



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA18/06106

Date and time of decision: 18 March 2019 08:49:00
L Hill, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Sri Lanka. He applied for a Safe Haven Enterprise Visa (protection visa) on 12 February 2017. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 5 December 2018.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act)(the review materials).
3. On 25 January 2019, the IAA received an email from the applicant's representative. The email enclosed a letter from the representative (IAA letter), three letters in support of the applicant's claims and an article.
4. The IAA letter contains discussion on why the applicant does not agree with the delegate's decision. To the extent that the discussion reiterates and addresses the claims made by the applicant to the delegate and refers to country information already before me, this is not new information and I have considered it in this review.
5. The email also included the following documents:
 - a. Letter from PJ dated 19 January 2018
 - b. Letter from SA undated
 - c. The Halo Trust Letter dated 19 January 2019
 - d. Sri Lanka Campaign for Peace & Justice article undated
6. Sources (a)-(b) were not before the delegate. They are new information.
7. Source (a) pre-dates the protection visa interview and delegate's decision. Source (b) is undated. No explanation has been provided nor is it apparent on the information before me why this information was not provided prior to the delegate making her decision.
8. The applicant was clearly advised by the delegate at the commencement of the protection visa interview that it was extremely important to provide the Department with complete and accurate protection claims as early as possible, including during the interview, and that it was his responsibility to raise his claims for protection. The applicant was also cautioned that if his application was refused he may not have another chance to provide further information to support his claims. The representative provided a post-interview submission. The applicant has been represented throughout the protection visa process yet at no time during the protection visa interview or prior to the delegate's decision did the applicant or his representative make mention of these two sources or that they would be seeking to obtain such information. I consider that had these sources been so fundamental to his case, or to the assessment of his credibility, as he now claims that it is he would have provided this information to the Minister prior to the decision being made. He did not.

9. It has been contended that source (a) is from a “fellow worker” with Halo Trust who has also fled the country and sought asylum in France and source (b) evidences the “continuing circumstances, in that the country security forces continue to attend [the applicant’s] home, asking for [his] whereabouts”. This is personal information however the format and details of these documents raise serious concerns about their reliability.
10. In relation to source (a), the substantive details have been typed yet the signatory’s address, phone number, email, date and signature have been handwritten. When this is considered against the substantive contents of the source, that being that it merely reiterates the applicant’s version of events it raises concerns about the level of involvement the signatory had in the preparation of this document and its reliability.
11. In relation to source (b), while it has been contended that it corroborates the applicant’s claims regarding events since his departure from Sri Lanka, the paragraph specifically relating to the visits by the Sri Lankan authorities to the applicant’s family have been expressed in general terms. It does not specifically indicate that the signatory has actual knowledge of such events. Furthermore, the signatory states that after a recent event remembering martyrs the applicant’s family have been targeted and that many youngsters like the applicant were produced and accused of organising such events. This is a new claim. The date of this claimed event and subsequent targeting of the applicant’s family remains unknown, and when considered against the inclusion of generalised statements and the delay in the provision of this source until after the delegate’s decision casts doubts about the reliability of its contents.
12. Weighing all the evidence before me, while sources (a)-(b) have been provided as corroborative evidence of the applicants claims, noting my concerns regarding the delay in their provision, the format of the sources and reliability of their contents, I am not satisfied that there are exceptional circumstances to justify the consideration of this new information.
13. Source (c) post-dates the delegate’s decision. The source purports to corroborate the applicant’s claims that he worked as a de-miner for The Halo Trust between [year] and [year], this fact was accepted by the delegate and is not in dispute. I am also not satisfied that there are exceptional circumstances to justify the consideration of this new information.
14. Source (d) has been contended as being “the latest release from the Sri Lanka Campaign”, however in the absence of a publication date, I am not satisfied from the mere assertion that it is the “latest release” that it post-dates the delegate’s decision. The applicant was capably represented at the protection visa interview by the same representative who has provided this information. After the protection visa interview, the representative provided a post-interview submission however this source was not referred to. The source is general country information. There is a range of credible information already before me including in the post-interview submission relating to the progress of the Sri Lankan government’s reform agenda after the civil war. In the absence of a publication date, I am not satisfied that the new information materially adds to the information already before me in the review material. I am not satisfied that there are exceptional circumstances to justify considering this new information.

