator of Law and Society Trust claimed that the army in general considers the people in the Vanni to be former LTTE members and sympathizers, as they have been under LTTE rule since the 1990s.³
22. However, the 2012 United Nation High Commissioner for Refugees Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka (2012 UNHCR Guidelines) notes that originating from an area that was previously controlled by the LTTE does not in itself result in a need for international refugee protection and that previous (real or perceived) links that go beyond prior residency within an area controlled by the LTTE continue to expose individuals to treatment which may give rise to a need for international refugee protection. The Guidelines notes a number of risk profiles which include people with family links to former LTTE combatants.⁴ It referred to documented cases of mistreatment and torture of women and men in detention for reason of their or their family members' alleged former links with the LTTE. Killings were also reported which appear to be politically motivated, targeting persons believed to be LTTE sympathizers.⁵
23. Thousands of LTTE members have been arrested and detained in rehabilitation centres since the end of the conflict. These included former combatants, those employed in administrative or other roles and those who may have provided a high level of non-military material support to the LTTE. According to the Australian Department of Foreign Affairs and Trade (DFAT), although the great majority of these low-profile ('low-risk') former members have already been released following their detention, any other low-profile LTTE members who came to the attention of Sri Lankan authorities would be detained and may be sent to the remaining rehabilitation centres.⁶ According to Sri Lanka's then Minister for External Affairs, GL Peiris, as of March 2014, a total of 12,288 LTTE members had been arrested and sent to rehabilitation centres since the end of the conflict in 2009. The majority of those in rehabilitation have since been released and DFAT understands that only 45-50 former ex-LTTE members remain in rehabilitation as of July 2015. DFAT is unable to independently verify the number of former LTTE members in detention other than rehabilitation. In a June 2015 interview for The Island newspaper, Minister of Justice Wijeyadasa Rajapakshe stated that there were only 273 convicted or suspected LTTE cadres in government custody, including those in rehabilitation centres.⁷
24. I accept DFAT's assessment that the Sri Lankan authorities remain sensitive to the potential re-emergence of the LTTE throughout the country⁸ and have considered recent country information which indicates that the Sri Lankan authorities continue to detain people they suspect of having links to the LTTE in the north. The post-interview submission refers to a

¹ United Nations High Commissioner for Refugee (UNHCR), "Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8 p.26

² United Kingdom Home Office (UK Home Office), "Sri Lanka February 2010", 18 February 2010, 1595 p.170

³ Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", October 2010 CISLib19345 p.26

⁴ UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8 p.27

⁵ Ibid.

⁶ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.14

⁷ Ibid p.15

⁸ Ibid p.13

2014 report titled "An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014" which claims that persons perceived as having been "connected to, or supporters of, the LTTE" have been subjected to "abduction, arbitrary detention, torture, rape and sexual violence".⁹ In 2015, Amnesty International claimed that Tamils suspected of links to the LTTE continued to be arrested and detained under the Prevention of Terrorism Act (PTA) instead of ordinary criminal law.¹⁰ In 2015, Minority Rights Group International also reported that the government arbitrarily detained over 65 people in the north of the country, claiming that the LTTE was trying to re-establish itself.¹¹ The United States Department of State Human Rights Report for 2014 (US Department of State) also refers to mass roundups during March and April 2014 in the Northern Province targeting former combatants.¹²

25. I have accepted the applicant's claim that his [Relative A's] and his father escaped from the LTTE after a short period and that his father denied any involvement with the LTTE when questioned by the Sri Lankan authorities after they moved to [Town 1] in approximately 2009/2010. Nonetheless, I have also given weight to country information that indicates that, had the Sri Lankan authorities had any further suspicion in respect of their involvement they would likely have been further detained and/or sent to a rehabilitation camp or had been more recently questioned and/or re-detained. When asked by the delegate if his parents had any problems in [Town 1] since he arrived to Australia the applicant responded that "now and then my father was harassed by the army but now it is subsiding". It is unclear from the applicant's statement whether he is referring to harassment as a result of his father's previous links to the LTTE or as a consequence of living in the Northern Province which continues to have a significant military presence.¹³ Regardless, the applicant has claimed that the harassment by the army is subsiding and has not provided any further evidence that his father or [Relative A's] or any family members have faced any problems from the Sri Lankan authorities as a result of their real or perceived links to the LTTE. For this reason I am not satisfied that the Sri Lankan authorities have taken or will take any further interest in the applicant's [Relative A's] and father in respect of any suspicion of involvement with the LTTE or that the applicant will be identified on return by the Sri Lankan authorities as someone who is related to people with LTTE links.
26. For the above reasons I am not satisfied that the applicant will face a real chance of serious harm from the Sri Lankan Army, the CID, or any other Sri Lankan authorities on the basis of his family's former actual or perceived links to the LTTE.

