



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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SRI LANKA  
IAA reference: IAA19/06618

Date and time of decision: 12 June 2019 12:03:00  
G Deal, 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 an referred applicant, or their relative or other dependant.*

## Background to the review

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### Visa application

1. The applicant (the applicant) claims to be a Tamil from the north of Sri Lanka. [In] July 2013 he arrived by boat in Australia. On 17 February 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV application) with the Department of Immigration, now part of the Department of Home Affairs.
2. On 6 May 2019 a delegate of the Minister for Home Affairs (the delegate) refused to grant the visa. The delegate accepted most of the applicant's claims, including that he worked for the Liberation Tigers of Tamil Eelam (LTTE) and fought with them in the final stages of the conflict but noted he was released from an Internally Displaced Persons (IDP) camp at in 2009 and other than being charged with his illegal departure was of no interest to authorities when he returned to Sri Lanka in 2013 and did not accept he was a person of interest to the authorities at the time of his second departure from Sri Lanka in July 2013. The delegate found the applicant did not meet the relevant definition of refugee, did not face a real risk of significant harm and was not a person in respect of whom Australia had protection obligations.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 4 and 5 June 2019 the IAA received a submission and supporting documents from the applicant.
5. In addition to a number of facts and claims that were before the Department, and arguments, the submission contains a number of new facts, claims and supporting documents. The new information includes photos of the applicant and his [Relative A] in LTTE clothing and a number of new details and claims in relation to their LTTE links, his time in an IDP camp, including an explanation for why he was not detained and interrogated and supporting documents in this regard, his time in Jaffna, why he was not detained at the airport in January 2013 and his detention and escape from the CID in 2013. This new information has been provided in response to adverse findings in the delegate's decision. The applicant broadly submits he did not previously provide this information because he did not understand or realise the information was an important part of his case and he was very nervous and stressed during the SHEV interview. Having listened to the audio of the SHEV interview, the applicant does not mention being nervous and nothing indicated he was so nervous he was unable to effectively participate in the interview and I do not accept this explanation. However, the interviewing delegate did not clearly raise the issues they had with the applicant's evidence in the SHEV interview in relation to these claims. In this regard, the applicant stated at the end of the SHEV interview that he had answered all of the interviewing delegate's questions but did not know how those answers were being treated. While I have some concerns about the new information I am satisfied it could not have been provided to the delegate before the delegate's decision was made. I also consider the new information corroborative of the applicant's central claims for protection. I am satisfied exceptional circumstances exist to justify its consideration.
6. In the submission the applicant makes a number of new claims, including that his family will be in danger because of his profile if he returns, that they will be harmed if they try to help him

and that he is at increased risk of harm because he did not undergo rehabilitation. These new claims do not address issues raised in the delegate's decision and are unsupported and lacking in detail. The applicant has been represented throughout the visa application process and I do not accept he could not have put these claims to the Department before the delegate's decision was made. I am not satisfied exceptional circumstances exist to justify consideration of the new information.

7. A number of country information reports and articles were referred to in the submission, however only an article about Tamil protestors in London and a report on the on-going torture in Sri Lanka are new information. I note they were published in the year preceding the delegate's decision and I am not satisfied they could not have been provided to the Department before the delegate's decision was made. The applicant has not claimed to have been in London or to have a political profile. A number of other recent country information reports about the mistreatment of Tamils by the authorities in Sri Lanka are already before me. I am not satisfied exceptional circumstances exist to justify consideration of the new information.
8. At the end of the applicant's submission it states "I humbly request the IAA to invite me for an interview to discuss about [sic] my refugee claims". There is no indication what information would be provided at interview or why that information could not have been included in the IAA submission. I note any new information provided could only be considered in exceptional circumstances. I also consider the applicant has had an adequate opportunity to provide his claims and supporting information. In addition to the arrival interview, he submitted an extensive submission together with his visa application and was assisted by his then migration agent in preparing this. His then migration agent attended his SHEV interview, and made a number of oral submissions at the end of that interview. While there was an opportunity to lodge a post interview submission none was lodged. I do not consider a further interview is required in the circumstances. I have decided not to provide the applicant with a further interview.

