



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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SRI LANKA  
IAA reference: IAA18/05616

Date and time of decision: 4 February 2019 15:25:00  
S MacKenzie, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Tamil from the north of Sri Lanka. He and his father arrived in Australia on [date] September 2012 as unauthorised maritime arrivals. It appears they were initially transferred to the Manus Island Regional Processing Centre, but later returned to Australia. On 10 November 2016, the applicant and his father lodged a valid combined application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV).
2. In the SHEV application, it was recorded that the applicant had not raised his own protection claims. This was confirmed in a subsequent email to the Department of Home Affairs on 26 April 2018, where the applicant's former representative confirmed that he was a dependant applicant and continued to rely on his father's protection claims. However, in a subsequent letter dated 4 June 2018, the applicant notified the Department that he wished to submit his own application for protection and raise his own protection claims. On 8 June 2018, he submitted an amended Form 866 (Application for protection visa) and a statutory declaration outlining claims for protection.
3. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the applicant a visa on 29 August 2018, on the basis that he did not face a real chance of serious harm or a real risk of significant harm upon return to Sri Lanka.
4. The delegate decided the applicant's father's claims separately and he is the subject of a separate decision by the IAA.

### Information before the IAA

5. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information was received or obtained by the IAA.

### Applicant's claims for protection

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6. The applicant's claims as outlined in his statutory declaration (SHEV statement) can be summarised as follows:
  - The applicant is a Tamil male from Sri Lanka;
  - The applicant's mother has two half-brothers who were LTTE (Liberation Tigers of Tamil Eelam) members;
  - The applicant's father experienced ongoing issues with the Sri Lankan authorities. He believes this was due to the authorities believing that his father was a member of, or connected to, the LTTE;
  - The Sri Lankan authorities regularly came to the applicant's father's shop and asked about the whereabouts of the applicant's father and the applicant's mother's half-brothers;
  - The Sri Lankan authorities, who the applicant believes were from the CID (Criminal Investigation Department), also visited the applicant's family home day and night and asked the applicant where his father was and what he was doing. The authorities asked for money, which the applicant's mother gave;

- On one occasion, the applicant’s father was detained and harmed by the Sri Lankan authorities. He spent around three weeks in hospital and required surgery on his leg;
  - The applicant recalls an incident where his home was burned down. He thinks the Sri Lankan authorities were responsible because they were looking for his father;
  - When the applicant was aged about [age] years (approximately June 2010 to June 2011), he was questioned by the Sri Lankan authorities about his father’s whereabouts. He was then taken in a white van and kept in a room for a few days. He was further questioned about his father’s whereabouts. He was released when his mother paid some money;
  - One day, the applicant’s father told him that they had to leave Sri Lanka by boat. His father did not tell him the exact reasons as to why they had to leave;
  - In early 2018, the Sri Lankan authorities approached the applicant’s mother and asked him about his and his father’s whereabouts. They also asked about the whereabouts of the applicant’s mother’s half-brothers;
  - A family friend of the applicant was recently killed. The applicant does not know why he was killed, but suspects involvement by the Sri Lankan authorities because the friend’s two brothers were in the LTTE;
  - If returned to Sri Lanka, the applicant fears he will be harmed by the Sri Lankan authorities due to:
    - his Tamil ethnicity
    - his imputed LTTE links, including familial links
    - his family members who reside in Australia
    - his illegal departure from Sri Lanka.
7. On 9 July 2018, the applicant was interviewed in connection with his protection claims (SHEV interview). In the SHEV interview, he provided new information that his father’s brother was in the LTTE. He also claimed that his father was sometimes taken for questioning in connection with that brother’s LTTE involvement.
8. Following the SHEV interview, the applicant’s former representative provided a written submission dated 12 July 2018 (post-SHEV interview submission), which for the most part reiterated the applicant’s claims already before the delegate. However, it was submitted that the applicant’s mother’s brothers were ‘high ranking members of the LTTE’. It was also submitted that prior to leaving Sri Lanka in 2012, the applicant’s father relocated his wife and other children for safety reasons. It was further submitted that the applicant feared harm in Sri Lanka on account of his profile as a failed Tamil asylum seeker, and due to his birth and previous residence in the Northern Province.