Fear of Harm as a Tamil

27. In the post-interview submission, the applicant's representative claimed that the applicant fears systematic and persecutory harm on the basis of his Tamil ethnicity. During the protection visa interview the applicant claimed that under the current Sri Lankan government there is no safety for Tamils and that he faced persecution because of his race.
28. On 8 January 2015, Maithripala Sirisena defeated President Mahinda Rajapaksa in the presidential election and analysis of the election indicated that the Tamil vote was significant

⁹ Yasmin Sooka, "An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014", 1 March 2014, The Bar Human Rights Committee of England and Wales (BHRC) and The International Truth & Justice Project, CIS28486 p.6

¹⁰ Amnesty International, "Amnesty International Report 2014/15 – Sri Lanka" NG5A1E6BC127 p. 343

¹¹ Minority Rights Group International (MRG), "State of the World's Minorities and Indigenous Peoples 2015 - Sri Lanka", 2 July 2015, NG5A1E6BC447

¹² United States Department of State, "Human Rights Report 2014 Sri Lanka", 25 June 2015, OG2B06FAF8 p. 39

¹³ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.8

in Sirisena's victory and the Tamil National Alliance (TNA) now formally leads the opposition.¹⁴ In December 2015, DFAT assessed that the Sirisena government has a more proactive approach to human rights and reconciliation than the previous government and has since replaced military governors in the Northern and Eastern Provinces with civilians; reduced High Security Zones and released land held by the military; released some individuals held under the Prevention of Terrorism Act 1979 (PTA) and engaged constructively with the Tamil National Alliance and the UN and other international partners.¹⁵

29. During the protection visa interview the delegate put to the applicant that country information indicates that due to the improved human rights and security situation in Sri Lanka it was unlikely he would face persecution on the basis of his Tamil ethnicity. The applicant responded that human rights have always existed in the [Sri Lankan] constitution but that Tamils were not protected and human rights cannot protect Tamils. He also claimed that only [Town 1] is safe for Tamils now. When asked by the delegate how the army camps in [Town 1] cause problems the applicant responded that the army harass people and have taken over people's land so there is not enough space for people to live.
30. In the IAA submission, the applicant claimed that Sri Lanka had made great efforts to appear to address the issues of the past, but the reality experienced by Tamils every day is a very different picture. He refers to an excerpt from an article [published] on the [date] on the current situation for Tamils in [Town 1]. The article claims that Sinhala politicians are paranoid about the next uprising. In the article, a political columnist and university teacher was quoted as saying that the army has not given back the land it holds and that people in [Town 1] are still being monitored by the intelligence. It claims thousands of people remain in [IDP camps].¹⁶
31. In 2015, Amnesty International reported that Tamils, particularly those from the north of the country, were harassed, threatened and arrested by security forces which suspected them of sympathy or links with the LTTE, based largely on their ethnicity and place of origin or residence.¹⁷
32. However, DFAT has recently assessed that the security situation in the north and east has greatly improved since the end of the conflict but that military and security forces maintain a significant presence in the Northern Province, including Mannar, Vavuniya, Kilinochchi, Mullaitivu and Jaffna Districts.¹⁸ It claims that monitoring and harassment of Tamils has decreased under the Sirisena government and, on a day-to-day basis, the Tamil community feels more confident to refuse or question the motives of monitoring activities undertaken by authorities, if such activities occur.¹⁹
33. I accept that there is still a military presence in the Northern Province where the applicant's family resides but I have given weight to the above assessment by DFAT that the security situation has greatly improved and that the monitoring and harassment of Tamils decreased in this area. I have also given weight to the applicant's own evidence given during the protection visa interview where he claimed that "now and then my father was harassed by the army but now it is subsiding".

¹⁴ Ibid p.4

¹⁵ Ibid p.7

¹⁶ [Information deleted]

¹⁷ Amnesty International, "Amnesty International Report 2014/15 – Sri Lanka" NG5A1E6BC127 p. 343

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

¹⁹ Ibid p.10

34. The above report by Amnesty International refers to the harassment of Tamils by security forces which suspected them of sympathy or links with the LTTE. I find that the country information indicates those Tamils who continue to be harassed and monitored by the Sri Lankan authorities are those with suspected or known links to the LTTE including former members, recruits and political activists. As I have not accepted that the applicant has a profile that would make him a suspected target as a result of his relatives' brief forced recruitment by the LTTE, I am not satisfied that the applicant faces a real chance of serious harm on the basis of his Tamil ethnicity from the Sri Lankan Army, or the Sri Lankan Criminal Investigation Division (CID) or any other Sri Lankan authorities. For the same reasons, I also do not accept that the applicant will face serious harm from the above groups on return to Sri Lanka on the basis of his imputed support for the LTTE due to his Tamil ethnicity.
35. According to the US Department of State report, Tamils maintained they suffered longstanding, systematic discrimination in university education, government employment, and other matters controlled by the government.²⁰ In December 2015 DFAT assessed that there are currently no official laws or policies that discriminate on the basis of ethnicity or language but there is a moderate level of societal discrimination between ethnic groups largely as a result of the civil conflict and its causes.²¹ I have also taken into account that the applicant was able to attend school for periods and that his father was able to secure work after they moved to [Town 1] and that they live in a house there.
36. I accept that there is more than a remote chance the applicant may face a low level of discrimination on the basis of his Tamil ethnicity due to years of ethnic conflict and the fact that he originates from the Northern province but the current country information does not suggest that this discrimination arises to the level of serious harm for the purpose of s. 5J(5) of the Act.