### **Applicant's claims for protection**

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9. The applicant's claims can be summarised as follows:
  - He is a Tamil male of [age] years of age born in [Town 1], an LTTE stronghold during the conflict, in the north of Sri Lanka. His parents are originally from Jaffna. He has only completed up to year [number] schooling and only speaks Tamil.
  - After he finished his schooling fighting intensified in his area and his family were forced to move into the Vanni. He and his father commenced a business but were forced to close down within a year because of fighting in the area. He began working for a [business] owned by the LTTE. He and his family were forced to relocate on a number of occasions due to the conflict.
  - He needed to earn a living and in 2002 agreed to work as a driver for the LTTE who trained him to drive their heavier vehicles. He transported goods, including weapons and ammunition into LTTE controlled areas.
  - He was forced to join the LTTE in 2007 and fought for them, among other things. He was given an LTTE name "[specified]".
  - In February 2009 he returned to his home after hearing it had been destroyed by the security forces. His [specified relatives] were injured, one cousin had been killed. He

took his sisters to hospital and buried his cousin. They were again relocated due to fighting and eventually, along with many others, moved to the government controlled area in [their district] where they were placed in an IDP camp.

- He was released with his family from the camp about six months later, avoiding interrogation because of his [family] connections, the applicant did not reveal his LTTE past and his [Relative A] had already been detained on suspicion of LTTE links and so other family members were not suspected. They could not return home because of landmines and instead went to Jaffna. The public did not know him in Jaffna and he worked in a [shop] transporting items between Jaffna and Colombo. During this period the army did not check people and permits were not required so he did not have any issues.
- He returned to his family village in 2012. People in his village who knew him told the authorities about his LTTE past. The CID went to his home looking for him a number of times but he was not home when they called on him. Given the CID's new interest in him and his LTTE links he feared for his safety and made arrangements to flee Sri Lanka for Australia by boat [in] December 2012. He was returned to Sri Lanka from [Australia] by plane in January 2013.
- On return to Sri Lanka he was arrested, charged and detained for one day and taken to court and released on bail. Under his bail conditions he was not allowed to leave Sri Lanka for six months. He lived in his family village and kept a low profile.
- In early 2013 he was arrested and detained, interrogated and tortured by the CID on suspicion of LTTE links and when he told them the truth about his LTTE past they did not believe him. While being transported to another camp about two months later he managed to escape. He went to his [relative's] house and remained there for a couple of days before travelling to [another city] by lorry and eventually fleeing Sri Lanka by boat bound for Australia [in] July 2013.
- His [Relative A] joined the LTTE during the conflict and when the war ended she was detained by the authorities and mistreated. She travelled with the applicant to Australia [in] July 2013 and is currently seeking protection in Australia.
- His parents and a number of his adult siblings continue to reside in the north, many still in the family village. One of his siblings has also sought protection in [another country], although the outcome of his application is unknown.
- He fears the government forces including the army, security forces and paramilitary groups. In addition to past association with the LTTE he fears he will be imputed a supporter of the LTTE given his race, location, age and gender. He will be detained for information about the location of hidden weapons and to identify an LTTE person they are looking for. He will be a failed asylum seeker who has spent a significant amount of time in a Western country with a large Tamil diaspora. He has left Sri Lanka illegally on two separate occasions and in breached his bail conditions which will increase his risk. He will be visited by the authorities and Tamil militant groups on his return to his family village, as they will be notified by authorities at the airport.

## **Factual findings**

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10. Based on the applicant's evidence, including his documentary evidence, I accept he is a Tamil male from the north of Sri Lanka of about [age] years of age. I also accept he has had limited schooling and only speaks Tamil, has worked as a driver in Sri Lanka and more recently as a factory worker in Australia. He has had the assistance of a migration agent and translators

throughout his visa application process and having listened to the audio of the arrival and SHEV interviews there was nothing to indicate he was unable to effectively participate and I do not accept this was the case. He has consistently said he was of Hindu faith which I accept. Other than stating he went to churches and temples of all denominations because of the way it made him feel, he has not mentioned any specific claims in relation to this.