## **Refugee assessment**

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9. 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**

10. 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.

### *Identity*

11. The applicant claims to originate from [District 1], Northern Province, Sri Lanka. He has provided some evidence of his identity, including a copy of his birth certificate (with accompanying English translation). On the basis of his evidence, I accept that he is a Tamil male from this part of Sri Lanka.

### *Events in Sri Lanka*

12. I acknowledge that the applicant was [age] years when he departed Sri Lanka and I accept his evidence in the SHEV interview that he learned about certain events that occurred in Sri Lanka after he arrived in Australia, particularly in relation to purported events involving his father. However, I found there to be a number of inconsistencies in the applicant's evidence presented at different times, particularly between his SHEV statement and his oral evidence in the SHEV interview, that undermine the credibility of several of his claims.
13. Firstly, there were inconsistencies in the applicant's evidence in respect of his family's involvement in the LTTE. In his SHEV statement, he stated that he had two maternal uncles (mother's half-brothers) who were LTTE members. In the SHEV interview, he advised the interviewing officer that he did not know the role of his maternal uncles in the LTTE, other than they had "been helping the LTTE". He also advised the interviewing officer that he had a paternal uncle who was a member of the LTTE. In the post-SHEV interview submission, it was claimed that his mother's brothers were 'high ranking members of the LTTE'. There was no mention of the applicant's paternal uncle or the paternal uncle's LTTE involvement.
14. Secondly, there were inconsistencies in the applicant's evidence as to the difficulties his father faced with the Sri Lankan authorities. In his SHEV statement, he claimed that on occasions the authorities came to the house asking him or his mother as to his father's whereabouts. During one visit, the authorities asked the applicant's mother for some money which she handed over. On another occasion, his father was at home and was taken away and beaten; although, the applicant did 'not know the exact details of what happened' due to his young age. He

suspected that his father had problems, in part, due to his maternal uncles' LTTE involvement. He also claimed that due to his father's issues he (the applicant) lived with a friend during the week and returned home only on weekends. However, in the SHEV interview, the applicant advised the interviewing officer that the SLA use to come and ask his father for money and that on one occasion he couldn't pay the money and it was then he was taken away and beaten. He also claimed that on other occasions his father was taken away and questioned in respect of his brother's LTTE involvement. The applicant further claimed that his father's problems with the SLA began while he was [working for Organisation 1] which involved his father [travelling] to Jaffna. He claimed that his father had to cease working in this role, that he opened a shop, and that he started [doing another job]. He also advised the interviewing officer that his mother never told him the reason why he stayed at a friend's house during the week.

15. Thirdly, there were inconsistencies in the applicant's evidence in relation to his claimed detention by the Sri Lankan authorities at [age] years (approximately June 2010 to June 2011) and the circumstances of his release. In his SHEV statement, he claimed that he was in his father's shop when the authorities came looking for his father. He claimed that he was then taken in a white van, held in a room for 'a few days', and was questioned about his father's whereabouts. His mother paid money to secure his release. However, in the SHEV interview, he claimed that he was taken by the Sri Lankan authorities while he was returning home from school and was kept in a dark room for "about two or three weeks". He was told by the authorities that they had gone to his house to look for his father. He was only released once his father was captured two to three weeks later. He advised the interviewing officer that after his release his mother moved him to his grandmother's house and to a new school. I note the applicant recorded on his SHEV application that he lived at the same address in Sri Lanka from birth until August 2012 and that he attended the same school from 2005 until 2012. In the post-SHEV interview submission, it was submitted that the applicant was 'kidnapped' from his father's shop, held for several days, and released when his mother paid the authorities.
16. Fourthly, there were inconsistencies in the applicant's evidence as to the actions of the Sri Lankan authorities after he and his father departed Sri Lanka. In his SHEV statement, he claimed that the authorities went to his house in early 2018 and questioned his mother as to his, his father's, and his uncles', whereabouts. However, this differed from his evidence in the SHEV interview that the authorities came looking for him and his father "about three years ago" when they were [in immigration detention]. According to the applicant's address history in his SHEV application he resided [in immigration detention] between September 2012 and November 2012. He also advised the interviewing officer that the authorities used to come to his home and take vegetables without paying. In the post-SHEV interview submission, it was submitted that the authorities had questioned the applicant's mother 'recently'. It was also submitted that prior to leaving Sri Lanka in 2012, the applicant's father relocated his wife and other children for safety reasons.
17. As noted by the interviewing officer during the SHEV interview, there were also discrepancies in the applicant's evidence between his oral and written claims in his SHEV application and the entry interview (conducted on 19 August 2013). When asked during the entry interview whether he had ever been arrested or detained by the police or security organisations in Sri Lanka, he responded, "other than threatening me, I was not taken or beaten up". The applicant made no mention of being 'kidnapped' or detained by the Sri Lankan authorities for any period of time when asked in the entry interview about why he left Sri Lanka. Further, I note he advised in the entry interview that his house was burned at the time there was fighting between the SLA and LTTE, thereby indicating this incident occurred several years prior to 2012. He also said that his family were accused of "passing information" and that his house was burned down for that reason. The applicant further claimed in the entry interview that