Fear of Harm as a Young Male Tamil

37. The applicant claims that his parents made arrangements for him to travel to Australia because, as [a male] child, he would always be at risk. During the protection visa interview he claimed that teenagers are being conscripted by the LTTE and are not safe as they are being taken by the LTTE or Army. He claims that his father thought that, as he is a young boy, his life is not safe there. He cited a recent example of a young boy who was killed on 'Heroes Day' on 27 November and the Army made it appear as though he had been hit by a train.
38. During his protection visa interview the applicant claimed that he was scared when his [Relative A's] had been forcibly recruited by the LTTE as the LTTE would have taken him as well. During the protection visa interview he said that Sri Lanka is not safe for Tamil youth and there is no future for Tamil youth and that nobody knows what will happen in the future in Sri Lanka so it is not safe for him to return. He claims the LTTE is not dead and will rejuvenate and will revive of army atrocities continue and he would be forced to be recruited by the LTTE and will be killed by the Army.
39. I accept that the applicant has a genuine fear of being forcibly recruited by the LTTE as a result of what occurred to his family members and fears any future conflict for the same reason. However, country information does not support his claim that the LTTE is not dead and will rejuvenate instigating further conflict. As early as 2010 the International Crisis Group assessed that there was no sign of renewed LTTE militancy²² and DFAT has recently assessed that the

²⁰ United States Department of State, "Human Rights Report 2014 Sri Lanka", 25 June 2015, OG2B06FAF8 p. 62

²¹ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.9

²² UK Home Office, "Operational Guidance Note: Sri Lanka (July 2013)", 1 July 2013, CIS29708 p.22

LTTE no longer exists as an organised force and any former LTTE members within Sri Lanka would have minimal capacity to exert influence on Sri Lankans.²³ For this reason I am not satisfied that the applicant faces a real chance of being forcibly recruited by the LTTE (and subject to serious harm as a consequence) in the reasonable foreseeable future in Sri Lanka.

40. During the protection visa interview the applicant claimed that he saw his friends being killed and there is a deliberate attempt to kill Tamil youth. I accept that the applicant arrived to Australia as an unaccompanied minor when he was [in an age range] and that he is currently [age] years of age. I accept that if he is returned to Sri Lanka he will be viewed by the authorities as a young male Tamil.
41. In the IAA submission the applicant included the full text of an article published on the [website] on [date]. The article reports on a major crackdown against Tamil youth in the north and east. It claims that more than 23 Tamils have been detained and that most were allegedly former members of the LTTE and previously imprisoned at the end of the war. It also claimed that a Tamil youth from [Town 1] was also detained for allegedly listening to [a song].²⁴
42. In the IAA submission the applicant also referred to a recent report by the International Truth and Justice Project published in January 2016 which he claimed indicates continuing police violence directed against Tamil youth and the lack of accountability and government knowledge of this. He quotes excerpts from the press release in relation to the publication of the report which claims that twenty Tamil survivors in four countries gave detailed testimony about brutal and repeated torture and sexual assault while in the custody of the Sri Lanka military and police in 2015. The report also warned Tamils formerly connected to the LTTE who are now aboard about the risks of returning to Sri Lanka.²⁵
43. The US Department of State reported that, in 2014, Tamils throughout the country, but especially in the north and east, reported that security forces and paramilitary groups frequently harassed young Tamil men.²⁶
44. I have weighed up the country information cited above and have taken note that the majority of incidents of harassment and detention of young male Tamils were in relation to those men who had a specific profile of having former links to the LTTE and who were formerly imprisoned at the end of the war. I have also considered DFAT's recent assessment that monitoring and harassment of Tamils has decreased under the Sirisena government.²⁷ The applicant does not have any links to the LTTE and I have not accepted that he will be identified as someone who is related to someone with actual or perceived links to the LTTE. For this reasons I am not satisfied that the applicant will face a real chance of serious harm from the Sri Lankan Army, or CID or other Sri Lankan authorities on the basis of being a young male Tamil. Taking into account the above country information I also do not accept that he will face a real chance of serious harm on the basis of an imputed political opinion of support for the LTTE on the basis of being a young male Tamil.

²³ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.12

²⁴ [information deleted]

²⁵ "Press Release: Silenced: survivors of torture and sexual violence in 2015", International Truth and Justice Project, 7 January 2016 http://www.itjpsl.com/wp-content/uploads/2015/07/ITJP_Press_Release_7_Jan_2016_new_report.pdf

²⁶ United States Department of State, "Human Rights Report 2014 Sri Lanka", 25 June 2015, OG2B06FAF8 p. 62