Applicant’s claims for protection

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

- The applicant is a Tamil male who was born in Kilinochchi District in Kilinochchi Division in the Northern Province of Sri Lanka.
 - Approximately one year prior to the civil war ending, the applicant was forcibly recruited by the LTTE. As the civil conflict was ending, the applicant escaped the LTTE and re-joined his family before they all surrendered to the SLA.
 - Upon surrender he was separated from his family by the SLA and taken to another camp. While detained at the camp on three occasions he was questioned about his involvement with and knowledge of the LTTE and its operations. He denied involvement. He was threatened, physically assaulted and hung from a tree for hours at a time. He was held at the camp for approximately four months before being released.
 - On release he was taken by the SLA to a different camp. He was again accused of being an LTTE member. The questioning, physical assaults and torture continued. He denied involvement. Some weeks later, other inmates at the camp overheard the SLA referring to the pressures from foreign governments. A few weeks later he was released and taken to the camp where his family was. While at this camp on a number of unspecified occasions he was taken by the CID and SLA and asked to identify LTTE members.
 - He and his family stayed at this camp for approximately six months before returning to their home village in [year]. On return he was given a direction by the Sri Lankan authorities that he was to stay at a nominated address and report to the local SLA unit once a month or as required. Life was not easy and he was regularly questioned by the Sri Lankan authorities.
 - Soon after his return, he was taken by the CID and kept for one month. While detained he was questioned and asked to identify who was involved with and/or member of the LTTE. He didn't provide any information.
 - [In] , he secured work with Halo Trust clearing landmines. When working for HaloTrust every month he was taken for questioning by the Sri Lankan security forces.
 - He felt his life was in danger and made arrangements to depart Sri Lanka.
 - Since his departure, the Sri Lankan authorities have gone to his family home seeking his whereabouts. On two occasions in [year], his sister was questioned by the Sri Lankan authorities.
16. It has been contended that the applicant fears on return to Sri Lanka he will be harmed by the Sri Lankan authorities on the basis of his ethnicity, actual and imputed political opinion arising from age, gender, his former forced recruitment by the LTTE, his former residence in a predominately Tamil and former LTTE controlled area in the Northern Province and because he has left Sri Lanka illegally while subject to reporting and/or sign in requirements and has sought asylum.

Refugee assessment

17. 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

18. 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.

19. I accept the applicant's identity is as claimed. I accept the applicant is a [age] year old Tamil male from the Northern Province of Sri Lanka, and a Sri Lankan national. Sri Lanka is the receiving country for the purpose of this assessment.

20. I accept that approximately one year prior to the civil war ending, the applicant was forcibly recruited by the LTTE. I accept that after initial LTTE training, he undertook duties which involved keeping and clearing mines. The applicant's evidence is plausible when considered against the Institutional History of the LTTE paper which reports that at that time the LTTE aggressively resumed its forced recruitment of both children and adults as the group began to find itself on the verge of military defeat.

21. I accept that in 2009 as the civil conflict was ending, the applicant escaped the LTTE and re-joined his family. I accept that he and his family then surrendered to the SLA. The applicant's evidence aligns with the information in the Institutional History of the LTTE referring to the report of the United Nations that between 27 October 2008 and 1 June 2009, approximately 290,000 individuals crossed over to government-controlled areas from the conflict zone. As these individuals crossed they were met, at designated reception areas or "checkpoints" by the Sri Lankan Army who screened and registered the displaced before transporting them to detention camps in the north, the largest of which was the multi-camp Menik Farm in Vavuniya district.

22. The Institutional History of the LTTE paper also reports that not all of the individuals screened and registered at the SLA checkpoints were sent to detention camps. Rather, those who were identified as having suspected ties to the LTTE were separated from those identified as civilians and taken to specially designated "Protective Accommodation and Rehabilitation Centres" (PARCs). Suspected LTTE members who had been missed at the checkpoint screenings were also sometimes later arrested in the northern detention camps as a result of additional screenings. In light of the foregoing, I accept when the applicant surrendered himself he was separated from his family by the SLA and taken to another camp however I do not accept that as claimed this was on the basis of his age or appearance but because at that time he was identified as an individual who had suspected ties to the LTTE.