### **Applicant's LTTE involvement**

11. The applicant consistently claimed he commenced working at a [business] owned by the LTTE after his family moved into the Vanni in the 1990s. I note in his submission to the IAA he stated that he commenced working for the LTTE in 2002 although this might be a reference to his work as an LTTE driver rather than in the [business]. The country information before me indicates that at that time the LTTE controlled the Vanni and everyone had some type of affiliation with them.<sup>1</sup> I accept he worked for an LTTE owned [business] while living in the Vanni some 30 years ago.
12. The applicant claims that he needed to earn a living and in 2002 he was trained and worked as a driver for the LTTE transporting goods. Although there were some minor inconsistencies in the dates in the arrival interview I do not draw an adverse inference from this because it was some time ago. The applicant also said he drove to Colombo to retrieve a vehicle during the peace talks before he joined the LTTE in 2007. The country information before me indicates a ceasefire commenced in 2002 and formally ended in 2008, although fighting intensified in 2006.<sup>2</sup> Given the consistency and detail provided and the country information before me I accept the applicant drove for the LTTE transporting goods from 2002 during the ceasefire because he needed to earn a living, just as many other Tamils in LTTE-controlled areas at that time were assisting the LTTE.<sup>3</sup> He claimed in his visa application he transported goods, including [a material] that was "used to make weapons". In contrast in the SHEV interview when asked what he did while driving for the LTTE he said he carried arms and ammunition from one point to another within the LTTE controlled area in the Vanni. Given the inconsistency and its belated I do not accept he transported weapons and ammunition for the LTTE as claimed.
13. The applicant claims he was forced to join the LTTE in 2007 and that he mostly fought for them during the conflict. The applicant's responses in relation to his role as a fighter for the LTTE have been brief and inconsistent, particularly when compared to his evidence in relation to his role as a driver. In his arrival interview he indicated that after joining, the LTTE military only had him for one day and then asked him to drive vehicles. He did not provide details about his role in the LTTE after 2007 in his visa application, stating he would provide this at interview. In the SHEV interview the applicant said that because of the scarcity of militants they recruited people from the public and he joined at that time. He said he was a driver and also worked in the [store] at that time. He was assigned to a sentry point and provided the LTTE with intel on the security force's movements. When asked if he fought while in this role he said that most of the places he was assigned the army were not present but he fought in two places. When asked where he mentioned [one town] and that he fought for three hours. The interviewing delegate asked if when he said he fought whether he was on the front line shooting his weapon and the applicant said yes, he was on the front line, but he provided no further detail.

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<sup>1</sup> DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064; Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345.

<sup>2</sup> Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345.

<sup>3</sup> DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064; Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345.

When asked when this was he said it was after 2007, maybe 2008, something like that, he was not sure but maybe 2007. He also fought at another site. When asked if he fired his weapon and engaged in battle there he said "yes" but did not elaborate. He was asked twice how long this fighting lasted. He eventually said it was maybe one and a half weeks. When asked what year the battle occurred he said maybe in 2008, in the later part of 2008. When asked if he engaged in any other battles he mentioned two other areas and said he also engaged in patrolling and driving as well during this period. When pressed to nominate which task he performed most he said he mostly fought. He also said that he was mostly in the battlefield in the later part of 2009 when the conflict ended. I note in his visa application the applicant said that he returned to his family home in February 2009 after it was damaged due to fighting and that he had to take family members to hospital and bury his cousin and he remained there until being displaced with his family and eventually taken with them to the IDP camp which I accept given the consistency and detail provided. In his IAA submission the applicant also claimed he was given an LTTE name [specified].

14. I have found the applicant's evidence in relation to his fighting role equivocal, on the one hand he indicated he did not fight much as the sentry points he was stationed at were not near the security forces and they wanted him to drive, and yet later in the SHEV interview when pressed on how much he fought, he indicated he mostly fought and was always on the battlefield in 2009 and near the end of the conflict. The country information before me indicates that in the lead up to the end of the conflict there were reports that the majority of LTTE recruitment in the Vanni, which was not uncommon at that time, was forced.<sup>4</sup> The late mention of his claimed LTTE name also raises serious concerns for me regarding its veracity, given its significance and that he was questioned at length in the SHEV interview about his LTTE role after 2007. The applicant has also provided two photos, one appears to be of him in an LTTE uniform and the second he claims is of his [Relative A] when she was young in an LTTE uniform. While the man in the photo bears a striking resemblance to the applicant I have some serious concerns about these photos. They are both very blurry, and are only images of people from the chest up in front of an artificially created background and do not show the people in a natural setting or engaging in any type of activity. Moreover, in the SHEV interview when the interviewing delegate asked the applicant if he had any photos or other supporting information in relation to his LTTE claims he said that he did not because they did not keep these types of records at that time. He has not explained how the photos have now come into his possession. I place no weight on these photos.
15. On the evidence including the country information detailed above, I accept the applicant was forced to assist the LTTE in 2007, as were many Tamils in the area at that time, received training, drove for the LTTE and may have had exposure to the battlefield and seen things. However given the lack of detail and inconsistencies I do not accept he was an LTTE member, fought as claimed, or that he was given an LTTE name which I consider exaggerations intended to strengthen his claims for protection.