²⁷ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.10

Fear of harm from the EPDP

45. In the post-interview submission, the applicant's representative wrote that close ties continue to remain between the EPDP and the Sri Lankan government's security forces and the applicant's previous issues with the EPDP gave rise to fears of their own volition.
46. I accept the applicant's claim that when his [Relative B] went to search for his father in the LTTE camp that his [Relative B] had been tortured and killed by the EPDP. During the protection visa interview the applicant claimed that his [Relative B] was killed as the EPDP were against the LTTE and did not like anyone going to see the LTTE.
47. Some Tamil militant groups, such as the Eelam People's Democratic Party (EPDP) and the Tamil Makkal Viduthalai Pulikal (TMVP), switched their allegiance to the then Government during the conflict and played a key role in supporting it in the north and east. While these groups have reportedly renounced paramilitary activities, DFAT claims to be aware of credible reports that these groups continue to be active in Sri Lanka, including in criminal activity. However verifying these reports is difficult.²⁸ Other credible country information sources indicate persistent ties between such groups and the Sri Lankan government and these groups have taken on characteristics of criminal gangs involved in intimidation, extortion, corruption and violence against civilians in Jaffna. One such report claimed that that EPDP supported security force intelligence gathering that included the torture and physical and sexual abuse of Tamils accused of LTTE connections.²⁹
48. I note that the applicant's claim of the murder of his [Relative B] by the EPDP occurred towards the end of the civil war, quite a number of years ago. The applicant has not raised any claims of further harassment or serious harm from the EPDP or other Tamil paramilitary groups since then. There is also no evidence that there is any connection between the murder of the applicant's [Relative B] in the context of the civil war and the applicant and that there is any reason for the EPDP to pursue the applicant for this reason. The applicant does not have any direct links to the LTTE and his family links have been denied to the authorities who have not pursued them further. Although his [Relative B] was killed by the EPDP as a result of attempting to visit the applicant's father in the LTTE camp, I have taken into account that no harm has come to the applicant's father by the EPDP as a result of this connection.
49. For the above reasons a I am not satisfied that the applicant faces a real chance of serious harm from the EPDP or other Tamil paramilitary groups on the basis that his [Relative B] had been murdered by the EPDP during the civil war or because of any perceived connection to the LTTE.

Fear of Harm from 'Grease men'

50. The applicant claims that, whilst living in [Town 1], there were also 'grease men' in the area who were from the army men and were trying to frighten the people.
51. The media widely reported the sighting of Grease Yakas in rural areas from early 2011 until about September 2011. Reports indicated that the 'Yakas' were men who smeared grease on their body to frighten women in rural villages. Several of the 'Yakas' were caught by villagers

²⁸ Ibid pp.7-8

²⁹ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8 p. 19; United States Department of State, "Human Rights Report 2014 Sri Lanka", 25 June 2015, OG2B06FAF8 p. 5

and handed over to the police, but no action was taken and the men were subsequently released. There were allegations that the Yakas were associated with the army but these have not been substantiated. There have been no reports of Grease Yaka sightings in 2012³⁰ and there is no mention of 'grease men' in more recent reports before me on the security situation in Sri Lanka. A 2011 media report by Reuters also described a "grease devil" as a thief who wore only underwear and smeared grease over his body to evade capture and the report refers to allegations that the police prevented people in [Town 1] from capturing suspected grease devils.³¹ Another media report referred to them as nocturnal prowlers who have frequented rural areas assaulting women at night.³²

52. I accept that 'grease men' were harassing locals in 2011 and the Sri Lankan authorities did little to capture these men. However, the above country information indicates that these 'grease men' mostly targeted women at night. The applicant also claimed during the protection visa interview that the grease men would "cut the breasts of the ladies and used the blood for some purpose". The country information before me also indicates that there have no reports of 'grease men' since the end of 2011 and no mention of them in more recent reports. For these reasons I am not satisfied that the applicant faces a real chance of serious harm from 'grease men' on return to Sri Lanka.

Fear of Harm as a returned asylum seeker and for illegal departure

53. During the protection visa interview the applicant claimed that if he returns to Sri Lanka he will be tortured for having sought asylum in Australia and the authorities will interrogate him as to the reasons for seeking asylum and will ask about his family connection with the LTTE and he will have to give a reason otherwise they will not leave him and, as a consequence, there will be a problem for his family. The post-interview submission also claims that the applicant fears systematic and persecutory harm due to his membership of the particular social group of returned asylum seekers.
54. I accept that if the applicant is forcibly returned to Sri Lanka he will be viewed by the Sri Lankan authorities as a failed asylum seeker who illegally departed Sri Lanka by boat.
55. In those post-interview submissions the applicant's representative further claimed that, as a consequence of the Department's leak of his personal details on their website on 11 February 2014 ('the Department's website disclosure'), the applicant fears that the Sri Lankan authorities have now identified him as an asylum seeker in Australia which will reinforce the applicant's imputed political opinion as anti-government and pro-LTTE by Sri Lankan authorities and the data breach by the Department gives rise to a real risk the applicant will now appear on the Sri Lankan authorities 'stop' or 'watch' list.
56. I accept that the applicant's personal details were inadvertently published on the Department's website and the details included his name, date of birth, nationality, gender, details about his detention and whether he had any family members in detention. The information did not include any information about his protection claims. I accept the possibility that the Sri Lankan authorities may have accessed this information but I note that, if the applicant is forcibly returned to Sri Lanka, the Sri Lankan authorities will already become aware that he had unsuccessfully sought asylum in Australia. According to DFAT, 'Stop' lists include names of those for whom there is an extant court order, arrest warrant or order to

³⁰ DFAT, "Sri Lanka: Questions arising from recent applications", 29 November 2012 CX299951

³¹ Shihar Aneez and Ranga Sirilal, "More than 100 arrested in new Sri Lanka 'Grease Devil' clash", Reuters, 23 August 2011, CX271573

³² "The mystery of Sri Lanka's 'grease devils'", British Broadcasting Corporation (BBC), 29 August 2011, CX296404

impound their Sri Lankan passport while 'watch' lists include names of those for whom Sri Lankan security services consider to be of interest, including for separatist or criminal activities.³³ I do not accept that the applicant falls within any of the above profiles so I do accept the claim that, as a result of the data breach, his name will appear on the Sri Lankan authorities' 'stop' or 'watch list.