unknown persons demanded money from him directly – a claim that was not advanced in his SHEV application. Finally, the claim in the post-SHEV interview submission that prior to leaving Sri Lanka in 2012 the applicant's father relocated his wife and other children for safety reasons appeared inconsistent with the applicant's evidence in the entry interview that his mother and siblings continued to reside at the same address that he did in Sri Lanka since birth.

18. When considered cumulatively, the above evidence leads me to conclude that certain aspects of the applicant's claims have been fabricated or significantly embellished. Specifically, it leads me to doubt that he was kidnapped or detained by the authorities, the extent of his family's LTTE involvement, the extent of his father's difficulties with the Sri Lankan authorities, that his home was burned down in 2012, and whether the authorities have pursued the applicant or his father following their departure from Sri Lanka.
19. Aside from the inconsistencies noted above, I also note several aspects of the applicant's father's evidence, also before the delegate, not supportive of several of the applicant's claims. For example, the applicant's father did not claim to have a brother in the LTTE or that he was questioned by the authorities on this basis. Nor did the applicant's father claim that he [worked] in Jaffna. The applicant's father also indicated that his problems with the Sri Lankan authorities began in mid-2010, some four years after he ceased his employment with [Organisation 1] in [District 1] as [an occupation]. In respect of the applicant's mother's half-brother's LTTE links, I note the applicant's father's evidence was that he did not know himself the extent of their LTTE involvement ('high ranking' or otherwise). The applicant's father also claimed that his wife had not been threatened or questioned by the Sri Lankan authorities since he had been in Australia. I also found the applicant's father's claim that he fears the applicant will be interrogated by the Sri Lankan authorities 'because he is now an adult' not insignificant.
20. Although I have concerns, having had regard to the entirety of the applicant's evidence, and that of his father, I accept that he had two maternal uncles who were members of the LTTE. I am not satisfied that these uncles were 'high ranking members' as first raised in the post-SHEV interview submission. I prefer the evidence of the applicant in his SHEV interview, and of his father, that the nature of the maternal uncles' LTTE involvement is unknown. The claim is consistent with country information that during the early years that followed the formation of LTTE, many people voluntarily joined its forces, some of them for political reasons, others motivated by anger at violations by the Government, in particular discrimination against the Tamil minority, or by LTTE propaganda.<sup>1</sup> I also accept the applicant's evidence in his SHEV interview that he was never in the LTTE himself. I do not accept that the applicant had a paternal uncle in the LTTE.
21. Given the evidence discussed, I do not accept that the applicant was taken and detained by the authorities when he was [age] years, or at any other time. However, I am willing to accept the applicant's broadly consistent evidence that his father was taken and beaten by the Sri Lankan authorities due to suspected LTTE links, including familial links. Country information indicates that family members of former LTTE members have been at risk of harm in Sri Lanka in the past.<sup>2</sup> Information also documents the mistreatment of ordinary Tamils during the civil war, noting that LTTE support was at times imputed on the basis of Tamil ethnicity. Many Tamils, particularly in the north and east, reported being harassed and/or detained by security forces at this time, and there are credible reports of torture being carried out by the Sri Lankan

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<sup>1</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report of the OHCHR Investigation on Sri Lanka" (OISL), 16 September 2015, CISEC96CF13358, p.128