#### **IDP camp**

16. Given the consistency of the claim and the country information before me which indicates there was an IDP camp in [location] I accept the applicant and his family spent about six months in this camp at the end of the conflict.<sup>5</sup> The country information before me<sup>6</sup> indicates

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<sup>4</sup> Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345.

<sup>5</sup> United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), 'IDP site locations and capacity as of 10 August 2009, Vavuniya, Sri Lanka', 1 January 2013, CIS24965.

that around that time the majority of the population in the Vanni was taken to IDP camps and a significant number suspected of LTTE involvement were detained in special rehabilitation camps. The army considered most Tamils from the Vanni to be former LTTE members or sympathisers given they had been under LTTE control since the 1990s and so they were closely monitored.<sup>7</sup> The applicant has not said he was detained, interrogated or sent to rehabilitation on suspicion of LTTE involvement while in the IDP camp. In his visa application he indicated this was because he wanted to surrender but his family would not let him. In his IAA submission he added that he and his family avoided interrogation by the CID while in the camp and were released after only six months because his [relative] worked in the medical facility at the IDP camp and had a good relationship with the Gramma Sevagar. In support of this he has provided some documents in relation to this [relative] which indicate [they] worked as a temporary driver at the [agency] in [Town 1] from about 2005, which I accept. He also states that because his [Relative A] had already surrendered as an LTTE member the authorities did not view other family members with suspicion. However the country information before me indicates his [Relative A's] LTTE links could have also brought his family under suspicion at the time.<sup>8</sup> The applicant also thought to explain why he was not detained while in the IDP camp in his visa application stating he wanted to surrender but his family did not want him to. Yet he did not provide the more detailed and seemingly more compelling reasons relating to his [relatives] at that stage and I do not accept these explanations.

17. The applicant has consistently claimed to have gone to Jaffna after leaving the camp in early 2010 where he remained and worked as a driver between Jaffna and Colombo until 2012, which I accept. In the SHEV interview he said no authorities came looking for him while he was living and working in Jaffna. He has also said no one knew him in the area and he was able to travel between Jaffna and Colombo during this period because the army were not checking and permits were not required. While indicating conditions had relaxed after the conflict, in contrast to the applicant's unsupported claims, the country information before me indicates there were still checkpoints in Jaffna and Colombo, random checks were still being conducted, youth and those suspected of LTTE links were targeted in Jaffna, and Tamils travelling from the North to Colombo still faced some measure of risk.<sup>9</sup> On the evidence, I do not consider the applicant was wanted by the authorities on suspicion of LTTE involvement at the time of his release from the IDP camp or while in Jaffna working from 2010 to 2012.

### **Illegal departure**

18. The applicant claims the CID were looking for him on his return home in 2012 and he fled in fear of his safety for Australia but was returned in early 2013 and charged for his illegal departure. The applicant has consistently said that the authorities were looking to question him prior to his first departure and that they wanted to gather information from him. In the SHEV interview he said that on his return to his family village in 2012, people in his village told the authorities about his LTTE links. The country information before me<sup>10</sup> indicates that at that time the Vanni was massively militarised and the extensive military presence was creating a number of problems for the local population. The army was monitoring and registering the

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<sup>6</sup> Landinfo, 'Sri Lanka: Human rights and security issues concerning the Tamil population in Colombo and the Northern Province', 1 December 2012, CIS25286.

<sup>7</sup> Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345.

<sup>8</sup> DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064.

<sup>9</sup> Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345.

<sup>10</sup> Landinfo, 'Sri Lanka: Human rights and security issues concerning the Tamil population in Colombo and the Northern Province', 1 December 2012, CIS25286.

population, reports were that the entire Tamil population in the area were being photographed and registered. He was not wanted by authorities at the end of the conflict in connection with an adverse security profile or harassed or otherwise harmed by them after his release and in the following three years while in Jaffna and travelling to Colombo. I do not accept his brief and belatedly raised claim that people in the village had told the authorities about his LTTE past in 2012. While I am willing to accept he may have been told by others that the authorities were looking for him on the evidence including the country information detailed above, I consider it more plausible that this was for registration purposes on his return to his family village. I do not accept he was wanted by the authorities on suspicion of LTTE links when he returned to his family village or when he left Sri Lanka in 2012. I accept the applicant left Sri Lanka at the end of 2012, was returned early 2013 and charged with having departed Sri Lanka illegally, briefly detained and went to court given the consistency and detail of this aspect of his claim. It is also plausible that he was asked why he left illegally and was advised not to leave again as part of this process, and I accept he was.