57. During the protection visa interview the applicant claimed that two or three boys who were on his boat returned to Sri Lanka and were arrested and taken to the 'fifth floor' and held and tortured for fifteen days and interrogated as to why they went to Australia. He claims that three-quarters of the people who returned to Sri Lanka were assaulted and tortured for having sought asylum in Australia. When the delegate put country information to the applicant during his protection visa interview that returnees are treated according to standard procedure regardless of ethnicity or religion and that risk of torture is low, the applicant responded that this information was government propaganda and that they will interrogate all those who come back irrespective of race or religion. However, he claimed that when a returnee is released the CID will come to their home and arrest them and take them to the 'fifth floor' where they are tortured, killed or disappear.
58. In 2012, UNHCR claimed that some sources have reported cases of former Sri Lankan (in particular Tamil) asylum-seekers who were allegedly detained and ill-treated or tortured after having been forcibly returned to Sri Lanka upon rejection of their asylum claims or who voluntarily returned to Sri Lanka.³⁴ In the same year a number of non-government organisations claimed that some failed Tamil asylum seekers from the United Kingdom and other countries have been subjected to arbitrary arrest and torture upon their return to Sri Lanka due to actual or perceived links to the LTTE.³⁵ Human Rights Watch further claimed that the Sri Lankan security forces have long used torture against people deemed to be linked to the LTTE, and growing evidence indicates that Tamils who have been politically active abroad in peaceful opposition to the government may be subject to torture and other ill-treatment.³⁶ One source claimed the standard age of those questioned, detained, and/or tortured upon their return was between 22-38 as this age range would have been those most exposed to political mobilization in the North and East during the course of the conflict.³⁷
59. The post-interview submission referenced a 2014 report by the Sydney Morning Herald which referred to a SBS report by Dr David Corlett claiming that asylum seekers returned from Australia to Sri Lanka they have since been raped and tortured in their homeland and had been asked whether they were members of the LTTE.³⁸ In their 2015 World Report, Human Rights Watch claimed that they and others have documented the authorities' use of torture against people suspected of links to the LTTE, including those returned as failed asylum seekers from the United Kingdom and other countries.³⁹ However, in its December 2015 report, DFAT noted that returnees are treated according to standard procedures regardless of their ethnicity and religion and are not subject to mistreatment during processing at the airport and, although, it does not routinely monitor the situation of returnees, it assessed that

³³ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.13

³⁴ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8 p.8

³⁵ UK Home Office, "Sri Lanka December 2012 - Bulletin: Treatment of Returns", 1 December 2012, CIS3853 pp. 5-24

³⁶ Ibid p.6

³⁷ Ibid p.17

³⁸ Jane Lee, "Asylum seekers say they were raped and tortured after Australia sent them back to Sri Lanka", Sydney Morning Herald (online), 1 October 2014 <http://www.smh.com.au/national/asylum-seekers-say-they-were-raped-and-tortured-after-australia-sent-them-back-to-sri-lanka-20140930-10oct9.html>

³⁹ Human Rights Watch, "Human Rights Watch World Report 2015 – Sri Lanka" NG5A1E6BC53 p.506

the risk of torture or mistreatment for the majority of returnees is low, including those suspected of offences under the Immigrants and Emigrants Act.⁴⁰

60. The above country information does not support the applicant's claim that three-quarters of returnees from Australia were assaulted and tortured for having sought asylum in Australia as the majority of sources indicate that those who are at risk of mistreatment and torture on return are those with actual or perceived links to the LTTE.
61. I do not accept that the applicant has a profile of interest to the Sri Lankan authorities on the basis of actual or perceived links to the LTTE or on the basis of belonging to a family with actual or perceived links to the LTTE. I have also taken into account that the Sri Lankan authorities will likely become aware that the applicant left Sri Lanka as a very young teenager in 2013 and, therefore, would have been less exposed to political mobilization in the North and East during the course of the conflict.⁴¹ I have also considered the applicant's claim that after a returnee returns to their home area the CID come to their home and arrest them and take them to the 'fifth floor' where they are tortured, killed or disappear. However, for reasons already stated, I do not consider that the applicant has a profile that would warrant any further attention from the Sri Lankan authorities on return to his home area. For this reason I am not satisfied that the applicant will face a real chance of serious harm on return to Sri Lanka on the basis of being a failed asylum seeker or for an imputed political opinion in support of the LTTE or against the Sri Lankan government for having sought asylum abroad.
62. In the IAA submission, the applicant further claims that it is likely he will be detained on his return to Sri Lanka and it is 'factual' that periods of detainment in Sri Lanka involve ill-treatment by the police so there is a real risk that he will experience some form of torture.
63. In December 2015, DFAT provided the following information in respect of returnees. Article 14(1) (i) of Sri Lanka's Constitution entitles any citizen to 'the freedom to return to Sri Lanka' and entry and exit from Sri Lanka is governed by the Immigrants and Emigrants Act 1949 (the I&E Act). Under Sections 34 and 45(1) (b) of the Act, it is an offence to depart other than via an approved port of departure, such as a seaport or airport and penalties for leaving Sri Lanka illegally can include imprisonment of up to five years and a fine of up to 200,000 Sri Lankan rupees (around AUD 2,000). In practice, penalties are applied on a discretionary basis and are almost always a fine. Returnees are generally considered to have committed an offence under the I&E Act if they departed Sri Lanka irregularly by boat.⁴²
64. Upon arrival in Sri Lanka, 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. The CID verifies a person's identity to determine whether the person has any outstanding criminal matters. For returnees travelling on temporary travel documents, police undertake an investigative process to confirm the person's identity, which would address whether someone was trying to conceal their identity due to a criminal or terrorist background or trying to avoid court orders or arrest warrants. This often involves interviewing the returning passenger, contacting the person's claimed home suburb or town police, contacting the person's claimed neighbours and family and checking criminal and court records.⁴³