<sup>2</sup> UN High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8, p.26-28

military and intelligence forces on the Tamil population.<sup>3</sup> The applicant's father claimed he faced difficulties with the Sri Lankan authorities in mid-2010. Having had regard to all of the information before me, I accept that the applicant's father came to the adverse attention of the authorities at that time on account of his ethnicity, or his familial LTTE connections, or a combination of these factors. I do not accept that the applicant's father [worked for Organisation 1], that he faced difficulty prior to 2010 on account of familial LTTE links, or that he or other members of the family were extorted for money. I consider the applicant's claim that he stayed at a friend's house during the week but at the family home during the weekends inconsistent with his other evidence that he was present when the authorities 'regularly' attended his family home and his father's shop. I am not satisfied that any time the applicant spent outside of the family home was due to any difficulty faced by his father.

22. Given the evidence discussed, I do not accept that the applicant's home was burned down by the Sri Lankan authorities in 2012 as claimed. Further, I consider the applicant's claim in his SHEV statement and SHEV interview that he was woken by his mother inside the home as it was attacked inconsistent with his father's claim that none of the family members were living in the family home at this time. I prefer the applicant's and his father's evidence at their respective entry interviews, which indicated that the house was burned during the conflict between the SLA and LTTE, much earlier than 2012. I am not satisfied that the applicant's home was burned in a targeted attack against the applicant or any of his family members.
23. Given the evidence discussed, I do not accept that the applicant's mother was approached and questioned about his, his father's, or his uncles', whereabouts after they departed Sri Lanka. Further, the applicant's claim in his SHEV statement that following the burning of his house that he, his mother, and his siblings, all resided at a different address appeared inconsistent with the residential history recorded on his SHEV application (consistent with his evidence in the entry interview) that he resided at the same location in Sri Lanka since birth, and that his mother and siblings continued to reside at that location. I also note the applicant's evidence in the SHEV interview that his brother has since relocated to Colombo where he has studied and is now working, without being questioned by the Sri Lankan authorities. On the information before me, I am not satisfied that the applicant was a person of adverse interest to the Sri Lankan authorities when he departed the country in 2012. Nor do I accept that the applicant's remaining family members in Sri Lanka relocated prior to his departure. While I have accepted that the applicant's father was a person of adverse interest to the Sri Lankan authorities in around mid-2010, having considered the evidence before the delegate, I am not satisfied that he continued to be a person of adverse interest following his release. The applicant's father continued to reside on the family farm without difficulty for over two years before departing the country. I consider that if the applicant's father was a person of interest to the Sri Lankan authorities due to any actual or imputed LTTE involvement, or for any other reason, during that two year period that he would have been contacted or apprehended by the authorities following his release in mid-2010. For this reason and due to the other evidence discussed, I reject the applicant's claim that his father relocated his remaining immediate family for safety reasons prior to him leaving the country. I am not satisfied that the applicant, or his father, have been pursued by the authorities since departing Sri Lanka, for any reason.
24. Even if I was to accept that the applicant's father continued to be a person of adverse interest to the Sri Lankan authorities when he departed the country in August 2012 due suspected LTTE links, including familial links, I am not satisfied that the applicant would face a real chance of harm on return to Sri Lanka in 2019 that basis. Country information from the UK Home Office

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<sup>3</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 3.8, 4.13-4.14

assesses that international protection is not warranted in cases where a person evidences past membership or connection with the LTTE, unless they had a significant role in it, or if they are, or perceived to be, active in post-conflict Tamil separatism.<sup>4</sup> Similarly, DFAT assessed in 2018 that high-profile individuals with links to the LTTE would continue to be of interest to the Sri Lankan authorities, and indicate that aside from the LTTE leadership former members who have committed terrorist or serious criminal acts during the conflict, or who provided weapons or explosives to the LTTE, may be considered high-profile.<sup>5</sup> In the applicant's case, he has not claimed to have had any LTTE involvement and I have not accepted that he was detained or questioned by the Sri Lankan authorities for any reason. In the applicant's father's circumstances, there is no claim that he was, or is perceived to be, a person who had a significant role in the LTTE, including its leadership, or a person active in post-conflict Tamil separatism. Nor is there a claim that he was, or is perceived to be, a person who committed terrorist or serious criminal acts during the conflict, or who provided weapons or explosives to the LTTE. I have not accepted the post-SHEV interview submission that the applicant's maternal uncles were 'high ranking' members of the LTTE.