19. The country information before me indicates that around that time, a returnee who had departed illegally, particularly those between 20 and 45 years of age, was screened at the airport by a number of government agencies, including the State Intelligence Service, to ensure they were not otherwise wanted by the authorities.<sup>11</sup> The applicant has not said he was otherwise detained or charged and I do not accept he was genuinely wanted by authorities on suspicion of LTTE links at that time. In his SHEV interview the applicant indicated on more than one occasion that he did not think he was detained at the airport on suspicion of LTTE links because he told them he was registered in Jaffna rather than the Vanni. In his IAA submission he also made the unsupported and brief assertion that the authorities no longer harmed people at the airport and waited until they returned to their village. However, in light of the country information detailed above I do not find the applicant's explanations persuasive and I do not accept them. On the evidence I do not accept the applicant was wanted by the authorities on suspicion of LTTE links on his return to Sri Lanka in early 2013.

## **2013 detention**

20. The applicant claims the CID detained and mistreated him on suspicion of LTTE links in 2013 and he escaped and fled Sri Lanka for Australia, a second time, in July 2013 in breach of bail conditions. In addition to lacking detail there have been a number of inconsistencies in the applicant's evidence in relation to these claims. At times he has said he was arrested in May 2013 and detained for a few months and then escaped and fled for Australia and at other times he has said he was arrested in February 2013, detained for a few months, then escaped and fled for Australia. I note he left Sri Lanka in July 2013. When these inconsistencies were pointed out in the SHEV interview, he was unable to provide an explanation, only stating he escaped in May 2013. I also find it surprising the applicant would return to his family village where he had claimed only a matter of months earlier to have fled in fear of his life. When this was put to him in the SHEV interview the applicant said he had to return as he had given up driving and had nowhere to live. He also mentioned he feared being detained for information about the location of weapons and to assist in finding an LTTE person who was well known to him, but I do not accept he transported weapons for the LTTE and he provided no further detail in relation to these belatedly raised claims, which I do not accept. When the interviewing delegate asked him if the CID were transporting him to rehabilitation when he escaped, he said they had not told him where they were taking him. The applicant did not mention his claimed escape from the CID in his SHEV interview which raises some concerns for me regarding the

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<sup>11</sup> UK Home Office, 'Sri Lanka - Bulletin: Treatment of Returns', 1 December 2012, CIS28615; Immigration and Refugee Board of Canada, 'Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka' 22 August 2011, LKA103815.E.



veracity of this claim, given its recency and significance. I note, the interviewing delegate did not directly question the applicant about his claimed escape, although they did question him about his claimed 2013 detention and gave the applicant and his then migration agent an opportunity to mention anything else of relevance during the SHEV interview. Further, the delegate did not accept this claim in their decision and the applicant has provided only very limited additional information in this regard in his IAA submission. He has said the CID did not believe him when he told them the truth about what he did for the LTTE, they accused him of being a high profile LTTE member and he was abused and severely mistreated. He was accompanied by three Sri Lankan Army (SLA) soldiers when being transported to the second camp. Two received a message and had to leave and he was left with only one soldier. He was allowed to go to the toilet and escaped at that point. He believes the soldier could have caught him if he wanted to but must have felt sorry for him and so let him escape. I find it surprising an SLA soldier would allow the applicant to escape if the applicant were genuinely wanted on suspicion of LTTE links. I am also surprised the applicant has provided little to no detail about his time in detention. I do not accept the applicant is a former LTTE member or was wanted by the authorities after the end of the conflict, in 2012 or after his release in 2013. In light of this and the issues with his evidence I do not accept the applicant was detained by the CID in early 2013 and severely mistreated on suspicion of LTTE links. It follows that I do not accept he escaped as claimed. The applicant left Sri Lanka for Australia in July 2013, some six months after returning to Sri Lanka. I have found the applicant's claim, mentioned in his SHEV interview, to have left Sri Lanka in breach of bail conditions belatedly raised, lacking in detail and unsupported and I do not accept this was the case. I also note the applicant has not said the authorities have looked for him in this regard, since being in Australia. I do not accept the applicant was wanted by the authorities or anyone working with them in connection with an adverse security profile when he left Sri Lanka in 2013.