⁴⁰ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 pp.24,29

⁴¹ UK Home Office, "Sri Lanka December 2012 - Bulletin: Treatment of Returns", 1 December 2012, CIS3853 p.17

⁴² DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.29

⁴³ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.29

65. Most Sri Lankan returnees, including those from Australia, are questioned by police on return and, where an illegal departure from Sri Lanka is suspected, are charged under the I&E Act. In most cases, these individuals have been arrested by the police at Colombo's Bandaranaike International Airport and are transported by police to the closest Magistrates Court at the first available opportunity after investigations are completed, after which custody and responsibility for the individual shifts to the courts or prison services. Those arrested can remain in police custody at the CID Airport Office for up to 24 hours. Should a magistrate not be available before this time—for example, because of a weekend or public holiday—those charged may be held at a nearby prison. DFAT was informed in July 2015 by Sri Lanka's Attorney-General's Department that no returnee who was merely a passenger on a people smuggling venture had been given a custodial sentence for departing Sri Lanka illegally. However, fines had been issued to act as a deterrent towards joining boat ventures in the future. If a person pleads guilty, they will be fined and are then free to go. In most cases, when a returnee pleads not guilty, returnees are granted bail on personal surety immediately by the magistrate, or may be required to have a family member act as guarantor. Returnees may sometimes need to wait until a family member comes to court to collect them. Children are never subject to bail or fines. DFAT assesses that ordinary passengers are generally viewed as victims and penalties are more likely to be pursued against those suspected of being facilitators or organisers of people smuggling ventures. DFAT has been advised that no returnees from Australia to Sri Lanka have been charged under the PTA. While credible, DFAT cannot verify this claim.⁴⁴
66. Numerous sources refer to prevalence of torture and mistreatment of detainees by the Sri Lankan authorities whilst in custody.⁴⁵ In 2015 Amnesty International claimed that torture and other ill-treatment of detainees remained widespread in Sri Lanka, especially at the moment of apprehension and during early stages of pre-trial detention. Victims reported torture of both adult and juvenile detainees; these included individuals arrested in the context of security operations as well as suspects in ordinary criminal cases.⁴⁶
67. However, DFAT has recently noted, that although it does not routinely monitor the situation of returnees, it assesses that the risk of torture or mistreatment for the majority of returnees is low, including those suspected of offences under the I&E Act.⁴⁷ I have also taken into account the country information cited earlier which referred to incidents of torture of failed asylum seekers and I find that those at risk of such treatment are those with suspected or actual links to the LTTE.
68. I have already assessed that the chance the applicant will face a real chance of serious harm when questioned by the Sri Lankan authorities on return on the basis of actual or perceived link to the LTTE is remote. The applicant does not have a profile that would make him of interest to the authorities such that he faces a real chance of serious harm whilst being questioned by the Sri Lankan authorities. For these reasons I am not satisfied that the applicant will face a real chance of torture or physical ill-treatment or physical harassment from the Sri Lankan authorities for this reason.
69. Based on the above country information I accept that the applicant may be charged on return to Sri Lanka pursuant to the I&E Act on the basis of his illegal departure from the country. I

⁴⁴ Ibid pp.29-30

⁴⁵ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8 pp.17-18; DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.24

⁴⁶ Amnesty International, "Amnesty International Report 2014/15 – Sri Lanka" NG5A1E6BC127 p. 343

⁴⁷ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.24

accept that, as a consequence of this, he may be questioned at the airport and then subsequently detained for a short period pending a court date and if found guilty may be subject to a fine. I note that if he returns whilst still a minor he may not be subject to a fine or bail. I have also considered a 2012 article by the Sydney Morning Herald which documented the experience on return of 50 Sri Lankan asylum seekers and reported that they spent three nights in prison before they were bailed, each to reappear before a court.⁴⁸