23. I accept that while detained at the camp on three occasions he was questioned about his involvement with and knowledge of the LTTE and its operations. I accept he was accused of being a member of the LTTE. I accept he was asked to identify LTTE members. I accept he was told by the SLA that they did not believe what he had said and was threatened, physically assaulted and hung from a tree for hours at a time. I accept that he was held at the camp for approximately four months before being released. The applicant's evidence regarding his past experiences of harm while detained were sufficiently detailed and given without hesitation.
24. I do not accept however that while detained he denied and/or did not confess and/or admit his involvement and/or membership of the LTTE to the Sri Lankan authorities. This aspect of the applicant's evidence was problematic.
25. I find it difficult to accept that the applicant would be released by the Sri Lankan authorities and allowed to return to his family after four months if they were not aware of his involvement and/or membership of the LTTE. Various sources in the review materials report that that suspects were detained for years in prisons and military-run detention centres while cases were being examined and I am satisfied that he was released after a short period of time because the Sri Lankan authorities were aware of the extent of his involvement with the LTTE and had determined that it did not warrant further investigation, detention or rehabilitation. If it had, various reports in the review materials including DFAT, UK Home Report and UNHCR suggests he would have been at a real and serious risk of being detained for further detention, more in depth interrogation, rehabilitation processes, or subject to harsher treatment, including indefinite detention and torture, as was the case for many Tamils whose involvement warranted who were seriously suspected of having links to the LTTE.
26. In the protection visa letter, the applicant claimed after he was released he was taken by the SLA to a different camp. He was again accused of being an LTTE member. The questioning, physical assaults and torture continued but occurred more regularly at this camp. He told the SLA he had lived in an LTTE area and was unable to avoid or disobey them and that many of his friends had joined. He told them while he may have been seen talking to these friends it did not mean he had joined the LTTE. He told the SLA that during the ceasefire period (2002 – 2006) and after the tsunami, some groups came and worked with the LTTE on various projects. One of the groups was engaged in clearing mines. He was recruited by this agency and given training on this project. The project was controlled and implemented by the LTTE and he had to take directions from them. He told the SLA he was not a member of the LTTE but had no other option than to assist on the project. The SLA did not believe him and kept saying he was with the LTTE and continued to torture him and ask where the mines were kept.
27. The applicant claimed that some weeks later, other inmates at the camp overheard the SLA despairingly referring to the pressures from foreign governments, particularly India and they were going to visit the camps. They also overheard them saying they would be unable to finish the LTTE'ers and that they would have to let them out with conditions to ease the pressure but would collect them later for questioning. A few weeks later he was taken to the camp where his family was. After returning to his family he learnt that his family had wrote complains and made representations to several welfare groups and organisations who had visited the camp asking for his whereabouts and release.
28. In contrast to the applicant's evidence regarding his surrender and detention by the SLA in the first camp, his evidence regarding what happened after he was released from the first

camp has varied. At the protection visa interview, when the applicant was asked what happened after he was released from the first camp he stated he was taken to the camp where his family was. They stayed at this camp for approximately six months before returning to their home village in [year]. While at this camp he was taken on a number of unspecified occasions by the CID and SLA and asked to identify LTTE members. At the protection visa interview, the applicant made no mention of the claims that on release from the first camp he was taken to another camp where he was again detained, questioned and harmed. Rather, he stated that after he had been held in the two camps they (the Sri Lankan authorities) sent them (his family) to their home village.

29. Furthermore, the applicant's evidence that during the ceasefire period he had been recruited and trained to clear mines and completed this work under the direction of the LTTE is problematic. At the time claimed, that being between 2002 and 2006, the applicant would have been between [age] and [age] years old and I find it implausible that at such a young age the applicant would have been recruited and trained to undertake such hazardous work, and I do not accept that he did.
30. In light of the foregoing, I am not satisfied the applicant has been a truthful witness regarding this aspect of his claims. I do not accept that after being held in the first camp for four months he was transferred to another camp where he was detained, questioned and harmed without his family. Nor do I accept any of the subsequent events he claimed to have occurred while detained at this camp. Instead, I found the applicant's evidence at the protection visa interview was a more plausible, cogent and compelling description of what happened after he was released from the first camp. I am satisfied that after the applicant was released from the first camp he was taken to the camp where his family was. I accept he and his family stayed at this camp for approximately six months before returning to their home [village]
31. I am also prepared to accept while detained with his family at this camp (second camp) the applicant on a number of unspecified occasions was taken by the CID and SLA and asked to identify LTTE members. However, I find it difficult to accept that the Sri Lankan authorities would do this if they were not already aware of the extent his involvement and/or membership of the LTTE. Rather, I am satisfied that the applicant was subjected to continuous questioning and asked to inform on other LTTE members by the Sri Lankan because they were aware he had been involved and/or a member of the LTTE and he could provide this information.
32. I accept that after the applicant on return to his home [village] he and his family tried to resume their life but it was difficult as their family home had been destroyed and the area was controlled by the Sri Lankan authorities including the security forces. I accept on return he was given a direction by the Sri Lankan authorities that he was to stay at a nominated address. These aspects of the applicant's evidence are plausible when considered against the information in the review materials that after the civil conflict security forces questioned and monitored many civilians for possible LTTE activity, civil resistance or anti-government sentiment and the 2013 UNHCR survey that reported that 87 percent of mostly Tamil IDP's who had returned to their homes in the north and east had been registered by the military and 71 percent had been visited by the military or the CID for interviews.
33. I accept that on return life he was regularly questioned by the Sri Lankan security forces about what he was doing and his background. I accept the Sri Lankan security forces would ask questions in Sinhalese or badly pronounced Tamil and any wrong answers led to problems and being taken away to the camp or police station. DFAT has reported that depending on their level of involvement, individuals were subjected to ongoing monitoring