#### **[Relative A's] LTTE involvement**

21. The applicant has consistently claimed his [Relative A] joined the LTTE in 1995 and was detained by authorities after the end of the war and travelled with him to Australia in 2013. He did not have any contact with his [Relative A] while with the LTTE (a period of about 14 years). She as detained and severely mistreated and questioned by authorities. They gave her a reporting timetable. In 2013 she travelled with the applicant to Australia. The applicant was unable to answer a number of the interviewing delegate's questions in the SHEV interview about his [Relative A's] LTTE involvement and detention after the war. He said it was because they did not share these secrets. However in his IAA submission he said he feared if he provided these details it would put his [Relative A] at risk of harm if she were returned and that he had now spoken with her and she had given him approval to share her information. He provided her claimed LTTE name, and said she worked as part of [a named unit] and took part in [specified battles], changed her LTTE name and then moved to [a different unit]. She was first injured in a battle in [location] and participated in the [specified] battle at the end of the conflict. I find this information lacking contextual detail. I note this could be because he had no personal involvement in the claimed events. Although his [Relative A's] detention was squarely at issue in the SHEV interview and he was unable to provide any detail at that time, he has not addressed this in his IAA submission. I do not accept the brief and belatedly raised claims in relation to his [Relative A's] LTTE involvement in the IAA submission. Given the consistency of the broader claim his [Relative A] joined the LTTE in 1995, was detained and mistreated by authorities at the end of the conflict, released with reporting obligations travelled to Australia with the applicant a number of years later I am willing to accept these aspects of his claims. There is no credible evidence before me to indicate she was a high level LTTE member or still wanted by the authorities when she left Sri Lanka and I do not accept this was the case. While

it is plausible his family may have been questioned by authorities about his [Relative A's] whereabouts during the conflict I do not accept they were harmed or have been more recently questioned in this regard; he said his family were also victims in connection with his [Relative A's] LTTE links in his SHEV interview but did not provide any further detail in this regard.

## **Refugee assessment**

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22. 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**

23. 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.

24. I accept the applicant is a Tamil male of about [age] years of age from the north of Sri Lanka and that he worked for the LTTE during the conflict and was subsequently forced to assist them at the end of the conflict in various ways, as were other Tamils in the Vanni at that time. I do not accept he was an LTTE member of fought for them or that he was genuinely wanted by the authorities in 2012 or 2013 on suspicion of LTTE links. While I accept his [Relative A] is a former LTTE member I do not accept she is of genuine on-going interest to the authorities. I do not accept the applicant was wanted by the authorities or anyone working with them in connection with an adverse security profile when he left Sri Lanka in 2013.

25. The country information before me indicates the conditions in Sri Lanka have improved since the applicant left in 2013, particularly after the election of the Sirisena government in 2015. Among other improvements, the current government has constructively engaged with the United Nations, there is a decreased military presence in the north, the Office of Missing persons has been established and certain action plans and legislation intended to promote and protect human rights in Sri Lanka have been adopted.<sup>12</sup> However a number of human rights

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<sup>12</sup> DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064; UN Human Rights Council, 'Report of the Working Group on Arbitrary Detention on its visit to Sri Lanka', 23 July 2018, CIS7B839419490.

challenges remain. For example, many disappearances during the conflict and in its aftermath remain unresolved, some authorities continue to enjoy impunity for past human rights abuses and the *Prevention of Terrorism Act*, which is reported to fall short of international human rights standards and to disproportionately affect Tamils, remains legally in force.<sup>13</sup>