25. The applicant has also claimed that a friend, who had two brothers in the LTTE, was killed in early 2018. Although he does not know the circumstances of his death, he suspects that the Sri Lankan authorities may have been involved. While I accept that the applicant's friend was killed in unknown circumstances, the relevance of this information to the applicant's claims for protection is unclear. While I note the applicant claimed that he lived with this person for a period of time prior to coming to Australia in 2012, there is no claim or indication that he faces harm in Sri Lanka on account of his friend's personal circumstances or death. I also consider the applicant's assertion that there may have been involvement by the Sri Lankan authorities in his friend's death speculative.
26. The applicant claims he faces harm in Sri Lanka because he has an uncle who has been found to engage Australia's protection obligations. He also fears harm because he has two uncles residing in Australia who were members of the LTTE. In the post-SHEV interview submission, it is submitted that because the applicant travelled on the same boat to Australia as his uncles he may be subjected to heightened suspicion in relation to his imputed familial connections to the LTTE. There is nothing in the evidence before me to indicate that the Sri Lankan authorities are aware that the applicant's uncles have travelled to Australia, with or without the applicant, or that an uncle has been found to engage Australia's protection obligations, and I am not satisfied this is the case. Nor am I satisfied that on return to Sri Lanka the applicant would be 'forced to disclose' his family connections on arrival. Even if I was to accept that the Sri Lankan authorities were aware of the applicant's uncles situation in Australia, on the country information before me, I am not satisfied that he, given his own background and profile, would come to the adverse attention of the Sri Lankan authorities on this basis.
27. Country information indicates that persons suspected of certain links with the LTTE may be in need of international refugee protection, depending on the individual circumstances of their case. Given my findings about the profile of the applicant, and having regard to the country information before me, I conclude that he is not a person who faces a real chance of harm by virtue of any actual or imputed LTTE connections, including familial connections. On the evidence before me, I am not satisfied that, in 2019, the applicant is a person of interest to the Sri Lankan authorities due to any actual or imputed LTTE membership or links, including familial links in Sri Lanka or Australia, in connection with his father's profile or interactions with the authorities in 2010, or in connection with his friends circumstances or death. Accordingly, I

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<sup>4</sup> UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826, p.13

<sup>5</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 3.50, 3.52



am not satisfied that on return to Sri Lanka he faces a real chance of being imprisoned, mistreated, or harmed in any way, by any arm of the Sri Lankan government, due to any imputed or actual LTTE activities, due to familial LTTE links, or for any other reason, now or in the foreseeable future. I am not otherwise satisfied that on return to Sri Lanka the applicant will be perceived as a person who opposes the Sri Lankan government 'by holding Tamil separatist views', as claimed in the post-SHEV interview submission.

28. The applicant fears harm based on his ethnicity and due to his birth and previous residence in the Northern Province. Although not expressly raised as a claim for protection, the delegate also considered whether he faced harm in Sri Lanka due to his profile as a Tamil from a former LTTE-controlled area.
29. Country information before me indicates that the overall situation for Tamils in Sri Lanka has improved considerably since the end of the civil conflict in 2009. In 2018, DFAT assessed that all Sri Lankans face a low risk of official or societal discrimination based on ethnicity, including in relation to access to education, employment, and housing.<sup>6</sup> While there is no official discrimination on the basis of ethnicity in public sector employment, DFAT assess that some Tamils report discrimination in employment, particularly in relation to government jobs. DFAT further assess that the limited Tamil appointments are a consequence of factors such as disrupted education due to conflict and language constraints.<sup>7</sup> The applicant has not claimed to have experienced ethnic based societal discrimination in the past, and nor has he claimed to have sought or been denied employment in the public sector. While I accept that the applicant may be at some risk of encountering a degree of societal discrimination solely on the basis of ethnicity, on the evidence before me, I am not satisfied that this would constitute serious harm.
30. In 2017, DFAT assessed that the harassment of Tamils had decreased significantly under the Sirisena government, noting that members of the Tamil community have described a positive shift in the nature of their interactions with the authorities, and feel able to question the motives of, or object to, monitoring or observation activities.<sup>8</sup> DFAT also reported that military checkpoints on major roads leading to the north and east were removed in 2015 and that there were no restrictions on travelling to these areas.<sup>9</sup> Consistent with its 2017 reporting, DFAT report in 2018 that military involvement in civilian life has generally diminished in the north and east of the country.<sup>10</sup> While DFAT report that the surveillance of Tamils in the north and east reportedly continued, those likely affected are associated with politically sensitive issues including missing persons, land release and memorial events.<sup>11</sup> In 2018, the US Department of State reported that Tamils in the north and east of the country reported monitoring and harassment by security forces, but indicates it was mainly targeted at activists and former or suspected former LTTE members.<sup>12</sup> In July 2018, the Special Rapporteur reported a large military presence in the north undertaking important re-construction work.<sup>13</sup>