and reporting requirements, and I am satisfied that as a Tamil whose involvement and/or membership of the LTTE which I have found was known to the Sri Lankan authorities, it is plausible that he would be subjected to a level of ongoing monitoring by the authorities on return to his home village.

34. In the protection visa letter and interview, the applicant claimed on return to his home village he was required to report to the local SLA unit one a month or as required. When he reported he was questioned for one to two hours and sometimes physically assaulted.
35. The UK Home Office and DFAT reports states while former LTTE members were required to register with their local military units Civil Affairs Office, the level of any ongoing monitoring and reporting requirements depended on whether the individual was a low or high-profile member. While I have accepted that the applicant was forcibly recruited and spent approximately one year with the LTTE before escaping, I have rejected the applicant's claims that he was released by the Sri Lankan authorities from the first camp and allowed to return to his family without having confessed and/or admitted his involvement and/or membership of the LTTE; and I find it difficult to accept that given his release after a relatively short period, that being four months and his type of involvement, that being as a forced recruited that his involvement and/or membership of the LTTE was considered to be anything more than minor or low level by the Sri Lankan authorities.
36. In light of the foregoing, including the country information, I do not accept that on the applicant's return to his home village he was subjected to any reporting and/or sign in requirements by the Sri Lankan authorities. I do not accept he was required to report and/or sign in once per month at the local SLA unit. Nor do I accept any of the subsequent events he claimed to have occurred when reporting and/or signing in.
37. At the protection visa interview, the applicant claimed on return to his home village on one occasion he was taken by the CID to a site in [District 1] and kept for one month in a house with another ten boys. While detained he was questioned. The CID told him that they were aware he was in the LTTE in the past and asked him to identify who was involved with and/or member of the LTTE. He didn't provide any information. The applicant made no mention of these claims in his protection visa letter and I find it difficult to accept that given the period of time he had claimed to be detained, that being one month that had this event had any credible basis he would have made mention of it, even if only to briefly indicate it prior to the protection visa interview, he did not. I do not accept that after his return to his home village he was taken by the CID and detained for one month. I am satisfied the applicant has contrived this aspect of his claims to enhance his claims for protection.
38. I accept after returning to his home village to support his family the applicant worked in construction and repaired damaged buildings. I accept that in [year], he secured work with Halo Trust clearing landmines. The applicant's evidence regarding his employment history after the civil war ended has been consistent throughout his interactions with Department. The photographs which depict the applicant in his Halo Trust uniform further substantiate this aspect of his claims.
39. The applicant claimed when working for Halo Trust every month he was taken for questioning by the Sri Lankan security forces. They would ask how many mines he had recovered and what happened to them and who were the others working with him. He stated this happened because the Sri Lankan security forces always suspected that LTTE members were working with Halo Trust to recover the mines and store them elsewhere. It was impossible for him to live like this; his life was in danger simply on the whim of any officer who would dislike him.