26. Despite improvements, the country information before me<sup>14</sup> relevantly states that Tamils in the north continue to report of monitoring by authorities, particularly in relation to those associated with politically sensitive issues. Some Tamils report feeling more empowered to question this. The current government continues to coordinate its reconciliation efforts through various measures, for example, by replacing military governors in the north with civilians. It is also reported that Tamils' inclusion in the political dialogue has improved since the current government came to power in 2015. Overall, Tamils are assessed as facing a low risk of official or societal discrimination. Consistent with this the UK Home office has noted that in its opinion being of Tamil ethnicity, in itself, does not warrant international protection.<sup>15</sup>
27. The UK Home Office notes that evidence of past membership or connection with the LTTE would not, in itself, warrant international protection unless the individual is perceived to have had a significant role in the LTTE or to be active in post-conflict Tamil separatism and therefore, a threat to the State.<sup>16</sup> In this regard, DFAT and the UK Home Office indicate that those on a 'stop list' and at most risk are those with an extant court order, arrest warrant or order to impound their passport. Other country information before me indicates that if detained in these circumstances they may be severely mistreated.<sup>17</sup> DFAT and the UK Home Office indicate those likely to be monitored but not detained are those on a 'watch list' and include people suspected of having engaged in separatist or criminal activities, minor offenders and former LTTE cadres. DFAT also understands that close relatives of high profile former LTTE members wanted by the authorities may be monitored.
28. Overall, the country information before me indicates that while conditions in Sri Lanka for Tamils have improved in recent years, issues remain. Those perceived as having played a significant role in the LTTE or to be active in post-conflict Tamil separatism and a threat to the State, including those with extant court orders and arrest warrants are at risk of being detained and mistreated. While those perceived as having engaged in separatist or criminal activities or close relatives of former high profile LTTE members may be monitored. The applicant does not meet this description. He has not said he has been involved in any demonstrations or political activities in relation to Tamil separatism or otherwise in Australia. I have not accepted his [Relative A] is of on-going interest to the authorities. I have also not accepted the applicant was ever harassed or detained by the authorities in Sri Lanka in connection with an adverse security profile or that he was a former LTTE member or fought for the LTTE or transported weapons for the LTTE. Based on the country information detailed above and the applicant's profile I am not satisfied the applicant faces a real chance of harm by reason of his race, location, age, gender, his [Relative A] or his past experiences in Sri Lanka.
29. I accept the applicant will be a returning asylum-seeker. He also claims to fear being harmed because he has spent a significant amount of time in a Western country with a large Tamil

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<sup>13</sup> UN Human Rights Council, 'Report of the Working Group on Arbitrary Detention on its visit to Sri Lanka', 23 July 2018, CIS7B839419490.

<sup>14</sup> DFAT, "DFAT Country Information Report – Sri Lanka", 23 May 2018, CIS7B839411064; US Department of State, 'Country Reports on Human Rights Practices for 2017- Sri Lanka', 20 April 2018, OGD95BE927333.

<sup>15</sup> UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OGD6E7028826.

<sup>16</sup> Ibid.

<sup>17</sup> United Nations, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka' A/HRC/34/54/Add.2, 22 December 2016, CIS38A80123313.

diaspora. I accept the applicant has spent about six years in Australia. He has not been involved in demonstrations or other activities in relation to Tamil separatism in Australia. DFAT states that the biggest problems facing returnees are bureaucratic inefficiencies and social stigma which can affect a returnee's ability to secure employment and housing and that many have to meet the costs of their boat journey to Australia. DFAT also notes of anecdotal evidence of returnees to the north being monitored by the authorities although I note I have not accepted the applicant was wanted by the authorities or those working with them when he left Sri Lanka in 2013. In his arrival interview the applicant said nothing was outstanding in relation to the cost of his boat journey to Australia. His parents and some siblings continue to reside in the family village in the north and he has not said he would not return there. As a Tamil asylum seeker returning to the north the applicant may face some initial reintegration issues and may be initially contacted by authorities on his return, but I am not satisfied this amounts to serious harm.

30. The applicant left Sri Lanka illegally and as such the country information before me<sup>18</sup> indicates he will be subject to the *Immigrants and Emigrants Act 1949* (I&E Act) and associated procedures at the airport. Following arrival at the airport, returnees will be processed in a group by a number of government agencies and this process can take several hours. If returning on a temporary travel document, police will undertake further investigations in particular to ensure an individual does not have a criminal or terrorist background or an outstanding court order or arrest warrant. Overall, DFAT understands returnees are not mistreated during processing at the airport. Those who departed illegally by boat may be found to have committed an offence under the I&E Act. If arrested they will be photographed, fingerprinted, a statement will be taken they will be transported to the closest magistrate's court where the next steps will be determined. If a magistrate is not available, for example on a weekend or public holiday, they may be held for up to two days in an airport holding cell. They must also appear in court when their case is being heard or they are summonsed as a witness in a case. The offence will be heard in the court closest to the occurrence of the offence which involves legal and transportation costs. Cases are only heard when all members of a people smuggling venture have been located, which can result in long delays. Penalties can technically include imprisonment however it is reported that no mere passenger has been given a custodial sentence for departing illegally but fines are issued as a deterrent. Fines start at about 3,000 LKR (for a first offence) and go up to about 200,000 LKR. DFAT is unable to assess if penalties for multiple illegal departures are higher. If they plead guilty a fine will generally be issued and the person will be free to go. If not pleading guilty they will likely be granted bail on the basis of personal surety or guarantee by a family member and so will have to wait for a family member to pick them up. DFAT also notes that the cumulative costs for returnees associated with the court process can be high.
31. I accept the applicant will be returning on a temporary travel document. There is no credible evidence before me that suggests the applicant has a criminal or terrorist background or outstanding court orders or arrest warrants or is otherwise wanted by the authorities. The applicant's migration agents included an extensive summary of various country information reports with the applicant's visa application, including some in relation to involuntary returnees. However, the applicant did not mention he would be an involuntary returnee in his accompanying statement or his interviews or that this was the case when he was returned to Sri Lanka in January 2013 and I do not accept this would be the case. While I have accepted he has already been charged once for illegal departure, he has not said he was anything other than a passenger on a people smuggling boat and the country information before me indicates