70. Based on the above information provided by DFAT, I accept that there is more than a remote possibility the applicant will be charged for illegal departure on return to Sri Lanka. He will then likely be transported by police to the closest Magistrates Court at the first available opportunity. It possible that he will remain in police custody at the CID Airport Office for up to 24 hours and if a magistrate is not available within that time he could be held at a nearby prison for a few days. If found guilty he will likely be subject to a fine which I do not accept amounts to serious harm.
71. Taking into account the applicant's particular circumstances and prison conditions in Sri Lanka,⁴⁹ even if I were to accept that being detained for a few days in a Sri Lankan prison amounts to serious harm, the enforcement of a generally applicable law does not constitute persecution as the enforcement of that law does not ordinarily constitute discrimination.⁵⁰ I find that the application of the I&E Act in respect of those Sri Lankans who have departed unlawfully is an application of the law which applies to all Sri Lankans and there is no evidence that the enforcement of this law is applied in a discriminatory manner. During the protection visa interview the applicant conceded that "they will enquire and interrogate all those who come back irrespective of race or religion...Tamils, Singhalese, Muslims". I also find the fact that it is unlawful to depart Sri Lanka through illegal means and the enforcement of this law via charging returnees and imposing a fine (in the majority of cases) is appropriate and adapted to achieve the legitimate state objective of preventing illegal departure from Sri Lanka.⁵¹ For this reason I am not satisfied that the loss of liberty the applicant may endure for a few days on return to Sri Lanka amounts to persecution within the meaning of s.5J(4) of the Act.

Fear as a young unaccompanied person

72. The post-interview submission claims that the applicant fears systematic and persecutory harm due to his incapacity to subsist as a result of being a young unaccompanied person who has no support and no protection from harm in Sri Lanka.
73. In the IAA submission, the applicant claimed that, due to his absence from Sri Lanka and his Tamil ethnicity, he would be unable to obtain viable means of supporting himself and will suffer economic hardship. Even though he has had access to an Australian education there are no viable employment, training or educational prospects for him if he returns to Sri Lanka. The applicant claims that his family have been impoverished by the war and the loss of their home and livelihood means they are unable to provide any assistance to him.
74. In the 2012 UNHCR Guidelines it claimed that, in the Vanni, the long-term recovery of children affected by the armed conflict is said to depend on the economic and social recovery in the

⁴⁸ "SRI LANKA: Asylum denied, a penalty waits at home", Sydney Morning Herald, 7 December 2012, CX 300741

⁴⁹ United States Department of State, "Human Rights Report 2014 Sri Lanka", 25 June 2015, OG2B06FAF8 p. 17

⁵⁰ *Applicant A v MIEA* (1997) 190 CLR 225 and *Chen Shi Hai v MIMA* (2000) 201 CLR 293

⁵¹ *MZAPO v MIBP* [2015] FCCA 96

region. At present, few jobs are available and children are required to drop out of school in order to support household incomes.⁵²

75. More recently in December 2015, DFAT claimed that, although conflict-affected areas in the north and east are recovering, many people in these and other areas remain economically vulnerable.⁵³ It claims that, since the end of the conflict and the subsequent opening of the economy, economic growth has been strongest in the Northern Province (off a relatively low base). This growth is due largely to post-conflict reconstruction, particularly in the infrastructure, transport, agriculture and fishery sectors.⁵⁴ It also noted that youth unemployment is high.⁵⁵ Many returnees are apprehensive about finding suitable employment opportunities on return. Those who have skills which are in high demand in the labour market are best placed to find well-paid employment.⁵⁶
76. In the IAA submission the applicant quotes an article published in The Hindu on 20 February 2016 in relation to a recent World Bank report on poverty in Sri Lanka. The report states that regions with the highest rate of poverty in Sri Lanka are areas inhabited by Tamils and that 47% of people living in poverty in the north and east are under 25 years of age. Lack of access to the labour market and high unemployment rates are factors that have contributed to this.⁵⁷
77. According to the US Department of State, Tamils maintained they suffered longstanding, systematic discrimination in university education, government employment, and other matters controlled by the government.⁵⁸ In December 2015 DFAT assessed that there are currently no official laws or policies that discriminate on the basis of ethnicity or language but there is a moderate level of discrimination between ethnic groups largely as a result of the civil conflict and its causes.⁵⁹ The applicant quoted an [article] which claimed that thousands of [people] remain in the [IDP camps].⁶⁰
78. I accept that the Northern Province is still economically disadvantaged compared to other areas of Sri Lanka and that youth unemployment is also likely to be higher in [Town 1] where the applicant's family continue to reside and that the applicant may face a moderate level of social discrimination on the basis of his Tamil ethnicity but, as stated earlier, I do not accept that this level of discrimination amounts to serious harm.
79. The applicant has indicated that if he returns to Sri Lanka he will live with his parents who continue to reside in [Town 1]. He has also claimed his father has managed to find work in [two specified occupations] since the family moved there. For this reason I do not accept the claim that, if the applicant returns to Sri Lanka, he will be unaccompanied person without support or protection as his family continues to reside there and he has remained on contact with his family and there is no information before me to indicate that his family will not provide support or protection to the applicant on his return. The support of his family will assist in the applicant's re-integration.

⁵² UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8 p.21

⁵³ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.5

⁵⁴ Ibid.