40. I do not accept that the applicant was targeted, taken and questioned by the Sri Lankan security forces when working for Halo Trust. The information in the review materials does not substantiate this aspect of the applicant's claims. While I accept that in 2009, the Journal of ERW and Mine Action reported on the violent disappearances and death of mine-action staff (de-miners), there is no independent information in the review materials to indicate that de-miners or de-mining organisations were targeted in the years following the end of the civil war in 2009. Rather, in 2013 the UNHCR reported that the Sri Lanka government has been working in official partnership with international demining organisations including Halo Trust to clear land and enable the resettlement of persons displaced during the war years and that the demining of mined lands is a pivotal element of the government's post-war reconstruction efforts. Furthermore, the applicant's claims that the Sri Lankan security forces targeted and questioned him because they suspected that de-miner's working for Halo Trust were former LTTE members is illogical when considered against my findings above that at the time of his release from the first camp in 2009 the Sri Lankan authorities were aware of the extent of his involvement with and/or membership of the LTTE.
41. While I have accepted that on return to his home village, the applicant was monitored and questioned, I have not accepted that he had reporting or sign in requirements. Nor have I accepted the event in which he claimed to have been taken by the CID to a site in [District 1] and kept for one month or that he was targeted, taken and questioned by the Sri Lankan security forces when working for Halo Trust. He has never claimed that he was arrested or charged. While I accept the monitoring and questioning by the authorities was intimidating for the applicant, the lack of any credible evidence regarding any subsequent actions after he returned to his home village suggests to me that the Sri Lankan authorities believed his involvement with and/or membership of the LTTE was low level and they did not hold any serious suspicions about him. If they did, the country information in the review materials suggests he would have been at a real and serious risk of being subjected to harsher treatment, including a period of rehabilitation or indefinite detention and torture, as was the case for many Tamils who were suspected of high level LTTE involvement at that time.
42. At the protection visa interview, the applicant claimed that since his departure the Sri Lankan authorities have gone to his family home seeking his whereabouts. This has happened many times the last time was approximately three months before the protection visa interview (December 2017/January 2018). They told his family members if he returns he must report to them. He believes they were after him because he has stopped reporting. Furthermore, on two occasions in [year] his sister was questioned by the Sri Lankan authorities. He believes they questioned her because he had departed and because they suspect she was a part of the LTTE.
43. I have rejected the applicant's claims that on return to his home village he was subjected to any reporting or sign in requirements by the Sri Lankan authorities and it follows that I do not accept that on this basis the Sri Lankan authorities have sought his whereabouts or questioned his sister. I also find it difficult to accept that had the Sri Lankan authorities genuinely suspected that the applicant's sister had been a member of the LTTE they would wait for at least three years after the civil war had ended before questioning her about this, and I do not accept they did. Finally, while the applicant claimed that these events commenced and continued in the immediate years after his departure, he made no mention of these claims in his protection visa letter which he was assisted to prepare by representative in early 2017 and consider the delay in the provision of these claims until the protection visa interview further undermines their credibility.

44. In light of the foregoing, I am not satisfied the applicant has been a truthful witness regarding these aspect of his claims. I do not accept that since the applicant's departure the Sri Lankan authorities have gone to his family home sought his whereabouts and questioned his family. Nor do I accept that on two occasions in [year] his sister was questioned. I am satisfied the applicant has contrived these claims to enhance his claims for protection.
45. It has been contended that the applicant fears on return to Sri Lanka he will be harmed including being imprisoned and/or killed by the Sri Lankan authorities on the basis of his ethnicity, actual and imputed political opinion arising from age, gender, his former forced recruitment by the LTTE, his former residence in a predominately Tamil and former LTTE controlled area in the Northern Province and because he has left Sri Lanka illegally and has sought asylum and other matters which I have not found to be credible above.
46. The DFAT, UK Home Office and US Department of State reports indicate that the overall situation for Tamils in Sri Lanka has improved considerably since the end of the civil conflict in 2009. Tamils have a substantial level of political influence and their inclusion in political dialogue has increased since the Sirisena government came to power in 2015. As a consequence of the improving situation, in 2017 and again most recently in 2018, DFAT assessed that Sri Lankans of all backgrounds generally have a low risk of experiencing official or societal discrimination, including in relation to access to education, employment or housing. Furthermore, the 2017 UK Home Office reports has assessed that it was its opinion that being a person of Tamil ethnicity would not in itself warrant international protection.
47. I have had regard to the submissions provided and it appears that it is being contended that while there have been changes in Sri Lanka since the applicant's departure the situation has not sufficiently improved such that the applicant, as a Tamil with his background, would be free of persecution. It has also been contended, and that since the 2018, DFAT report was published there have been recent changes in the composition of the Sri Lankan parliament and that "these developments had put the country at a crossroads without any solution to the ethnic conflict or political demands of the Tamils, which is the primary cause of the persecution leading to human rights violations for Tamils".
48. I accept that Sri Lanka is still yet to fully come to terms with its legacy of large-scale past abuses committed in the war and its aftermath, and is yet to truly achieve reconciliation; and while I have considered the sources and the associated claims raised in the submissions and the analysis by commentators and organisations in the sources in the review materials, I consider it too speculative to conclude that recent changes referred to by applicant or the representative will lead to a risk of harm to the applicant on his return. Rather, I am satisfied that the advice and commentary from DFAT, UK Home Office and US Department of State remains relevant and that the Sirisena government maintains effective control. I do not accept that recent changes in the composition of parliament and the events resulting from such would lead to the applicant facing a real chance of harm on return now or in the reasonably foreseeable future.
49. I have also had regard to the submissions provided by the applicant's representative relating to the arbitrary arrest, detention, abduction, torture, sexual abuse and killing of individuals who were perceived to be connected to or supporters of the LTTE, while some of the information is dated, I accept that there is credible evidence of serious harm being perpetrated against certain Tamils associated with, or perceived to be associated with, the LTTE by the Sri Lankan authorities in pre and post-war Sri Lanka.