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<sup>6</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 3.3

<sup>7</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 3.6-3.7

<sup>8</sup> DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 3.9

<sup>9</sup> DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 2.39

<sup>10</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 2.35, 2.11

<sup>11</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 3.9, 3.11

<sup>12</sup> US Department of State, "Country Reports on Human Rights Practices for 2017 - Sri Lanka", 20 April 2018, OGD95BE927333, p.19

<sup>13</sup> Office of the High Commissioner for Human Rights, "Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism - Mission to Sri Lanka", 23 July 2018, CIS7B839411830, p.15

31. In June 2017, the UK Home Office reported that being of Tamil ethnicity does not in itself warrant international protection.<sup>14</sup> Recent reports do not mention that Tamils are at risk of harm based on their prior place of residence.<sup>15</sup> I have also considered the country information from DFAT and other sources which indicate that Tamils are not being systematically targeted and subjected to serious harm because of their race. Overall, the country information before me does not support that being Tamil in itself gives rise to a real chance of persecution. I am not satisfied that any monitoring the applicant may face on return to Sri Lanka would constitute serious harm.
32. Having regard to the entirety of the evidence before me, I am not satisfied that the applicant faces a real chance of harm from any arm of the Sri Lankan government, on account of his background, his ethnicity, his birth or residence in the north, due to any residence in an area previously controlled by the LTTE, due to any actual or imputed LTTE links, or a combination of these factors, upon his return to Sri Lanka now, or in the foreseeable future.

*Illegal departure / Returning asylum seeker*

33. I accept that if the applicant returned to Sri Lanka he would do so as a failed asylum seeker returned from Australia. I also accept that he would be identified by the Sri Lankan authorities as someone who departed Sri Lanka illegally.
34. Having regard to the country information before me, I am not satisfied there is a real chance the applicant would be harmed by the Sri Lankan authorities by virtue of him being a Tamil asylum seeker. DFAT assess that all returnees are subject to the same standard procedures on return, regardless of ethnicity, and are not subject to mistreatment during processing at the airport.<sup>16</sup>
35. DFAT indicate that returnees will be processed by the Department of Immigration and Emigration, the State Intelligence Service, the CID and, at times, the TID (Terrorist Investigation Division) who check travel documents and identity information of returnees against the immigration and intelligence databases, as well as determining whether a returnee has any outstanding criminal matters.<sup>17</sup> DFAT note that all returnees travelling on a temporary travel document are subject to a standard procedure to confirm their identity which often includes interviewing the returnee, contacting the police in their home area, contacting family and neighbours, and checking criminal and court records.<sup>18</sup> I accept the applicant may return to Sri Lanka on a temporary travel document. Processing arrivals at the airport can take several hours, primarily due to the administrative processes and staffing constraints at the airport. DFAT also note that returnees are processed in groups and cannot leave the airport until the group has been processed.<sup>19</sup> I am satisfied on the information before me that the applicant has no identification concerns and I am not satisfied that he is a person with a criminal or security record that would raise the concern of these authorities. Further, I am not satisfied that any

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<sup>14</sup> UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826, p.13

<sup>15</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064; UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826; US Department of State, "Country Reports on Human Rights Practices for 2017 - Sri Lanka", 20 April 2018, OGD95BE927333; Human Rights Watch, "Human Rights Watch World Report 2018", 18 January 2018, NGED867A63; Office of the High Commissioner for Human Rights, "Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism - Mission to Sri Lanka", 23 July 2018, CIS7B839411830

<sup>16</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.29

<sup>17</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.28

<sup>18</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.29

<sup>19</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.28

processing delays or investigative processes to which the applicant may be subject to would constitute serious harm as defined by the Act.