⁵⁵ Ibid p.6

⁵⁶ Ibid p.30

⁵⁷ T. Ramakrishnan, "Tamil areas in Sri Lanka are the pockets of poverty", The Hindu, 20 February 2016 <http://www.thehindu.com/news/international/tamil-areas-in-sri-lanka-are-the-pockets-of-poverty/article8258342.ece>

⁵⁸ United States Department of State, "Human Rights Report 2014 Sri Lanka", 25 June 2015, OG2B06FAF8 p. 62

⁵⁹ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.9

⁶⁰ [Information deleted]

80. Unlike other residents in the Northern Province, the applicant's family do not reside in an IDP camp without access to basic services but live in a house in [Town 1]. The applicant also claimed that, after moving to [Town 1], he worked as [an occupation] after school so has developed some trade skills that could be of use in Sri Lanka. This also indicates a level of motivation and initiative that will assist the applicant to find employment opportunities. I note the applicant has attended school in Australia and has developed good English language skills that could also be of use in seeking employment or further education in Sri Lanka. There is also no information before me to indicate that the applicant's family are so impoverished that they are unable to subsist or that they have been denied access to basic services.
81. For the above reasons I am not satisfied that the applicant will face a real chance of economic hardship, or be denied access to basic services or be unable to earn a livelihood to such an extent that it will threaten his capacity to subsist and, therefore, I am not satisfied that the applicant will face a real chance of serious harm on return to Australia on the basis that he is a young unaccompanied person.

Cumulative Assessment

82. I have also taken into consideration the circumstances of the applicant cumulatively. I have not found that the applicant will face a real chance of serious harm on the basis of his family members' actual or perceived link to the LTTE, on the basis of his Tamil ethnicity, for being a young male Tamil or for returning as a young unaccompanied person or failed asylum seeker. The applicant does not have a profile that would place him at risk in Sri Lanka from the Sri Lankan authorities including the army or CID or from Tamil paramilitary groups. For these reasons I do not find the applicant's claims cumulatively give rise to a real chance of serious harm.

Refugee: conclusion

83. 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

84. 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

85. 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.

86. I do not accept that the applicant will face a real risk of significant harm on the basis of his Tamil ethnicity, as a result of his family's actual or perceived association with the LTTE, or for being a young male Tamil. As noted above, the Sri Lankan authorities are unaware of the applicant's father and [Relative A's] brief forcible recruitment by the LTTE a number of years ago and have not pursued them further. I, therefore, find that the applicant does not have a profile of someone that the Sri Lankan authorities would take an interest in regarding any potential connection to the LTTE. I accept that the applicant may face a moderate amount of social discrimination on the basis of his Tamil ethnicity but I do not accept that will amount to cruel or inhuman treatment or degrading treatment for the purpose of s.36(2A) of the Act.
87. I also do not accept that any economic hardships the applicant will face as a young unaccompanied person on return to Sri Lanka amounts to significant harm as it cannot be considered intentional cruel or inhuman treatment or punishment or degrading treatment of punishment for the purpose of s.36(2A) of the Act.
88. I also do not accept that the applicant will face a real risk of significant harm on the basis of being a failed asylum seeker based on the country information cited above and having taken into account the particular circumstances of the applicant.
89. I have found that there is a real chance the applicant may be detained for up to several days in a Sri Lankan prison on the basis of being charged for illegal departure from Sri Lanka. As 'real chance' equals 'real risk'⁶¹ I also find that there is a real risk that the applicant may face a period of detention for up to several days on return. In general, prison conditions in Sri Lanka do not meet international standards because of a lack of resources, overcrowding and poor sanitary conditions and that in some cases juveniles were not held separately from adults and authorities often did not hold pre-trial detainees separately from convicted prisoners.⁶² DFAT notes that Sri Lankan prisons are estimated to hold three times their capacity and that on 27 February 2015, the Sri Lankan government held a 'High Level Roundtable on the Legal and Judicial Causes of Prison Overcrowding', from which a taskforce has been established to address the issues.⁶³ The United State Department of State also noted that Sri Lankan authorities acknowledged poor prison conditions, but cited lack of space and resources as limiting factors.⁶⁴
90. I have assessed whether the applicant's potential period of stay in a Sri Lankan prison in such conditions amounts to significant harm taking into account the particular circumstances of the applicant.
91. The definitions of torture, cruel or inhuman treatment or punishment and degrading treatment and punishment as defined in s.5(1) of the Act all require an element of intention. In *SZTAL v MIBP*, the Court held that there must be an actual, subjective, intention on the part of a person to bring about the suffering.⁶⁵ In consideration of the above country information I find that the poor conditions in Sri Lankan prisons are not a consequence of the Sri Lankan authorities' deliberate attempt to inflict suffering on the prison population but are a result of lack of space and resources. Their recent attempt to address the situation of overcrowding is evidence of this. There is also no evidence that placing juveniles in the same prisons as adults is also a deliberate attempt by the authorities to subject juveniles to potential harm from the adult prison population. For this reason I am not satisfied that the applicant will face

⁶¹ *MIAC v SZQRB* (2013) 210 FCR 505

⁶² United States Department of State, "Human Rights Report 2014 Sri Lanka", 25 June 2015, OG2B06FAF8 p. 17

⁶³ DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143 p.27

⁶⁴ United States Department of State, "Human Rights Report 2014 Sri Lanka", 25 June 2015, OG2B06FAF8 p. 17

⁶⁵ *SZTAL v MIBP* [2015] FCCA 64

significant harm on return to Sri Lanka on the basis that he may spend several days in a Sri Lankan prison on return.

92. I have considered the applicant's claims cumulatively and I do not find that he will face a real risk of significant harm. I have taken into account the applicant is from the Northern Province, his Tamil ethnicity and young age and his family's past and brief involvement with the LTTE and that he departed Sri Lanka illegally and will be returning as a failed asylum seeker. Assessing his claims cumulatively I find they do not give rise to a real risk of significant harm

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.

...