50. I have also had regard to reports by the UK Home Office, US Department of State and DFAT, which while not suggesting that there does not continue to be issues of concern, indicate it is individuals who have or are perceived to have had a significant role in relation to post-conflict Tamil separatism or a renewal of hostilities within Sri Lanka who are now at risk of serious or significant harm on return. DFAT has assessed that those at highest risk of monitoring, arrest, detention or prosecution are high profile former LTTE members, including the former leadership, and former members suspected of terrorist or serious criminal offences during the conflict or of providing weapons or explosives to the LTTE, and that close relatives of such people who remain wanted by the authorities may be monitored. People on a "stop list", those with extant court orders or arrest warrants or orders to impound their passport, may be at risk of being detained; and people on a security services' 'watch list' for separatist or criminal activities, may be monitored. The US State Department has reported that although the use of force against civilians by government officials remained a problem it was increasingly rare, and that arbitrary arrest by police had decreased.
51. I accept the applicant is a [age] year old male Tamil, who has previously resided in in the Northern Province. Country information published by the UNHCR and UK Home Office supports that a person being of Tamil ethnicity from the North or the East would not in itself warrant international protection. There is no independent information before me, absent any other concerns to suggest that arising from a person's age or gender or that Tamils who resided in predominately Tamil or former LTTE controlled areas in the Northern Province who departed Sri Lanka are imputed with pro-LTTE or anti-Sri Lankan government political opinion. I am satisfied that the applicant will not be imputed with any type of profile because he a [age] year old male Tamil who resided in the Northern Province including in predominantly Tamil or former LTTE controlled areas on return now or in the reasonably foreseeable future.
52. I have accepted however that the applicant was forcibly recruited by the LTTE. However, I have found that the applicant's involvement with the LTTE was as a forced recruit for a period of a year at least [years] ago and prior to the civil conflict ending, and I am satisfied his involvement was low-level and known to the authorities. I have rejected the applicant's claims that on return to his home village he was subjected to any reporting or sign in requirements and detained for one month by the Sri Lankan authorities and that since his departure the Sri Lanka authorities have questioned his family and sought his whereabouts, however I have accept that he underwent a short period of detention, that being four months and was subject to regular monitoring and questioning on his return to his home village. As discussed above, the country information in the review materials indicates that this was routine for individuals who had low-level involvement with the LTTE, and I am not satisfied that such monitoring and questioning indicates that the Sri Lankan authorities had serious suspicions or that it is indicative of the treatment he would receive now, particularly having regard to changed country conditions. He has not committed any terrorist or criminal acts or been involved in any LTTE or Tamil separatist activities since the civil conflict ended. There is no information to suggest that the applicant is on either the stop or watch lists. He did not have, and nor do I accept he would be perceived to have had a significant or a high level role in the LTTE on return.
53. I have accepted that the applicant was previously employed for approximately [years] with the Halo Trust, however I am not satisfied that his past employment would lead to any interest or consequences for the applicant, even if his employment was identified on his return to Sri Lanka. The applicant ceased his employment with the Halo Trust at least [years] ago, and I have rejected the applicant's claims that he was targeted, taken and questioned by the Sri Lankan security forces when working for Halo Trust and that since his departure the

Sri Lanka authorities have questioned his family and sought his whereabouts. Furthermore, as discussed above there is no independent information in the review materials to indicate that de-miners or de-mining organisations were targeted in the years following the end of the civil war or its employees are viewed adversely for any reason. I am satisfied that the applicant will not be imputed with any type of profile as a consequence of his past employment with Halo Trust on his return.