36. DFAT report that while the Sri Lankan government has reportedly decreased surveillance of returnees, anecdotal evidence indicates that the CID regularly visited and/or telephoned returnees in the north of Sri Lanka in 2017.<sup>20</sup> DFAT assess that surveillance of returnees contributed to a sense of mistrust of returnees within their community.<sup>21</sup> DFAT also report that some returnees reported social stigma from within their communities on return, and that in some communities people resent the financial support returnees are provided.<sup>22</sup> DFAT further assess that societal discrimination can affect a returnee's ability to secure housing and employment.<sup>23</sup> A small percentage (0.3%) of returnees interviewed by the UNHCR in 2016 indicated that they had security concerns following their return to Sri Lanka.<sup>24</sup> While I accept the applicant may be visited by the authorities following his return to Sri Lanka, and that he may face social stigma or societal discrimination within his local community due to his profile as a returnee asylum seeker, I am not satisfied that he would face treatment that would constitute serious harm as defined by the Act. I am also mindful that the applicant's family continue to reside in Sri Lanka and would be able to assist him to reintegrate into the community and life in Sri Lanka.
37. For these reasons, and considering the applicant's individual circumstances, I am not satisfied he faces a real chance of harm due to his asylum application in Australia, or due to being a failed Tamil asylum seeker from Australia now, or in the reasonably foreseeable future, if he returns to Sri Lanka.
38. As noted in the delegate's decision, there are penalties under the Immigrants and Emigrants Act (IAEA) for departing Sri Lanka illegally.
39. DFAT report as part of this process, most returnees will provide a statement, be fingerprinted and photographed, and transported to the nearest Magistrates Court at the first available opportunity once investigations are completed, after which custody and responsibility for the individual shifts to the courts or prison services. The Court then makes a determination as to the next steps for each returnee. Returnees who are arrested can remain in police custody at the CID Airport Office for up to 24 hours after arrival. Should a Magistrate not be available before this time – for example, because of a weekend or public holiday – returnees who are charged may be held in an airport cell for up to two days.<sup>25</sup> DFAT rates general prison conditions in Sri Lanka as not meeting international standards because of a lack of resources, overcrowding and poor sanitary conditions.<sup>26</sup>
40. I accept that as the applicant departed Sri Lanka irregularly by boat, he will be considered to have committed an offence under the IAEA.<sup>27</sup> Country information indicates that persons who have departed Sri Lanka illegally may face penalties that can include up to five years imprisonment and a fine. A fine varies from LKR 3,000 (approximately AUD 25) for a first

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<sup>20</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.40

<sup>21</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.42

<sup>22</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.40

<sup>23</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.42

<sup>24</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.41

<sup>25</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.30

<sup>26</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.18

<sup>27</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.27

offence, and up to LKR 200,000 (approximately AUD 1,670); in practice, penalties are applied to such persons on a discretionary basis and usually in the form of a fine.<sup>28</sup>