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<sup>18</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.

that no mere passenger has been given a custodial sentence. Based on the country information above I accept the applicant may be detained at the airport for processing and may possibly be briefly (up to two days) held in a holding cell if a Magistrate is not available, as part of the usual procedures for those who left illegally. I am not satisfied there is a real chance he would be otherwise detained. If the applicant pleads guilty, he has not said he would not, after being issued with a fine he will be free to leave. Given his ability to work and option to pay the fine in instalments I am not satisfied that he would not be able to pay the fine or that there is a real chance this would threaten his capacity to subsist. If he does not plead guilty he would likely be granted bail on certain conditions, such as personal surety or guarantee by a family member and would be released on being collected by a family member. The evidence before me does not indicate a family member, many of whom currently reside in the family village in the north, would be unable or unwilling to do this if required. While he may have to meet costs associated with the court process in his circumstances based on his profile I am not satisfied there is a real chance this would threaten his capacity to subsist or would otherwise amount to serious harm. Based on his profile, including that I have not accepted he was wanted by the authorities or those working with them on suspicion of LTTE links when he left Sri Lanka in 2013 and he has not said he has been involved in any Tamil separatist protests or other similar activities in Australia, I am also not satisfied there is a real chance he would be detained or otherwise harmed by authorities in connection with an adverse security profile on his return to his family village.

32. I accept the applicant, as a consequence of his illegal departure, may be interviewed, charged, briefly held, fined, and may possibly have to attend court appearances and meet costs associated with this, but I do not accept these experiences amount to 'serious harm' in this case. Furthermore, I am not satisfied that the relevant laws and procedures dealing with those who depart Sri Lanka illegally are discriminatory, or intended to apply or are applied or enforced in a discriminatory manner.
33. I am not satisfied the applicant faces a real chance of persecution because of his illegal departure.
34. I am not satisfied the applicant has a well-founded fear of persecution.

#### **Refugee: conclusion**

35. 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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36. 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**

37. 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.
38. For the reasons already discussed, I accept the applicant may be interviewed, charged, briefly held, fined, and may possibly have to attend court appearances and meet costs associated with this. However, I am not satisfied that these circumstances amount to ‘significant harm’, as defined for the purposes of s.36(2A). There is not a real risk the applicant would be arbitrarily deprived of his life or subject to the death penalty on his return or be subject to torture. Furthermore, the evidence before me does not support a conclusion that there is an intention to inflict severe pain or suffering, pain or suffering that could reasonably be regarded as cruel or inhuman in nature or to cause extreme humiliation. I am not satisfied the applicant faces a real risk of significant harm as a consequence of his illegal departure.
39. As detailed above I accept that as a Tamil asylum seeker returning to the north the applicant may face some initial reintegration issues and may be initially contacted by the authorities on his return. However, I am not satisfied that these circumstances, even when coupled with what he may experience as a consequence of his illegal departure, amount to ‘significant harm’ within the meaning of s.36(2A) of the Act. This will not involve the applicant being arbitrarily deprived of his life, or being subjected to the death penalty, torture, cruel or inhuman treatment or punishment or degrading treatment or punishment.
40. In considering the applicant’s refugee status, I have otherwise concluded that there was no ‘real chance’ the applicant would suffer harm on his return to Sri Lanka for the other reasons claimed. ‘Real chance’ and ‘real risk’ involve the same standard.<sup>19</sup> For the same reasons, I am also not satisfied the applicant would face a ‘real risk’ of significant harm.

#### **Complementary protection: conclusion**

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

#### **Decision**

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

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<sup>19</sup> *MIAC v SZQRB* [2013] 210 FCR 505.

## 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.