54. Having regard to all the evidence before me, I am not satisfied that the applicant will be imputed with any type of profile arising from his past circumstances on return to Sri Lanka. I am not satisfied that as a [age] year old male Tamil male who resided in predominately Tamil and/or former LTTE controlled areas the Northern Provinces, his involvement with the LTTE as a forced recruit, or his past employment with the Halo Trust he will be perceived to have an pro-LTTE or pro-Tamil or anti-Sri Lankan government political opinion, on his return to Sri Lanka. I am not satisfied the applicant faces a real chance of harm as a Tamil, or because of any actual or imputed pro-LTTE, pro-Tamil or anti-Sri Lankan government political opinion, on his return to Sri Lanka now or in the reasonably foreseeable future.
55. I accept the applicant left Sri Lanka illegally and he would return to Sri Lanka on temporary travel document. I accept the applicant would be returning to Sri Lanka after his asylum application has failed and that the Sri Lankan authorities may know or infer that he has made claims for protection in Australia.
56. The most recent DFAT report states that most Sri Lankan returnees, including those from Australia are questioned at the airport upon their return. DFAT has reported that for returnees travelling on temporary travel documents, police undertake an investigative process to confirm identity, which would identify someone trying to conceal a criminal or terrorist background, or trying to avoid court orders or arrest warrants. This often involves interviewing the returning passenger, contacting the person's claimed hometown police, contacting the person's claimed neighbours and family, and checking criminal and court records.
57. I accept, as a person returning on a temporary travel document, the applicant may be detained at the airport with other returnees for processing by the Sri Lankan authorities. I accept that during this process the authorities will become aware of the applicant's past circumstances. However, as discussed above, I have found the applicant will not be imputed with any type of profile arising from his past circumstances on his return to Sri Lanka. There is no evidence before me that he has outstanding court orders, arrest warrants or a criminal or terrorist background.
58. DFAT and other sources in the review material advises that returnees are treated according to the standard airport procedures, regardless of their ethnicity and religion and that they are not subject to mistreatment during processing at the airport. The process can take several hours, due to the administrative processes, interview lengths and staffing constraints at the airport. Returnees are processed in groups, and individuals cannot exit the airport until all returnees have been processed. The information before me indicates that the processing of returnees at the airport is not applied in a discriminatory manner or selectively enforced and nor will the applicant be mistreated.
59. Overall, I am satisfied that any period of detention that would occur while these investigations are ongoing will still be brief and would not exceed the several hours that group processing generally takes. I am not satisfied the applicant being subjected to standard processing at the airport amounts to serious harm.

60. I accept on return the applicant may be charged under the Immigrants and Emigrants Act (I&E Act) for departing Sri Lanka other than via an approved port of departure. Returnees who are arrested and charged under the I&E Act are processed at the airport and enquiries made about activities while abroad if returnees are former LTTE members. After processing returnees may be detained at the airport for up to 24 hours. At the earliest available opportunity returnees are transferred to the closest Magistrates Court. Should a magistrate not be available before this time – for example, because of a weekend or public holiday – those charged may be detained in an airport holding cell for up to two days. Information before me indicates that detention is not selectively applied to returnees, or that returnees are processed in any discriminatory manner or that those who committed an offence under I&E Act, such as the applicant, face a higher risk of torture or other mistreatment.
61. DFAT reports that penalties for returnees who depart illegally can include imprisonment and a fine. According to the Sri Lankan Attorney-General's Department, no mere passenger on a people smuggling venture has been given a custodial sentence for departing Sri Lanka illegally. However, fines are issued to deter people from departing illegally in the future. There is nothing before me to indicate that the applicant would be perceived and treated as anything other than a mere passenger on the people smuggling vessel. I am satisfied that the applicant will not be given a custodial sentence.
62. If the applicant pleads guilty to departing illegally, he will be required to pay a fine (which he can be done by instalment) and will subsequently be free to go. Where a passenger returnee pleads not guilty, the magistrate will usually grant bail on the basis of personal surety or guarantee by a family member. Where a guarantor is required, returnees may need to wait for the guarantor to come to court. DFAT has indicated that anecdotal evidence suggests that most passengers of people smuggling ventures spend many years on bail, and that most are free to go after paying a fine. It further noted that the fines issued were low. The applicant has not claimed and there is no evidence before me to indicate he would not be granted bail on personal surety.
63. Those charged under I&E Act will only need to return to court when their case is being heard, or if summonsed as a witness in a case against the organiser/facilitator of a people smuggling venture. There is no general requirement to report to police or police stations between hearings. DFAT noted that the fines issued for passengers of people smuggling ventures was often low, but that the cumulative costs associated with regular court appearance over a protracted lengths of time can be high.
64. I am not satisfied that the conditions of detention for a brief period at the airport in a holding cell, a fine and the costs associated with regular court appearances, if required amount to serious harm in this case. In addition, the information before me does not indicate that I&E Act is discriminatory on its terms, that it is applied in a discriminatory manner or that it is selectively enforced. Accordingly, I am satisfied that any investigation, prosecution and punishment would not amount to persecution for the purpose of ss.5H(1) and 5J(1) of the Act.
65. In its most recent report, DFAT reported that between 2008 and 2017, over 2,400 Sri Lankan nationals departed Australia for Sri Lanka. This includes nationals who were returned from the Australian community, and those removed from Australian onshore immigration detention centres. Many others returned from the US, Canada, the UK and other European countries, and most returnees are Tamil. In 2017, the Sri Lankan Prime Minister publicly stated that failed asylum seekers from Australia would be welcome back to Sri Lanka. However, DFAT has also reported that apart from this positive government sentiment, failed