41. On return to Sri Lanka, I find the applicant would be charged and fined under the IAEA and then released. In the less likely event that the applicant elected to plead not guilty to the offence under the IAEA, he would either be granted bail on a personal surety or have a family member act as guarantor.<sup>29</sup> There is no suggestion the applicant was anything other than an ordinary illegal departee from Sri Lanka. In that context, I find that he would not face any chance of imprisonment, but it is highly likely that he will be fined. As noted above, DFAT report that returnees are not subject to mistreatment during processing at the airport. While the applicant may be subjected to poor prison conditions during a short period of detention, I am not satisfied that the prison conditions to which the applicant may be subject of themselves constitute serious harm as defined by the Act. Further, I am not satisfied the applicant will face a real chance of harm during any brief time spent in detention. On the evidence before me, I find the imposition of any fine (which can be paid in instalments<sup>30</sup>), surety or guarantee would not of itself constitute serious harm. I have considered the possibility of a custodial sentence, but there is no country information before me that indicates that custodial sentences are being levelled against illegal departees with a profile such as the applicant. In the context of a significant number of Sri Lankan nationals being returned to Sri Lanka, and the absence of any profile that would elevate the penalty the applicant would face, I find there is not a real chance that the applicant would face imprisonment.
42. I am also satisfied that the provisions and penalties of the IAEA are laws of general application that apply to all Sri Lankans equally. The law is not discriminatory on its terms, nor is there country information before me that indicates that the law is applied in a discriminatory manner or that it is selectively enforced. I am further satisfied that the process and penalties that the applicant may face due to his illegal departure do not amount to serious harm. Accordingly, I am satisfied that any process or penalty the applicant may face on return to Sri Lanka because of his illegal departure would not constitute persecution for the purpose of the Act. In light of this I find that the applicant does not face a real chance of harm from the Sri Lankan authorities due to his illegal departure, travel to Australia or for any other reason.
43. After having regard to the applicant's claims individually and cumulatively, I find that he does not have a well-founded fear of persecution within the meaning of s.5J.

#### **Refugee: conclusion**

44. 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**

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45. 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.

<sup>28</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.32

<sup>29</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.32

<sup>30</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.32

## Real risk of significant harm

46. 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.

47. I have concluded that the applicant is not of interest to any arm of the Sri Lankan government, on account of any actual or imputed LTTE links (including familial links) and does not face a real chance of harm on this basis. I have also concluded that the applicant does not face a real chance of harm for any other reason including due to his father's profile or previous interactions with the authorities in 2010, his family members who live in Australia or Sri Lanka, his friend's circumstances or death, his ethnicity, his previous place of birth and residence, his time spent in Australia, his political opinion, or for being a returning asylum seeker. Based on the same information, I find that the applicant does not have a real risk of suffering significant harm on return to Sri Lanka.

48. I have accepted that the applicant may face some level of societal discrimination as a Tamil or as a returnee asylum seeker. The country information confirms that the trend of monitoring Tamil civilians in day-to-day life has eased since 2009. Having considered the applicant's own circumstances, and evidence discussed above, I am not satisfied that any monitoring or societal discrimination the applicant may face amounts to significant harm as defined in the Act.

49. I have accepted that the applicant will be identified on arrival at the airport in Sri Lanka as having departed illegally, that he will be subjected to a number of administrative procedures, and that he may be detained for several hours at the airport and potentially detained in a holding cell for a number of days. On the country information, I am not satisfied there is a real risk that the applicant will face significant harm during the investigation process or while being held at the airport. While I accept that the applicant may be subjected to poor prison conditions during any period of detention, country information confirms this is due to overcrowding, poor sanitation and lack of resources. It does not amount to the death penalty; an arbitrary deprivation of life or torture. Further, there is no intention to inflict pain or suffering, severe pain or suffering, or extreme humiliation. In these circumstances, the poor prison conditions to which the applicant may be subject do not of themselves constitute significant harm as defined by the Act. For these reasons, I am not satisfied the applicant will face a real risk of significant harm during any brief time spent in detention.

50. While I accept the applicant may be subjected to questioning and may be required to pay a fine or provide a surety on return to Sri Lanka, I am not satisfied that this amounts to significant harm. I find that the questioning, imposition of a fine and the potential of being held in detention, individually or cumulatively not to amount to the death penalty, arbitrary deprivation of life, torture or that there is an intention to inflict pain or suffering, severe pain or suffering or cause extreme humiliation. I am not satisfied this amounts to significant harm as defined by the Act.

51. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm.

**Complementary protection: conclusion**

52. 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).

**Member of same family unit**

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53. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant.

54. I have considered the protection claims of the applicant's father in a separate decision and found that he is not a person who is mentioned in s.36(2)(a) or (aa). It follows that the applicant does not meet the family unit criteria in either s.36(2)(b) or s.36(2)(c).

**Decision**

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

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
  - (c) that is not inconsistent with Article 7 of the Covenant; or
  - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

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

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

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

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

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

### 5K Membership of a particular social group consisting of family

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

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



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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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