asylum seekers, may face practical difficulties on return. Failed asylum seekers receive limited reintegration assistance and many returnees have difficulty finding suitable employment and reliable housing on return. However, DFAT assesses that reintegration issues are not due to failure to obtain asylum, but rather due to the employment and accommodation difficulties they may face. DFAT also notes that some failed asylum seekers reported social stigma from their communities upon return. Furthermore, while the Sri Lankan government has reportedly decreased systematic surveillance of returnees, DFAT is aware of anecdotal evidence of regular visits and phone calls by the CID to failed asylum seekers in the North as recently as 2017. DFAT assesses that this surveillance of returnees contributes to a sense of mistrust of returnees within the community. However, in interviews with returnees conducted by UNHCR in 2016 only 0.3 per cent indicated they had any security concerns following their return.

66. I accept that the applicant would return to the North of Sri Lanka as failed asylum seeker and that as such the applicant may be the subject of some monitoring by the Sri Lankan authorities for a period and may face some reintegration issues that being difficulties finding employment and accommodation and some social stigma from his community; however I am not satisfied that such matters amounts to serious harm.
67. I am not satisfied the applicant faces a real chance of persecution, as a Tamil failed asylum seeker with his background who departed illegally on his return to Sri Lanka now or in the reasonably foreseeable future.
68. I am not satisfied the applicant has a well-founded fear of persecution.

Refugee: conclusion

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

Complementary protection assessment

70. 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

71. 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.

72. As the applicant would be travelling to Sri Lanka (whether involuntarily or otherwise) on temporary travel document, I have accepted he may be detained at the airport for processing on return and questioned. I have also accepted he may be detained briefly in an airport holding cell, fined and incur costs associated with regular court appearances. I am not satisfied these measures constitute significant harm as defined. I do not accept they would amount to the death penalty, constitute or result in an arbitrary deprivation of life, or torture. Nor does the evidence before me indicate that these processes, or the penalties implemented as a result involve any intention to inflict pain or suffering that could be considered cruel or inhuman in nature, severe pain or suffering or to cause extreme humiliation. I am not satisfied that it amounts to cruel or inhuman treatment or punishment or degrading treatment or punishment as defined.
73. I accept that the applicant as a returning failed asylum seeker in the North may be monitored by the authorities for a period and may face some reintegration issues that being difficulties finding employment and accommodation and some social stigma. The evidence does not suggest that the applicant will suffer the death penalty, arbitrary deprivation of life, or torture as a consequence of being a returnee. I am not satisfied that any monitoring and social stigma the applicant may face amounts to pain or suffering that is cruel or inhuman in nature, severe pain or suffering, whether physical or mental, or extreme humiliation, as required in the definitions of cruel or inhuman treatment or punishment or degrading treatment or punishment. I am not satisfied there is a real risk of significant harm on this basis.
74. Furthermore, having regard to the evidence as a whole, I am also not satisfied that the applicant being detained at the airport for processing and questioned or detained briefly in an airport holding, fined or costs incurred with regular court appearances, monitoring or reintegration issues that being difficulties finding employment or accommodation or facing some social stigma on return amounts to significant harm.
75. I have otherwise found the applicant does not face a real chance of harm on any or the bases claimed now or in the reasonably foreseeable future. As 'real risk' involves the same standard as 'real chance', I am also not satisfied that the applicant faces a real risk of significant harm on these bases.

Complementary protection: conclusion

76. 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) of the Act.

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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